S. HRG. 109–223

[STAR PRINT]
CONFIRMATION HEARING ON THE NOMINATIONS OF CAROL E. DINKINS TO BE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD AND ALAN CHARLES RAUL TO BE VICE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

NOVEMBER 8, 2005

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NOMINATIONS OF CAROL E. DINKINS, OF TEXAS, TO BE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD AND ALAN CHARLES RAUL, OF THE DISTRICT OF COLUMBIA, TO BE VICE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

TUESDAY, NOVEMBER 8, 2005

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., in room SD–226, Dirksen Senate Office Building, Hon. John Cornyn, presiding.

Present: Senator Cornyn.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. The Committee will come to order.

I want to thank Chairman Specter for scheduling today's hearing. This hearing involves two very important positions recently created by the Congress. The Privacy & Civil Liberties Oversight Board was created based upon the recommendations of the 9/11 Commission, and is designed to oversee our Government's commitment to defend civil liberties while we do the work we need to do to find out who it is that is trying to hurt us. As the Chair and Vice Chair of this Board, both of you will fill vital positions within the Government. I hope we can get your nominations voted out of the Committee and through the Senate so you can get to work as soon as possible.

As a country, we cherish our civil liberties and we are committed to vigorously defend them, to ensure that we maintain our way of life. Congress works hard to try to strike the right balance, a careful and wise balance between national security and civil liberties. While this is not always easy, nor can we always claim to have gotten it exactly right, I do believe that we do so with the best interests of our Nation in mind, and that we do so in a manner that is both honest and in good faith.

That is why I am disappointed when we hear what turn out to be false reports or scare tactics about phantom civil rights violations. False reports and scare tactics serve no legitimate purpose, but they do a grave disservice to the American people. The war on terrorism must be fought aggressively, but consistent with protec-

tion of civil rights and civil liberties. Whenever real civil liberties problems do arise, we must learn about them right away so that we can fix them swiftly.

Every false allegation undermines true allegations, and that hurts us all. If anything, false claims about civil liberties violations actually make it harder to monitor real civil liberties issues in the future, for the same reason that eventually no one listened to the little boy who "cried wolf." And that is why I encourage honest, responsible and fair discussions about the war on terrorism, civil liberties and the USA PATRIOT Act.

The Privacy and Civil Liberties Oversight Board will play an important role in this debate. Both of you will be expected to give honest, responsible and fair review of the development and implementation of laws, regulations and executive branch policies related to efforts to protect the Nation against terrorism, and you will also be expected to ensure that concerns with respect to privacy and civil liberties are appropriately considered. And I stand ready to work with both of you, and I know the Committee as a whole does as well.

[The prepared statement of Senator Cornyn appears as a submission for the record.]

Well, I see we have the senior Senator from Texas here. I know she is eager to make an introduction, so let us turn to Senator Hutchison.

PRESENTATION OF CAROL E. DINKINS, NOMINEE TO BE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman. I thank you for holding this hearing.

I am very pleased to be here with my friend, Carol Dinkins. Carol has been nominated to chair this Board, the Privacy and Civil Liberties Oversight Board, and I really cannot think of a better person for this job.

I have known Carol for a long time. She is a leader, as you know, Mr. Chairman, in the legal field in Texas. She has worked with the law firm of Vinson Elkins through most of her career, and during her tenure there has become a leading expert in the United States in environmental law. She has represented clients across various industries, and has handled all aspects of client counseling from litigation to mediation and standard business transactions. She served on the firm's Management Committee and currently chairs the firm's administrative and environmental law practice.

In 1981, Carol left Vinson Elkins to serve as the Assistant Attorney General in Charge of the Environmental and Natural Resources Division in the Department of Justice. In this position she supervised the Government's litigation in Federal environmental, natural resources, Indian and public lands cases. In 1984, she became the Deputy Attorney General of the United States, the second ranking official in the Department of Justice. Her responsibilities included day-to-day management of the Department's 60,000 employees, as well as working with members of Congress, the White House, the Cabinet, and sub-Cabinet officers.

Carol Dinkins is a member of the State Bar of Texas, the Federal Bar Association and the American Bar Association. She has also served as Chair of the ABA Standing Committee on the Federal Judiciary. Her active participation in the legal community has earned her many awards and recognitions, including being cited as one of the best lawyers in America.

I am proud that she hails from my alma mater, the University of Texas at Austin, where she earned her bachelor's degree, and later attended the University of Houston for her JD.

I know that her experience in both the public and private sectors have prepared her to serve as the first Chair of the Privacy and Civil Liberties Oversight Board, and I am very pleased that she has been willing to accept this nomination.

And, Mr. Chairman, I know that your holding this hearing means that you also have an interest in expediting these confirmations so that we can get the Board set up and ready to go.

Thank you.

Senator CORNYN. Thank you very much, Senator Hutchison. I know you have other commitments, and I have already told our two nominees that we have stacked votes here in just a few minutes, we will soldier on the best we can. But thank you for being here and introducing Ms. Dinkins.

Since I have had the honor of also knowing Carol Dinkins for a number of years too, I will not repeat all the nice things that Senator Hutchison said, but just put me down as ditto for all those compliments, and I agree the President has chosen wisely as the Chair of this Board.

Our other nominee is Alan Raul, who is the President's nominee to serve as Vice Chair of the Privacy and Civil Liberties Oversight Board. He is a partner in the prestigious Washington, D.C. law firm of Sidley, Austin, Brown and Wood, and he too brings significant public sector and private sector experience to this job.

Mr. Raul's previously served at the White House as Associate Counsel to President Reagan. He has also served as General Counsel of the Office of Management and Budget, and as General Counsel to the U.S. Department of Agriculture. Mr. Raul, I am confident your past Government service will serve you well in this new position as well.

I welcome both of you here.

As I told Ms. Dinkins yesterday when she was in my office, just catching up after not seeing each other for a while, we had a chance for some informal conversation. I will tell you, Mr. Raul, what I told her yesterday. I said the fact that we do not have a packed audience here or packed members of the Senate Judiciary Committee here does not mean that they are not listening and not interested, because certainly they are and certainly their staff is here. But these days, given the contentious nature of some of our fights here on the Judiciary Committee in particular, the fact that this is not a packed dais up here is not a bad thing. It is probably a good thing.

I am hopeful that we will be able to, as Senator Hutchison and I have already said, move promptly on these nominations.

At this time I would like to turn now to Ms. Dinkins, and any opening remarks you would care to make, we would be glad to hear.

STATEMENT OF CAROL E. DINKINS, NOMINEE TO BE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Ms. DINKINS. Thank you, Mr. Chairman. I appreciate your kind words and those of Senator Hutchison as well. It is a great pleasure to be here today, and a privilege to be nominated by the President to Chair the Privacy and Civil Liberties Oversight Board, and if confirmed, I will be privileged to serve with Alan Raul, and Ted Olsen, Lanny Davis and Frank Taylor, all of whom are men of great distinction and of very considerable achievement and experience.

Having served as Assistant Attorney General for the Office of Legal Counsel, and more recently as Solicitor General of the United States, Mr. Olsen is well known to this Committee. I was fortunate to serve as an Assistant Attorney General when he was the head of the Office of Legal Counsel at the Department of Justice, and I sought his advice and counsel on a number of difficult matters. From that experience, I know that he is careful, measured and thoughtful, and he is thorough in his legal analysis. He is an independent thinker, and he is squarely grounded in the law.

Mr. Chairman, I would like to present Lanny Davis, who is behind me.

[Mr. Davis stood.]

Ms. DINKINS. Thank you, Lanny.

Lanny has a great depth of experience as Special Counsel to President Clinton, and that will be invaluable to the Board, which is housed within the Executive Office of the President.

The other member, Frank Taylor, who is here also, was a longtime career Air Force officer in the area of security, before he was Secretary of State, as Counterterrorism Coordinator, and he is now head of security at General Electric.

The breadth of this collective experience will assure that this Board is well suited to carry out the functions and the great responsibility that has been assigned it. We see that it will be a particular challenge to have the opportunity to be the first members of this Board, and if Alan and I area confirmed, to be the first Chair and Vice Chair. We will be shaping the organization of the Board and working with its members to develop and carry out the initial agenda.

If confirmed, my first priority as Chair, with Mr. Raul's very able assistance, will be to engage an Executive Director and to do what is necessary to get the Board up and running. We will convene as soon as possible to develop our agenda and set priorities, and an integral part of that agenda will be to reach out to those who are interested in this Board and its activities.

We would welcome the opportunity, if confirmed, to meet with members of Congress who may wish to share their views on the role and activities of the Board, and we look forward to reporting at least annually to the Congress on our major activities.

Thank you.

[The biographical information of Ms. Dinkins follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Carol Eggert Dinkins
   Carol Kay Eggert

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

   Office:
   Vinson & Elkins L.L.P.
   2300 First City Tower
   1001 Fannin Street
   Houston, Texas 77002

3. Date and place of birth.

   November 9, 1945
   Corpus Christi, Texas

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

   Marital Status: Married
   Spouse's Name: Bob Brown
   Spouse's Occupation: Retired Attorney

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

The University of Houston
Dates Attended: 1969-1971
Degree Received: Doctor of Jurisprudence
Degree Granted: 1971

The University of Texas School of Law
Dates Attended: 1968-1969
Degree Received: N/A
Degree Granted: N/A

The University of Texas at Austin
Dates Attended: 1964-1968
Degree Received: Bachelor of Science in Education
Degree Granted: 1968

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

a. Principal Associate, Texas Law Institute of Coastal & Marine Resources and Adjunct Assistant Professor of Law, The University of Houston College of Law (1971-1973);
b. Vinson & Elkins 1973-Present, except while in Government;
c. The Nature Conservancy, Board of Directors (member 1996-2008): Chair (2004); Chair, Audit Committee (2005-06); Co-Chair, Government Relations and Volunteer Activities Committee (1996-2003);
d. The Nature Conservancy, Texas Chapter, Chair (1996-99), Trustee (1987-1996), Trustee Emeritus;
e. Houston Museum of Natural Science, Trustee (since 1986) and Executive Committee as Legal Advisor;
f. RESOLVE, Inc., Washington, D.C., Member of Board (since 2001);
g. Environmental and Energy Study Institute, Washington, D.C., Director (1986-1999);
h. Environmental Law Institute, Washington, D.C., Director (1985-1991);
i. National Ocean Industries Association, Washington, D.C., Director and Chair, Government and Public Affairs Committee (1986-1992);
j. Oryx Energy Company, Dallas, TX, Director (1990-1995);
k. University of Houston Law Foundation, Board of Directors (1996-98)

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

None.

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

a. Margaret Brent Award for Women Lawyers of Achievement, awarded by the American Bar Association Commission on Women in the Profession (1999)
b. Inductee, Texas Women's Hall of Fame (2000)
c. University of Houston Law Alumnus of the Year (1984)
d. Outdoors Woman of the Year, awarded by Wonders of Wildlife (2000)
e. YWCA Outstanding Woman of the Year (Business) (1989)
f. Order of Barons, University of Houston Law School (1970-71)
g. Kate Stoneman Award, Albany Law School, Albany, New York (2003)
h. The Women's Council on Energy & the Environment, Woman of the Year (2001)

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

a. American Bar Association:
Board of Governors (2005-2008)
House of Delegates (since 1992)
- Chair, Rules & Calendar Committee (2000-2002) and Member (1996-98)
- Member Nominating Committee (1994-97, 1998-2005)

Board of Editors, ABA Journal (Member since 1998), Chair (2003-06)
Standing Committee on Federal Judiciary
- Chair (2002-03)
- Member (1997-98)

Fund for Justice and Education
- Council (2002-05)

Section of State and Local Government Law
- Delegate and Member of Executive Committee (1992-98 and 2004-05)
- Section Chair (1991-92)
- Various officer positions (1987-91)
- Section Council (1985-87)

Section of Environment, Energy, and Resources
- Delegate and Member of Executive Committee (1998-2004)
- Chair (1997-98)
- Officer (1995-97)
- Section Council (1991-94)

Litigation Section
- Chair, Environmental Litigation Committee (1989-92)

Special Committee on Energy Law (1983-84)

Section Officers Conference, Chair of Nominating Committee (1995-96)

President-Elect Mathis' Appointments Committee (2006-07)

President-Elect Greco's Appointments Committee (2004-05)

President-Elect Shestack's Appointments Committee (1996-97)

b. American Bar Foundation Life Fellow
c. The American Law Institute
d. State Bar of Texas
e. Texas Bar Foundation Sustaining Life Fellow
f. Houston Bar Foundation Fellow
g. Federal Bar Association
h. International Bar Association
i. Inter-American Bar Association
j. Houston Bar Association: Chair, Environmental Law Section (1990-1992); Chair, Committee on the Environment (1990-1992)
k. National Association of Former United States Attorneys
l. Environmental Panel and Texas Panel, CPR Institute for Dispute Resolution
m. Association of Attorney-Mediators
n. Affiliate, Society of Professionals in Dispute Resolution
o. Environmental and Energy Study Institute, Washington, D.C., Director (1986-1999)
p. Environmental Law Institute, Washington, D.C., Director (1985-1991)

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

The Nature Conservancy engages in some lobbying before public bodies.

Other Memberships:
Houston Museum of Natural Science
Houston Zoological Society
Memorial Drive Lutheran Church
Westview Terrace Civic Association
National Recreation & Park Association
University of Houston Law Foundation
University of Houston Alumni Association
Women's Environmental and Energy Study Institute

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

a. Texas Supreme Court (admitted: 1971)
b. U.S. Supreme Court (admitted: 1973)
c. 5th Circuit Court of Appeals (admitted: 1973)
d. 9th Circuit Court of Appeals (admitted: early 1980s)
e. 10th Circuit Court of Appeals (admitted: early 1980s)
f. U.S. Court of Appeals for Federal Circuit (admitted: early 1980s)
g. U.S. Court of Appeals for District of Columbia (admitted: early 1980s)
h. Southern District of Texas (admitted: mid to late 1970s)
i. Northern District of Texas (admitted: late 1980s)
j. Eastern District of Texas (admitted: late 1980s)
k. Eastern District of Arkansas (admitted: late 1980s or early 1990s; allowed to lapse when I no longer had a case in Arkansas)

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

    Please see Attachment A, a list of publications.

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

    Present state of health: excellent
    Date of last physical examination: July 14, 2005

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

    a. State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed.

        Chair, Governor's Task Force on Coastal Zone Management (1979)
        Member, Environmental Protection Committee of the Interstate Oil Compact Commission (1979-81)
        Chair, Governor's Flood Control Action Group (1980-81)
        Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D. C. (1981-83) (PAS)
        Board Member, National Consumer Cooperative Bank Board (1981) (PAS)
        Chair, President Reagan's Task Force on Legal Equity for Women (1981-83) (Presidential appointment)
        Deputy Attorney General of the United States (1984-85) (PAS)
        Member, Legislature's Joint Select Committee on Judiciary, (1987-89) (Gubernatorial appointment)
        Member, Native Hawaiian Study Commission (appointment)

Member, Policy Committee of the Galveston Bay National Estuary Program Management Conference (1988-1992) (Gubernatorial appointment)
Member, Task Force on Judicial Selection, Texas Legislature (1990) (Gubernatorial appointment)
Commissioner, Texas Parks & Wildlife Commission (1997-2002) (Gubernatorial appointment with Senate confirmation); Vice Chair (1999-2001)
Chair, Governor Bush's Conservation Task Force (2000)
Member, Marine Protected Areas Federal Advisory Committee (2003-05) (appointment)

b. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held, nor sought, any elective office.

15. Legal Career:

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

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

N/A

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

N/A

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

The University of Houston
4800 Calhoun Road
Houston, Texas 77204
1971-1973

Vinson & Elkins L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002
Associate (1973-1979)
Partner (1980-1981, 1983-1984, and 1985-present)

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C.
1981-1983

Deputy Attorney General
U.S. Department of Justice
Washington, D.C.
1984-1985

Director
Oryx Energy Company
Dallas, Texas
1990-1995

Texas Parks & Wildlife Commission
4200 Smith School Road
Austin, TX 78744
1997-2002 (Commissioner), 1999-2001 (Vice Chair)

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

From 1971 to 1973, I served as Associate, then Principal Associate, of the Texas Law Institute of Coastal & Marine Resources. I organized conferences, participated in agency meetings, and wrote and published articles and other materials. I also taught research and writing courses as an Adjunct Assistant Professor of Law.

From 1973 to 1981, I represented clients in obtaining governmental authorizations of projects and in counseling on compliance activities. I worked on matters involving, among others, the CWA, CAA, ESA, NEPA, MPRSA, CZMA, 1899 Rivers and Harbors Act, NHPA, FLPMA, OCSLA, and state analogs. I obtained permits for significant navigation projects, industrial facilities, pipelines, dams, levees, drainage projects, and residential waterfront canal developments. I also represented clients in flood plain matters.

As Assistant Attorney General for the Environment and Natural Resources Division, I supervised the government's litigation in federal environmental, natural resources, and public lands matters. During my tenure, the Division implemented the Comprehensive Environmental Response, Compensation, and Liability Act (also known as Superfund) and created the Environmental Crimes Unit, subsequently a section.

In 1984, I was appointed Deputy Attorney General of the United States, the second-ranking official in the Department of Justice, responsible for the day-to-day management of its 60,000-plus employees.

When I returned to private practice in 1985, I added CERCLA and RCRA to my practice portfolio. I assist clients with compliance matters, including counseling, internal investigations, and negotiation of judicial and administrative settlements or other disposition of enforcement actions.

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

My clients and former clients consist of energy and petrochemical industries, transportation interests, developers, state and local governmental entities and, occasionally in prior years, individuals who were involved in regulatory or enforcement matters.

My principal area of practice is environmental law, a field for which specialization is not certified.

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

I appear in court very infrequently.

2. What percentage of these appearances was in:
(a) federal court;

90% is a very general approximation.

(b) state courts of record;

10% is a very general approximation.

(c) other courts.

3. What percentage of your litigation was:
(a) civil:

A very general approximation is 80%.

(b) criminal:

A very general approximation is 20%.

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

   A handful, at most, some as second chair.

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

   0%.

   (b) non-jury:

   100%.

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

    Also state as to each case:

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

    The cases that I litigated are so old that I have been unable to locate files or other information.

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

A. In *United States v. Texas Eastern Transmission Company*, No. 89-6307, in the Southern District of Texas before Judge Ewing Werlein, I was lead counsel to Texas Eastern, a natural gas transmission company. I headed the team that negotiated a consent decree to address remediation of approximately five dozen sites in 14 states and 6 EPA regions. Four states sought to intervene after lodging of the consent decree, which the Fifth Circuit denied. 923 F.2d 410 (1991). For the United States, Brian Donohue at United States Department of Justice (telephone number: 202-514-5413).

B. In *United States v. Occidental Chemical Corporation*, No. 89-5064 (1990), I negotiated the consent decree under which remedial design/remedial construction has now been accomplished at 80/120 Lister Avenue in Newark, New Jersey, decree entered by Judge Bissell. Counsel for the United States was Jerry Schwartz, United States Department of Justice. In 1994, I negotiated an administrative order on consent with EPA, Region 2, for the conduct of an RI/FS in 6 miles of the Lower Passaic River. In 2004, I negotiated another administrative order on consent to conduct an RI/FS in Newark Bay. Counsel for the 1994 Order is Patricia Hick, EPA, Region 2 (telephone number: 212-637-3137); and for the 2004 Order, Amelia Wagner, EPA, Region 2 (telephone number: 212-637-3141). This remains a very active matter.

C. In *United States v. ATOFINA Chemicals, Inc.*, O1CV7087, I negotiated a multi-media consent decree that covered half a dozen plants in three EPA regions. Adam Kushner, former DOJ, now EPA, lawyer was counsel to the government. Honorable Norma Shapiro, E.D. Pa., was the judge.

D. I was lead counsel for BP Exploration (Alaska) Inc. in negotiating a global settlement of a case involving waste disposal at Endicott Island. I negotiated the Plea Agreement, Case No. A99-0141-CR (JKS), a civil settlement, and a voluntary compliance agreement with EPA's Office of Suspension and Debarment. After sentencing, I represented the Company in implementation of the Plea Agreement and Compliance Agreement. This case concluded in February 2005. Counsel for the United States were Timothy Burgess and Deborah Smith of the United States Attorney's Office in Alaska (telephone numbers: 907-271-5071 [Burgess]; 907-271-3389 [Smith]). This case was in Judge Singleton's Court.

E. In *United States v. Fina Oil and Chemical Company*, in the Eastern District of Texas, I negotiated a plea agreement regarding oil spills in the Neches River. I also handled the sentencing hearing before Judge Schell. Former Assistant United States Attorney Tom Kienhoff represented the government.

F. In the late 1970s, I was lead counsel in obtaining federal and state permits to construct a deepwater port in Galveston.

G. Also in the late 1970s, I was lead counsel for a consortium of energy companies in obtaining federal and state permits and other authorizations to construct a liquid propane gas facility and navigation improvements near Sabine Pass, Texas.

H. Since 1999, I have been lead counsel for the Pacific Lumber Company in seeking adaptive management changes to the Headwaters Habitat Conservation Plan in northern California.

I. In the 1970s, I obtained permits for construction of a water front canal residential subdivision. Some aspects were litigated; I served as second chair and have not been able to locate files.

ATTACHMENT A
TO
QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

12. Published Writings:

PUBLICATIONS	TITLE	COPYRIGHT	AUTHOR
8 Houston L. Rev. 322	Comment, Survey of Bankruptcy Law in the Fifth Circuit	1970	Carol E. Dinkins
10 Houston L. Rev. 43	Texas Seashore Boundary Law: The Effect of Natural and Artificial Modifications	October 1972	Carol E. Dinkins
28 Oil & Gas Inst. 181	Governmental Land Use and Environmental Constraints to Consider in Planning New Projects	Matthew Bender 1977	Carol E. Dinkins
22 The Landman, No. 5	Developing Concerns of Coastal Regulatory Programs Affecting Energy Operations	May 1977	Carol E. Dinkins
Barrister	The Federal Zoning Program: Regulation of Flood Plain Use Under the National Flood Insurance Act	Spring 1978	Carol E. Dinkins
1Pace Env. L. Rev. 1	Enforcement of the Statutes Governing Disposal and Cleanup of Hazardous Wastes	Winter 1983	Carol E. Dinkins
14 Env. L. Rev. Rep. 10398	Shall we fight or will we finish: Environmental dispute resolution in a litigious society,	November 1984	Carol E. Dinkins

PUBLICATIONS	TITLE	COPYRIGHT	AUTHOR
Cambridge Energy Forum	Mergers and the Administration, The Reshaping of the Oil Industry—Just Another Commodity	1985	Carol Dinkins
Corporate Practice Commentator 460, 27 S. Tex. L. Rev. 460	A Return to Reason	Fall 1986	Carol E. Dinkins
24 Houston L. Rev. 5	Introduction to Symposium—Rethinking Tort and Environmental Liability Laws: Needs and Objectives of the late 20th Century and Beyond	January 1987	Carol E. Dinkins
8 Corporate Counsel Review 71	The Changing Environment of Environmental Regulation	November 1989	Carol E. Dinkins
Private Investors Abroad – Problems and Solutions in International Business, Chapter 5	Portents for Environmental Law and Policy in a New Administration and a Changing Decade	Annual 1989	Carol E. Dinkins, Carolyn White
13 The Nat'l L. J. 19	Interest in Mitigation Increases, Clean Water	February 4, 1991	Carol E. Dinkins
13 The Nat'l L. J. 34	Government Lawyers Shape Debate on Land Use.	August 12, 1991	Carol E. Dinkins
Washington Legal Foundation, Volume 6 No. 32, Legal Backgrounder	Environmental Violations: What You Should Know About Avoiding Criminal Sanctions,	November 15, 1991	Carol E. Dinkins

PUBLICATIONS	TITLE	COPYRIGHT	AUTHOR
1992 Wiley Construction Law Update, Chapter 1, pages 3-38	Emerging Environmental Issues	1992	Carol E. Dinkins Kimberly Z. Lesniak
CMJ ALI-ABA, Course Materials Journal, Page 31	Comprehending Natural Resources Damage Claims	December 1992	Carol E. Dinkins
9 Env. Forum 30	Business Needs to Retain Flexibility	September/October 1992	Carol E. Dinkins
The Landman	Avoiding Criminal Sanctions Through Effective Compliance Auditing	November/December 1993	Carol E. Dinkins
25 Env. Rep. 1320	Criminal Enforcement of Wetlands Protection law	November 3, 1994	Carol E. Dinkins Thomas R. Bartman
47 Admin. L. Rev. 337	Impact of the Environmental Justice Movement on American Industry and Local Government	Summer 1995	Carol E. Dinkins
BNA Books	Environmental Criminal Liability: Avoiding and Defending Enforcement Actions	1995	Carol E. Dinkins, Contributing Author
10 The Nat'l Law J.C12	Hot issues include green house gases, utility deregulation	August 4, 1997	Carol E. Dinkins
West Group	Business and Commercial Litigation	1998	Carol E. Dinkins, Arthur E. Murphy Contributing Authors

PUBLICATIONS	TITLE	COPYRIGHT	AUTHOR
29 Seton Hall L. Rev.60	New Solutions for Old Problems in Newark Bay	1998	Carol E. Dinkins Kristie Tice
41 Houston L. Rev. 237	A tribute to Professor G. Sidney Buchanan upon his retirement	Summer 2004	Carol E. Dinkins
The Practical Real Estate Lawyer	An Ethics Overview (And Update) for The Environmental Lawyer	March 2005	Carol E. Dinkins

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II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   I will continue to practice law with Vinson & Elkins L.L.P.

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

   The Board will have counsel for ethics questions. Until the Board is organized and functioning we cannot identify categories of conflicts. I have taken steps to assure that my investment portfolio is constituted so that trades are not made in my accounts without my knowledge. I will consult with ethics counsel and recuse where appropriate.

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

   I will continue to practice law with Vinson & Elkins L.L.P.

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

   A copy of SF-278 is attached.

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

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

    1. As Co-Chair of Lawyers for Bush-Cheney, I oversaw and assisted in recruiting volunteer lawyers to be available for assisting with possible contested election matters in November 2004.

    2. Senator Phil Gramm

        a. Host committee member, Texas Size Salute, 1996

        b. Friends of Phil Gramm Finance Committee, 1996

    3. Senator Kay Bailey Hutchison

    4. Carole Keeton Rylander, candidate for Texas Comptroller, Woman's Event 1998

    5. Member, Steering Committee for Judge Jane Bland, 281st District Court, 1998

    6. Houston Finance Committee, Texas Supreme Court, Justice Deborah Hankinson, 1997

    7. Campaign Steering Committee, State District Judge Pat Mizell, 1996

    8. Greg Abbot Campaign for 129th District Court

III. GENERAL (PUBLIC)

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

   I perform *pro bono* activities for the Houston Museum of Natural Science and, to a lesser extent, The Nature Conservancy.

   Houston Museum of Natural Science
   I serve as general counsel, directing queries to the appropriate lawyers in the Firm, counseling the Museum on various issues, and participating in Executive Committee meetings to advise the Board on matters needing assistance of counsel.

   The Nature Conservancy
   From time-to-time I have given counsel on disputes, policies relevant to governance or legal issues, and legislation.

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

   No, not to my knowledge.

FINANCIAL STATEMENT

NET WORTH

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

Various entries are approximate amounts.

ASSETS				LIABILITIES			
Cash on hand and in banks		400	000	Notes payable to banks-secured None			
U.S. Government securities-add schedule None				Notes payable to banks-unsecured None			
Listed securities-add schedule Schedule A	2	185	787	Notes payable to relatives None			
Unlisted securities--add schedule None				Notes payable to others None			
Accounts and notes receivable: None				Accounts and bills due -- Approximately $20,000/month		20	000

Due from relatives and friends None				Unpaid income tax Taxes are current			
Due from others None				Other unpaid tax and interest All taxes are current			
Doubtful None				Real estate mortgages payable-add schedule Bank of America, mortgage on rural property, Lavaca County, Texas Bank of America, mortgage on weekend home, Jamaica Beach, Texas		90 155	000 000
Real estate owned-add schedule Schedule B	1	646	700	Chattel mortgages and other liens payable None			
Real estate mortgages receivable None				Other debts-itemize: None			
Autos and other personal property		80	000				
Cash value-life insurance None							
Other assets itemize: VE Capital Account Variable annuities VE Defined Benefit Plan VE Deferred Compensation Plan City of Houston Defined Benefit Plan Family Partnership fractional interest	 2 	 475 460 250 072 3 10	 000 000 000 400 300 000				

				Total liabilities		265	500
				Net Worth	7	318	187
Total Assets	7	583	187	Total liabilities and net worth	7	848	187
CONTINGENT LIABILITIES None				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule) No			
On leases or contracts				Are you a defendant in any suits or legal actions? No			
Legal Claims				Have you ever taken bankruptcy? No			
Provision for Federal Income Tax							
Other special debt							

SCHEDULE A

Listed securities

Amegy Bancshares	$63,000
Sears, Roebuck	1,250
Compass Bank 529	11,000
Fidelity Select Energy	23,000
Goldman Sachs Mid Cap Value	11,250
Harbor International	20,000
Ing Senior Income	34,000
Nation's Marisco Growth	22,000
Nation's Value Investor A	20,000
Royce Total Return Fund	11,000
Third Avenue International Value	32,000
Van Kampen Real Estate	146,000

Equities	Market Value
Common Stocks	
ABBOTT LABS COM	**10,472.80**
Dividend Option: Cash	
Security Identifier: ABT	
ALLSTATE CORP	**11,832.06**
Dividend Option: Cash	
Security Identifier: ALL	
AON CORPORATION	**15,430.48**
Dividend Option: Cash	
Security Identifier: AOC	
ARCHER DANIELS MIDLAND CO	**12,527.28**
Dividend Option: Cash	
Security Identifier: ADM	
BAXTER INTERNATIONAL INC	**13,037.49**
ISIN#US0718131099	
Dividend Option: Cash	
Security Identifier: BAX	
BOEING CO COM	**15,220.80**
Dividend Option: Cash	
Security Identifier: BA	
BRISTOL-MYERS SQUIBB CO COM	**10,393.92**
Dividend Option: Cash	
Security Identifier: BMY	
CHEVRON CORP COM	**14,175.87**
Dividend Option: Cash	
Security Identifier: CVX	
CHUBB CORP	**12,805.65**
Dividend Option: Cash	
Security Identifier: CB	
CONAGRA FOODS INC	**9,281.25**
Dividend Option: Cash	
Security Identifier: CAG	
CONOCOPHILLIPS.	**14,681.10**
Dividend Option: Cash	
Security Identifier: COP	

Equities		Market Value
Common Stocks		
	EXXON MOBIL CORP COM	14,169.42
	Dividend Option: Cash	
	Security Identifier: XOM	
	FPL GROUP INC	13,994.40
	Dividend Option: Cash	
	Security Identifier: FPL	
	HARTFORD FINL SVCS GROUP INC COM	12,655.88
	Dividend Option: Cash	
	Security Identifier: HIG	
	HEWLETT-PACKARD CO COM	16,585.60
	Dividend Option: Cash	
	Security Identifier: HPQ	
	HUNTINGTON BANCSHARES INC	10,313.73
	Dividend Option: Cash	
	Security Identifier: HBAN	
	INTERNATIONAL BUSINESS MACHS CORP	11,872.56
	COM	
	Dividend Option: Cash	
	Security Identifier: IBM	
	KIMBERLY CLARK CORP	10,779.63
	Dividend Option: Cash	
	Security Identifier: KMB	
	LIMITED BRANDS INC	10,051.56
	Dividend Option: Cash	
	Security Identifier: LTD	
	MATTEL INC	9,941.28
	Dividend Option: Cash	
	Security Identifier: MAT	
	MERCK & CO INC	9,659.55
	Dividend Option: Cash	
	Security Identifier: MRK	
	MORGAN STANLEY COM	11,974.68
	Dividend Option: Cash	
	Security Identifier: MWD	
	PFIZER INC COM	10,337.58
	Dividend Option: Cash	
	Security Identifier: PFE	
	SBC COMMUNICATIONS INC	11,481.63
	Dividend Option: Cash	
	Security Identifier: SBC	

Equities	Market Value
Common Stocks	
SAFEWAY INC COM NEW	
Dividend Option: Cash	
Security Identifier: SWY	13,824.00
UNION PACIFIC CORP COM	
Dividend Option: Cash	
Security Identifier: UNP	12,834.30
VERIZON COMMUNICATIONS COM	
Dividend Option: Cash	
Security Identifier: VZ	10,591.56
WACHOVIA CORP (NEW) COM	
Dividend Option: Cash	
Security Identifier: WB	10,279.44
WASHINGTON MUTUAL INC	
Dividend Option: Cash	
Security Identifier: WM	10,157.98
WEYERHAEUSER CO	
Dividend Option: Cash	
Security Identifier: WY	10,793.75
WYETH	
Dividend Option: Cash	
Security Identifier: WYE	12,585.44
XEROX CORPORATION	
Dividend Option: Cash	
Security Identifier: XRX	9,350.25

Equities	Market Value
Common Stocks	
FRESH DELMONTE PRODUCE Dividend Option: Cash *Security Identifier:* FDP	4,763.50
IPC HOLDINGS LTD Dividend Option: Cash *Security Identifier:* IPCR	5,877.00
ORTHOFIX INTL NV ISIN#ANN6748L1027 Dividend Option: Cash *Security Identifier:* OFIX	7,194.00
STEINER LEISURE LTD Dividend Option: Cash *Security Identifier:* STNR	6,963.85
ACUITY BRANDS INC COM Dividend Option: Cash *Security Identifier:* AYI	6,527.40
ADVO INC Dividend Option: Cash *Security Identifier:* AD	5,319.30
ALLMERICA FINL CORP COM Dividend Option: Cash *Security Identifier:* AFC	6,993.80
AMETEK INC NEW COM Dividend Option: Cash *Security Identifier:* AME	4,941.55
AMIS HOLDINGS INC ISIN#US0315381014 Dividend Option: Cash *Security Identifier:* AMIS	2,490.60
ARBITRON INC COM Dividend Option: Cash *Security Identifier:* ARB	6,573.60
ARCH CHEMICALS INC COM Dividend Option: Cash *Security Identifier:* ARJ	4,766.25

	Market Value
Equities	
Common Stocks	
ARMOR HLDGS INC COM SHS	**4,301.00**
ISIN#US0422601098	
Dividend Option: Cash	
Security Identifier: AH	
ARROW INT'L INC	**3,666.00**
Dividend Option: Cash	
Security Identifier: ARRO	
BANDAG INC	**3,643.10**
Dividend Option: Cash	
Security Identifier: BDG	
BANTA CORP INC	**5,343.45**
Dividend Option: Cash	
Security Identifier: BN	
BENCHMARK ELECTRONICS INC	**6,566.16**
Dividend Option: Cash	
Security Identifier: BHE	
BLACK HILLS CORP COM	**6,505.50**
Dividend Option: Cash	
Security Identifier: BKH	
BRIGGS & STRATTON CORP (WI) PREVIOUSLY	**8,993.40**
(DE)	
Dividend Option: Cash	
Security Identifier: BGG	
BRIGHAM EXPL CO COM	**6,296.50**
Dividend Option: Cash	
Security Identifier: BEXP	
BROOKLINE BANCORP INC DEL COM	**3,875.90**
Dividend Option: Cash	
Security Identifier: BRKL	
CARMIKE CINEMAS INC COM	**3,670.40**
Dividend Option: Cash	
Security Identifier: CKEC	
CHARLES RIV LABORATORIES INTL	**8,069.70**
INC COM	
Dividend Option: Cash	
Security Identifier: CRL	
CHEMICAL FINL CORP	**5,427.50**
Dividend Option: Cash	
Security Identifier: CHFC	

Equities		Market Value
Common Stocks		
	CHITTENDEN CORP Dividend Option: Cash *Security Identifier:* CHZ	4,109.05
	CIMAREX ENERGY CO COM Dividend Option: Cash *Security Identifier:* XEC	5,439.60
	CLARCOR INC Dividend Option: Cash *Security Identifier:* CLC	4,308.00
	CULLEN FROST BANKERS Dividend Option: Cash *Security Identifier:* CFR	4,440.60
	DSP GROUP INC COM Dividend Option: Cash *Security Identifier:* DSPG	8,467.80
	DRESS BARN INC Dividend Option: Cash *Security Identifier:* DBRN	5,007.20
	DYCOM INDS INC COM Dividend Option: Cash *Security Identifier:* DY	7,077.00
	EAGLE MATLS INC COM Dividend Option: Cash *Security Identifier:* EXP	4,247.95
	EAGLE MATLS INC CL B Dividend Option: Cash *Security Identifier:* EXP B	4,628.00
	EFUNDS CORP COM Dividend Option: Cash *Security Identifier:* EFD	4,895.80
	ELECTRO SCIENTIFIC INDS INC Dividend Option: Cash *Security Identifier:* ESIO	4,807.40

Equities	Market Value
Common Stocks	
FLORIDA EAST COAST INDS INC COM	**6,340.60**
Dividend Option: Cash	
Security Identifier: FLA	
FULLER H B CO	**3,885.00**
Dividend Option: Cash	
Security Identifier: FUL	
HUDSON UTD BANCORP COM	**9,677.65**
Dividend Option: Cash	
Security Identifier: HU	
ICON PUB LTD CO SPONSORED ADR	**8,750.00**
Dividend Option: Cash	
Security Identifier: ICLR	
INFINITY PPTY & CAS CORP COM	**6,316.20**
Dividend Option: Cash	
Security Identifier: IPCC	
INTER TEL INC	**5,460.00**
Dividend Option: Cash	
Security Identifier: INTL	
JOURNAL COMMUNICATIONS INC	**7,003.00**
CL A COM	
Dividend Option: Cash	
Security Identifier: JRN	
LA QUINTA CORP PAIR CTF 1 COM B	**6,474.05**
LA QUINTA PPTYS & 1 COM LA QUINTA CORP	
Dividend Option: Cash	
Security Identifier: LQI	
LANCE INC	**6,460.20**
Dividend Option: Cash	
Security Identifier: LNCE	
LEARNING TREE INTERNATIONAL INC	**3,036.00**
ISIN#US5220151063	
Dividend Option: Cash	
Security Identifier: LTRE	
LINCOLN ELEC HLDGS INC COM	**5,910.00**
Dividend Option: Cash	
Security Identifier: LECO	
MGE ENERGY INC COM	**4,198.65**
Dividend Option: Cash	
Security Identifier: MGEE	

Equities	Market Value
Common Stocks	
MICREL INC COM Dividend Option: Cash *Security Identifier:* MCRL	7,524.10
MILLER HERMAN INC Dividend Option: Cash *Security Identifier:* MLHR	5,908.50
NCI BLDG SYSTEM INC Dividend Option: Cash *Security Identifier:* NCS	10,197.50
OPTION CARE INC COM Dividend Option: Cash *Security Identifier:* OPTN	3,952.80
OXFORD INDS INC COM Dividend Option: Cash *Security Identifier:* OXM	4,737.60
PAXAR CORP Dividend Option: Cash *Security Identifier:* PXR	3,622.75
PAYLESS SHOESOURCE INC COMMON STOCK Dividend Option: Cash *Security Identifier:* PSS	6,090.00
PLANTRONICS INC NEW Dividend Option: Cash *Security Identifier:* PLT	5,545.80
PROVIDENT FINL SVCS INC COM Dividend Option: Cash *Security Identifier:* PFS	3,784.00
RYANS RESTAURANT GROUP INC COM Dividend Option: Cash *Security Identifier:* RYAN	3,209.25
SAFENET INC COM Dividend Option: Cash *Security Identifier:* SFNT	7,988.20

Equities	Market Value
Common Stocks	
SIMPSON MANUFACTURING CO Dividend Option: Cash Security Identifier: SSD	2,739.80
SUPERIOR ENERGY SERVICES INC Dividend Option: Cash Security Identifier: SPN	6,118.85
SYBRON DENTAL SPECIALTIES INC COM Dividend Option: Cash Security Identifier: SYD	6,860.70
TRAMMELL CROW CO COM Dividend Option: Cash Security Identifier: TCC	5,799.80
UGI CORP Dividend Option: Cash Security Identifier: UGI	7,319.00
UNIVERSAL COMPRESSION HLDGS INC COM Dividend Option: Cash Security Identifier: UCO	5,766.65
WABTEC COM Dividend Option: Cash Security Identifier: WAB	5,183.20
WADDELL & REED FINL INC CL A Dividend Option: Cash Security Identifier: WDR	6,679.20
WARNACO GROUP INC COM NEW Dividend Option: Cash Security Identifier: WRNC	4,820.20
WAUSAU PAPER CORP COM Dividend Option: Cash Security Identifier: WPP	4,566.15
WESTAMERICA BANCORPORATION Dividend Option: Cash Security Identifier: WABC	5,165.00
WORLD WRESTLING ENTMT INC CL A Dividend Option: Cash Security Identifier: WWE	4,420.00

	Market Value
Equities	
Real Estate Investment Trusts	
CRESCENT REAL ESTATE EQUITIES CO	**7,075.95**
(CUSIP REMAINS THE SAME)	
Dividend Option: Cash	
Security Identifier: CEI	
POST PROPERTIES INC	**6,705.00**
Dividend Option: Cash	
Security Identifier: PPS	
SUN COMMUNITIES INC	**5,241.60**
Dividend Option: Cash	
Security Identifier: SUI	
TANGER FACTORY OUTLET CENTERS INC	**4,727.70**
COM	
Dividend Option: Cash	
Security Identifier: SKT	

	Market Value
Equities	
Common Stocks	
DAIMLERCHRYSLER AG NAMEN AKT	**17,825.61**
ISIN#DE0007100000	
Dividend Option: Cash	
Security Identifier: DCX	
ABN AMRO HLDG N V SPON ADR	**13,320.00**
Dividend Option: Cash	
Security Identifier: ABN	
AEGON N V ORD AMER REG	**17,224.40**
Dividend Option: Cash	
Security Identifier: AEG	
AKZO NV SPON ADR	**15,495.75**
Dividend Option: Cash	
Security Identifier: AKZOY	
ALCATEL ALSTHOM SPONSORED ADR	**14,158.10**
FORMERLY SPONS ADR REPSTG 1/5TH SHS	
Dividend Option: Cash	
Security Identifier: ALA	
BAE SYS PLC SPONSORED ADR	**3,018.75**
ISIN#US05523R1077	
Dividend Option: Cash	
Security Identifier: BAESY	
BT GROUP PLC ADR	**13,794.72**
Dividend Option: Cash	
Security Identifier: BT	
BANCO BILBAO VIZCAYA ARGENTARIA SA	**6,226.70**
ISIN#US05946K1016 APONSORED ADR	
Dividend Option: Cash	
Security Identifier: BBV	
BANCO SANTANDER CENT HISPANO S A ADR	**4,543.65**
ISIN#US05964H1059	
Dividend Option: Cash	
Security Identifier: STD	

	Market Value
Equities	
Common Stocks	
ELECTROBRAS CENTRAIS ELECTRICIAS ADR	7,425.00
ISIN#US15234Q2075	
Dividend Option: Cash	
Security Identifier: CAIFY	
COMMERZBANK AG ADR NEW SPONSORED ADR	5,225.00
Dividend Option: Cash	
Security Identifier: CRZBY	
COMPANIA ANONIMA NACIONAL TELEFONOS	1,543.30
DE VENEZUELA SPONSORED ADR REPSTG	
7 CL D	
Dividend Option: Cash	
Security Identifier: VNT	
COMPASS GROUP PLC SPONS ADR	9,288.00
Dividend Option: Cash	
Security Identifier: CMPGY	
CONTAX PARTICIPACOES S A SPON ADR	53.60
Dividend Option: Cash	
Security Identifier: CTXNY	
CORUS GROUP PLC SA ADR	5,163.20
Dividend Option: Cash	
Security Identifier: CGA	
DBS GROUP HLDGS LTD SPONS ADR	8,866.90
Dividend Option: Cash	
Security Identifier: DBSDY	
DEUTSCHE TELEKOM AG SPONSORED ADR	15,139.20
Dividend Option: Cash	
Security Identifier: DT	
EISAI CO LTD ADRS UNSPONSORED 1 ADR =	7,899.50
1 ORDINARY SHARE	
Dividend Option: Cash	
Security Identifier: ESALY	
FIRST PACIFIC LTD SPON ADR	2,296.20
Dividend Option: Cash	
Security Identifier: FPAFY	
FRANCE TELECOM SPONSORED ADR	11,643.75
Dividend Option: Cash	
Security Identifier: FTE	
FUJI PHOTO FILM LTD ADR NEW	17,911.80
Dividend Option: Cash	
Security Identifier: FUJIY	

Equities		Market Value
Common Stocks		
	GLAXOSMITHKLINE PLC SPONS ADR	13,845.60
	Dividend Option: Cash	
	Security Identifier: GSK	
	HEINEKEN NV ADR	10,207.80
	Dividend Option: Cash	
	Security Identifier: HINKY	
	HITACHI LTD ADR 10 COM NEW	16,798.35
	Dividend Option: Cash	
	Security Identifier: HIT	
	IMPERIAL CHEM INDS PLC ADR NEW	4,224.00
	Dividend Option: Cash	
	Security Identifier: ICI	
	ING GROEP N.V. ADR	4,259.97
	Dividend Option: Cash	
	Security Identifier: ING	
	INVENSYS PLC SPONSORED ADR	392.92
	Dividend Option: Cash	
	Security Identifier: IVNSY	
	J SAINSBURY PLC SPONSORED ADR NEW	14,220.00
	Dividend Option: Cash	
	Security Identifier: JSAIY	
	KT CORP SPON ADR	6,412.50
	Dividend Option: Cash	
	Security Identifier: KTC	
	KONINKLIJKE AHOLD NV SPON ADR NEW	12,106.05
	Dividend Option: Cash	
	Security Identifier: AHO	
	KOREA ELEC PWR CO SPONSORED ADR RPSTG	9,386.30
	ISIN#US50063110 63 1/2 SHS	
	Dividend Option: Cash	
	Security Identifier: KEP	
	MARKS & SPENCER GROUP PLC SPONSORED	12,111.16
	ADR	
	Dividend Option: Cash	
	Security Identifier: MAKSY	

Equities	Market Value
Common Stocks	
MATSUSHITA ELEC INDL LTD ADR Dividend Option: Cash *Security Identifier:* MC	9,752.70
MILLEA HLDGS INC ADR COM Dividend Option: Cash *Security Identifier:* MLEA	16,572.20
MITSUBISHI TOKYO FINL GROUP INC SPON ADR Dividend Option: Cash *Security Identifier:* MTF	20,131.35
NESTLE SA SPONSORED ADRS REGISTERED Dividend Option: Cash *Security Identifier:* NSRGY	25,357.50
NIKKO CORDIAL CORP JAPAN ADR Dividend Option: Cash *Security Identifier:* NIKOY	5,438.75
NIPPON TELEG & TELEPHONE CORP SPONSORED ADR Dividend Option: Cash *Security Identifier:* NTT	19,607.80
NORMURA HLDGS INC SPONSORED ADR Dividend Option: Cash *Security Identifier:* NMR	5,827.50
NORTEL NETWORKS CORP NEW COM ISIN#CA6565681021 Dividend Option: Cash *Security Identifier:* NT	11,033.01
PORTUGAL TELECOMM SGPS S A SPONSORED ADR Dividend Option: Cash *Security Identifier:* PT	8,353.80
ROYAL & SUN ALLIANCE INC GROUP PLC SPONSORED ADR NEW Dividend Option: Cash *Security Identifier:* RSA	3,503.25
SANOFI-AVENTIS SPONS ADR ISIN#US80105N1054 Dividend Option: Cash *Security Identifier:* SNY	7,686.75

	Market Value
Equities	
Common Stocks	
SCHERING A G SPONS ADR	**4,755.00**
Dividend Option: Cash	
Security Identifier: SHR	
SONY CORP ADR AMERN SH NEW	**10,454.85**
Dividend Option: Cash	
Security Identifier: SNE	
STMICROELECTRONICS NV SHS N Y REGISTRY	**10,627.20**
Dividend Option: Cash	
Security Identifier: STM	
SUMITOMO MITSUI FINL GROUP INC ADR	**14,960.00**
Dividend Option: Cash	
Security Identifier: SMFJY	
SWISSCOM SPON ADR	**5,900.40**
Dividend Option: Cash	
Security Identifier: SCM	
TELECOM ITALIA S P A NEW SPONS ADR	**11,475.20**
REPSTG ORD SHS	
Dividend Option: Cash	
Security Identifier: TI	
TELECOM ARGENTINA S A SPONSORED ADR	**4,518.50**
REPSTG S CL B ORD SHS	
ISIN#US8792732096	
Dividend Option: Cash	
Security Identifier: TEO	
TELECOM CORP OF NEW ZEALAND LTD	**9,077.00**
SPONSORED ADR EACH REP 8 ORD SHRS NZ	
Dividend Option: Cash	
Security Identifier: NZT	
TELEFONICA S A ADR (FORMERLY)	**11,442.24**
TELEFONICA DE ESPANA S A ADR CU# REMAINS	
THE SAME	
Dividend Option: Cash	
Security Identifier: TEF	

	Market Value
Equities	
Common Stocks	
TELEFONOS DE MEXICO SA DE CV ADR CLASS L	11,698.50
ISIN#US8794037809	
Dividend Option: Cash	
Security Identifier: TMX	
TELEKOM AUSTRIA AG SPONS ADR	3,391.50
ISIN#US87943Q1094	
Dividend Option: Cash	
Security Identifier: TKA	
UNILEVER NV NEW YORK SHS NEW	25,364.75
Dividend Option: Cash	
Security Identifier: UN	
VOLKSWAGEN A G ADR (SPONS)	22,140.00
Dividend Option: Cash	
Security Identifier: VLKAY	
WOLTERS KLUWER N V SPON ADR	7,438.55
Dividend Option: Cash	
Security Identifier: WTKWY	
ZURICH FINL SVCS SPONS ADR	5,406.00
ISIN#US98982M1071	
Dividend Option: Cash	
Security Identifier: ZFSVY	
TELE CENTRO OESTE CELULAR	108.72
PARTICIPACOES S A SPONSORED ADR REPSTG	
PFD ISIN#US87923P1057	
Dividend Option: Cash	
Security Identifier: TRO	
TELECOMUNICACOES BRASILEIRAS SA	2,592.80
SPONSORED ADR REPSTG ADR FOR PFD	
Dividend Option: Cash	
Security Identifier: TBH	
TELELESTE CELULAR PARTICIPACOES S A	6.64
SPONSORED ADR REPSTG PFD	
Dividend Option: Cash	
Security Identifier: TBE	
TELESP CELULAR PARTICIPACOES S A	43.01
SPONSORED ADR REPSTG PFD	
Dividend Option: Cash	
Security Identifier: TCP	

			Market Value			
Equities						
Preferred Stocks						
7.000	TIM PARTICIPACOES SA SPONS ADR REPSTG PFD	18.5800	130.06		1.71	1.31%
	Dividend Option: Cash					
	Security Identifier: TSU					

	Market Value
Equities	
Common Stocks	
NABORS INDS LTD SHS	**6,463.70**
Dividend Option: Cash	
Security Identifier: NBR	
NOBLE CORP SHS ISIN#KYG654221004	**8,557.50**
Dividend Option: Cash	
Security Identifier: NE	
AFLAC INC	**5,662.50**
Dividend Option: Cash	
Security Identifier: AFL	
ALBERTO CULVER COM	**5,817.50**
Dividend Option: Cash	
Security Identifier: ACV	
AMGEN INC	**8,763.70**
Dividend Option: Cash	
Security Identifier: AMGN	
APPLE COMPUTER INC	**4,020.75**
Dividend Option: Cash	
Security Identifier: AAPL	
AVON PRODS INC COM	**2,835.00**
Dividend Option: Cash	
Security Identifier: AVP	
BED BATH & BEYOND INC	**6,227.90**
Dividend Option: Cash	
Security Identifier: BBBY	
CHARLES RIV LABORATORIES INTL	**5,670.60**
INC COM	
Dividend Option: Cash	
Security Identifier: CRL	
CHICAGO MERCANTILE EXCHANGE HLDGS INC	**3,373.00**
CL A COM	
Dividend Option: Cash	
Security Identifier: CME	
CHICOS FAS INC COM	**4,232.00**
Dividend Option: Cash	
Security Identifier: CHS	

Equities	Market Value
Common Stocks	
CISCO SYSTEMS INC	10,758.00
Dividend Option: Cash	
Security Identifier: CSCO	
COACH INC COM	4,390.40
Dividend Option: Cash	
Security Identifier: COH	
COCA-COLA COMPANY	8,638.00
Dividend Option: Cash	
Security Identifier: KO	
COGNOS INC ISIN#CA19244C1095	5,644.85
Dividend Option: Cash	
Security Identifier: COGN	
COMMERCE BANCORP INC N J	3,989.70
Dividend Option: Cash	
Security Identifier: CBH	
COMMUNITY HEALTH SYS INC NEW COM	6,209.60
Dividend Option: Cash	
Security Identifier: CYH	
DELL INC COM	5,335.20
Dividend Option: Cash	
Security Identifier: DELL	
EMC CORP (MASS) COM	5,926.52
Dividend Option: Cash	
Security Identifier: EMC	
EOG RES INC COM	4,868.50
Dividend Option: Cash	
Security Identifier: EOG	
EBAY INC COM	5,768.00
Dividend Option: Cash	
Security Identifier: EBAY	
ELECTRONIC ARTS	5,404.55
Dividend Option: Cash	
Security Identifier: ERTS	
EXPRESS SCRIPTS INC COM	6,220.00
Dividend Option: Cash	
Security Identifier: ESRX	
FRANKLIN RESOURCES INC	3,358.30
Dividend Option: Cash	
Security Identifier: BEN	

Equities		Market Value
Common Stocks		
	GENERAL DYNAMICS CORP COM Dividend Option: Cash Security Identifier: GD	6,575.25
	GENERAL ELECTRIC CO COM Dividend Option: Cash Security Identifier: GE	20,269.34
	GENZYME CORP COM FORMERLY COM-GEN DIV TO 5/27/2004 Dividend Option: Cash Security Identifier: GENZ	3,940.20
	GILLETTE COMPANY MER EFF 10/1/05 1 OLD=975 CU# 742718109 PROCTOR & GAMBLE INC Dividend Option: Cash Security Identifier: G	9,603.00
	GOODRICH CORP Dividend Option: Cash Security Identifier: GR	6,429.30
	GOOGLE INC CL A Dividend Option: Cash Security Identifier: GOOG	4,746.90
	HILTON HOTELS CORP Dividend Option: Cash Security Identifier: HLT	6,807.60
	INTEL CORP COM Dividend Option: Cash Security Identifier: INTC	11,289.70
	JOHNSON & JOHNSON COM Dividend Option: Cash Security Identifier: JNJ	12,909.12
	KOHLS CORPORATION Dividend Option: Cash Security Identifier: KSS	7,777.90

	Market Value
Equities	
Common Stocks	
ELI LILLY & CO	4,281.60
Dividend Option: Cash	
Security Identifier: LLY	
MEMC ELECTRONIC MATERIALS INC COM	8,204.40
Dividend Option: Cash	
Security Identifier: WFR	
MEDTRONIC INC	10,187.80
Dividend Option: Cash	
Security Identifier: MDT	
MICROSOFT CORP COM	12,865.00
Dividend Option: Cash	
Security Identifier: MSFT	
MONSANTO CO NEW COM	6,275.00
Dividend Option: Cash	
Security Identifier: MON	
MOODYS CORP COM	4,597.20
Dividend Option: Cash	
Security Identifier: MCO	
MORGAN STANLEY COM	6,472.80
Dividend Option: Cash	
Security Identifier: MWD	
MOTOROLA INC	8,481.55
Dividend Option: Cash	
Security Identifier: MOT	
PFIZER INC COM	3,495.80
Dividend Option: Cash	
Security Identifier: PFE	
QUALCOMM INC	8,950.00
Dividend Option: Cash	
Security Identifier: QCOM	
ROCKWELL AUTOMATION INC COM	4,496.50
FORMERLY ROCKWELL INTL CORP	
Dividend Option: Cash	
Security Identifier: ROK	
ROPER INDUSTRIES INC NEW COM	4,714.80
Dividend Option: Cash	
Security Identifier: ROP	
STATION CASINOS INC COM	4,977.00
Dividend Option: Cash	
Security Identifier: STN	

Equities	Market Value
Common Stocks	
TIME WARNER INC NEW COM Dividend Option: Cash *Security Identifier:* TWX	**6,610.15**
UNITEDHEALTH GROUP INC COM Dividend Option: Cash *Security Identifier:* UNH	**10,678.00**
WALGREEN CO Dividend Option: Cash *Security Identifier:* WAG	**8,907.25**
WHOLE FOODS MKT INC Dividend Option: Cash *Security Identifier:* WFMI	**4,705.75**

SCHEDULE B

1.	Residence on Clawson Street, Houston, Harris County, Texas	$350,000
2.	65 acres with barn, well on Clay Creek Road, Washington County, Texas	280,000
3.	154 acres with mobile home, barn near Moulton, Lavaca County, Texas	400,000
4.	House on Zora, Houston, Harris County, Texas	130,000
5.	Weekend home on Jolly Roger, Jamaica Beach, Texas	450,000
6.	16 vacant lots, Mathis, Texas	1,200
7.	Fractional royalty/mineral interests near Mathis, Texas	500
8.	1/3 interest in 4.11 acres in Mathis, Texas	35,000

Senator CORNYN. Thank you, Ms. Dinkins, and thank you for introducing the other members of the Board who are here with us, and welcome.

Mr. Raul, we will now turn to you for any opening comments you would like to make.

STATEMENT OF ALAN CHARLES RAUL, NOMINEE TO BE VICE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Mr. RAUL. Mr. Chairman, thank you for your kind introduction earlier.

It is a great honor and responsibility to appear before this Committee as President George W. Bush's nominee to serve as Vice Chairman of the Privacy and Civil Liberties Oversight Board. I am humbled and inspired that the President has asked me to help our Nation maintain its constitutional soul in the process of defending itself and ultimately vanquishing enemies who have sworn to do us brutal harm. This mission is surely one of the most important and challenging roles a lawyer in our country could be asked to undertake.

If I am confirmed it will be a special privilege to embark upon this initiative with such distinguished, experienced and independent-minded colleagues as Carol Dinkins, Ted Olsen, Lanny Davis and Frank Taylor. My prospective fellow Board members are as talented and patriotic as any group with whom one could hope to work. I look forward to sharing responsibilities, efforts and objectives with them.

I am under no illusion that we can or should please everyone with the work of the Board. As embodied in the statute establishing the Privacy and Civil Liberties Oversight Board, our advisory and oversight obligations reflect a certain tension between protecting the precious liberties that are vital to our way of life, and acknowledging the additional powers the Federal Government may need to conduct the war on terrorism.

While I recognize that we may not please all sides all the time, I am certain that I and the other members of the Board will discharge our specified legal duties honestly and conscientiously. Specifically, we will be dedicated to ensuring that privacy and civil liberties implications and concerns are identified, understood, communicated, and appropriately considered as the executive branch develops and implements policies and practices to fight the war against terrorism.

To that end, if confirmed, I will make the personal commitment to assure that the views of the Privacy and Civil Liberties Oversight Board are informed and credited within the executive branch, and useful to the President and the relevant department and agency heads. We will also report candidly to Congress, as required by law, and consult meaningfully with civil libertarians and other patriots inside and outside of Government, who are interested in sharing their views, suggestions and concerns with us.

In the first and final analysis, if confirmed, I, and the other members of the Board I am sure, will be governed by the opening text in our great Constitution, where the people established our noble system of Government to, quote, "ensure domestic tran-

quility, provide for the common defense," and most germane for our Board, "secure the blessings of liberty to ourselves and our posterity."

Thank you for honoring me with your consideration of my nomination.

[The biographical information of Mr. Raul follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Alan Charles Raul

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

Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington, DC 20005

3. Date and place of birth.

September 9, 1954
New York, NY

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

Mary Tinsley Raul (nee Tinsley)
Currently works at home

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

- Harvard College, 1972-1975, A.B. 1975 Magna Cum Laude
- Harvard University, Kennedy School of Government, 1975-1977, M.P.A. 1977
- Columbia University School of Law, 1977-1978
- Yale Law School, 1978-1980, J.D. 1980

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

- Summer jobs during College and Law School (no specific data available)
- U.S Government: Law Clerk, US Court of Appeals for the D.C., Hon. Malcolm R.

Wilkey, 1980-1981

- Debevoise & Plimpton, 1981-1986
- U.S. Government
  - White House, 1986-1988
  - Office of Management and Budget, 1988-1989
  - U.S. Department of Agriculture, 1989-1993
- Beveridge & Diamond PC, 1993-1997
- Sidley Austin Brown & Wood LLP (previously Sidley & Austin), 1997-present

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

None

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

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

- American Bar Association – member since approximately 1980; I have served as a member of the Government Council of the Sections of International Law (approximately 1994-1997) and Administrative Law (2004-2005); I also served as an appointed member of the ABA's Standing Committee on Election Law (approximately 1996-1998).
- Federalist Society – member since approximately 1987; I have served as Chair of the Environmental Practice Group (approximately 1995-1998); Member of the National Practitioners Council (approximately 2000-present); DC Chapter Steering Committee (approximately 1997).
- Atlantic Legal Foundation – member of Advisory Council since approximately 2002 through the present.
- Conferences – I attend and/or speak at numerous CLE and other conferences every year. Not sure what further information would be useful, but I would be happy to elaborate as necessary or appropriate.

10. Other Memberships: List all organizations to which you belong that are active in

lobbying before public bodies. Please list all other organizations to which you belong.

- American Heart Association – Member of Washington DC-area board of directors (2003-present; prior service as board member in 1990s).
- Council on Foreign Relations – Member since approximately 1995 through present.
- Republican National Lawyers Association – Member since 2005 through present.
- DC Bar Association – Member since approximately 1982 through present.
- Progress and Freedom Foundation – Adjunct Fellow (approximately 2000-2002).
- Social Clubs:
    - Fly Club, Cambridge MA
    - Harvard Club of New York City
    - Metropolitan Club of Washington DC
    - Chevy Chase Club of Maryland
    - Siasconset Casino, Nantucket, MA.

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

- New York – 1982
- District of Columbia – 1982
- U.S. Court of Appeals for the D.C. Circuit – 1982
- U.S. District Court for D.C. – 1986
- U.S. Supreme Court – 1988
- U.S. District Court for Southern District of N.Y. – 2000

[dates for the following not readily available]

- U.S. Court of Appeals, 10th Circuit
- U.S. Court of Appeals, 11th Circuit
- U.S. Court of Appeals, 4th Circuit
- U.S. Court of Appeals, 9th Circuit
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Federal Claims
- U.S. Court of International Trade

- Pro Hac Vice Admissions to various courts from time to time.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports,

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

I am the author of "Privacy and the Digital State: Balancing Public Information and Personal Privacy" (Kluwer Academic Publishers 2001). I have provided a copy of the book for the Committee.

I have written numerous articles, alerts and speeches. Attached are printouts of Westlaw searches for articles specifying me as author. I have also attached a list of articles and relatively recent congressional testimony that has been maintained by my secretary, and updated from time to time. This list is not as comprehensive as the Westlaw search results, and would not generally include "practice" and CLE-type articles.

I would be happy to provide copies of any material of interest to the Committee. (I have provided copies of my congressional testimony on anti-spam legislation, presidential pardons, and the non-delegation doctrine. I believe my opinion pieces in the mainstream media are readily available, but I would be happy to provide copies if the Committee would like.)

I do not have any organized collection of speeches, most of which would be in the nature of CLE presentations.

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

My health is good. My last physical was in 2004.

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

- Law Clerk to U.S. Circuit Judge (1980-1981) (appointed)
- Associate Counsel to the President (1986-1988) (appointed)
- General Counsel, Office of Management and Budget (1988-1989) (appointed)
- General Counsel, U.S. Department of Agriculture (1989-1993) (appointed)

15. Legal Career:

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

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

Law Clerk to Judge Malcolm R. Wilkey, U.S. Court of Appeals for the D.C. Circuit, 1980-1981.

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

Not applicable

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

- Debevoise & Plimpton, New York, NY, Associate, 1981-1986
- White House, Washington, DC, Associate Counsel to the President, 1986-1988
- Office of Management and Budget, Washington, DC, General Counsel, 1988-1989
- U.S. Department of Agriculture, Washington, DC, General Counsel, 1989-1993
- Beveridge & Diamond, Washington, DC, Managing Director, 1993-1997
- Sidley Austin Brown & Wood LLP (and Sidley & Austin), Washington, DC, Partner, 1997-present

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

Practice involves litigation, regulatory counseling and corporate compliance. Issues focused on include: administrative law, constitutional law, environmental law, food safety, international trade, agriculture regulation, securities law issues, trademark, copyright, Internet law, privacy, international arbitration, appellate litigation, freedom of information.

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

Alan Charles Raul **October 21, 2005**

Typical current and former clients: AT&T, Raytheon, Government of Peru, Aramark, Tyson Foods, Booth Eye Care and Laser Center, Hoffman-LaRoche, Schering Plough, Bank of New York, Costco, Sierra Pacific Power, Microsoft, Allergan, Mettler Toledo, Recording Industry Association, Business Roundtable, Organization for International Investment, TWE Trustee, Rep. Thomas Bliley and Sen. Hatch, Rep. Donald Manzullo.

Issues described in prior response immediately above.

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

I appear in court occasionally. Typically: motions and oral arguments, and appellate arguments.

1. What percentage of these appearances was in:

(a) federal court;

65%

(b) state courts of record;

10%

(c) other courts.

25% (ICSID arbitration; WIPO arbitrations)

3. What percentage of your litigation was:

(a) civil:

100%

(b) criminal.

0%

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

One case tried to a verdict; chief counsel.

5. What percentage of these trials was:

(a) jury;

100%

(b) non-jury.

0%

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

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

[following are brief summaries; I can provide more detail and information if required, including contact data for opposing counsel where available]

Duke Power v. Peru, international arbitration under ICSID (appointed international arbitrators), 2005; international investment dispute involving tax and jurisdictional issues; I handled oral arguments and witness examinations and cross-examinations and significant briefing; decision pending.

Boothe v. Morikawa, Texas state court, Collin County (Judge Henderson), 2004-2005; Internet defamation and harassment suit; I handled TRO motion and significant briefing; TRO and permanent injunction granted.

AT&T v. Sprint, SDNY (Judge Cote), 2002-2004; unfair competition, trademark infringement, and FCC violations lawsuit; I handled substantial discovery, briefing, mediation, court conferences, and settlement negotiations; favorable settlement reached.

Retail Services, Inc. v. Freebies Publishing, EDVA (Judge Brinkema), 2002-2004; trademark infringement and Anticybersquatting Consumer Protection Act litigation; I handled substantial discovery, summary judgment briefing and oral argument, and Fourth Circuit argument and briefing; favorable decisions rendered in district and appellate courts; 247 F.Supp.2d 822 (E.D.V.A. Feb 27, 2003); 364 F.3d 535 (4th Cir. 2004).

"*Grokster*" litigation, US Supreme Court, 2005; vicarious or contributory copyright infringement; I was lead partner for Sidley drafting amicus brief in support of recording and motion picture industry; Supreme Court ruled for industry in *MGM et al. v. Grokster* (2005).

Domain Name Arbitrations, World Intellectual Property Organization, 2000-present;

domain name cybersquatting and trademark infringement litigation; I have been lead counsel in briefing approximately 40 WIPO arbitrations; successful panel decisions obtained in nearly all proceedings.

AT&T v. AT-Time, EDVA (Judge Brinkema), 2002-2003; cybersquatting and trademark infringement under the Anticybersquatting Consumer Protection Act and Lanham Act; I handled briefing and oral arguments; permanent injunction and order transferring domain name granted.

Browner v. American Trucking Associations, DC Circuit and US Supreme Court, 1999-2001; issue involved whether EPA Clean Air Act rules violated the constitutional doctrine of non-delegation of legislative powers; I was the lead attorney briefing the non-delegation issue in the Court of Appeals (on behalf of amici Sen. Hatch and Congressman Bliley), and also submitted an amicus brief in the Supreme Court; the Court of Appeals issued a favorable decision that was reversed by the Supreme Court.

Idaho Conservation League v. Mumma, Ninth Circuit, 1992; litigation involved NEPA and APA issues regarding judicial review of USDA Forest Service forest management plans; I handled the briefing and oral argument in the Ninth Circuit; the Ninth Circuit granted judicial review but ruled for my client on the merits of the NEPA claim; 956 F.2d 1508 (9th Cir. 1992).

Bernardi v. Yeutter, NDCA (Judge Conti), 1991-1992; employment discrimination litigation; I handled significant, contentious negotiations resulting in a new, more feasible consent decree being entered.

Exxon Valdez, Natural Resource Damage Assessment, 1989-1993; I personally and substantially represented one of the Natural Resource Trustees (National Forests) in connection with remediation and recovery of natural resource damages in Prince William Sound; a one billion dollar NRD settlement was achieved.

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

The above eleven representations fairly describe the nature of my varying practice over the years. In addition to these litigations, I have submitted numerous amicus briefs in the U.S. Supreme Court and various Courts of Appeals, typically but not always involving issues of administrative law.

I also have a very active practice advising corporations on US and international privacy and data protection compliance programs, and information security issues. I coordinate Sidley Austin's Information Law and Privacy Practice.

I advise clients on food safety compliance and crisis matters, involving recalls and other regulatory issues.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

The position for which I have been nominated is part-time and, if confirmed, I will remain a partner of my firm. Accordingly, I understand this question not to be applicable.

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

If confirmed, I will consult with the designated White House ethics counsel, as well as my firm's ethics partner to avoid any conflict of interest. I will also ensure that I do not represent or receive profits from representation of foreign governments during my tenure. In view of the advisory and oversight nature of the Privacy and Civil Liberties Oversight Board, and the fact the Board's subject matter concerns the Government's activities to fight terrorism, I believe that the likelihood of conflicts with my representations or my firm's corporate clients is limited. In addition, I believe that as a general matter it unlikely that actual matters involving specific parties will come before the Board. If any matters come before the Board that could reasonably be viewed as posing a conflict with respect to me, my firm or client matters my firm is involved in, I will err on the side of recusing myself from any participation in Board decision-making.

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

Not applicable in light of the nature of the position in question.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure

report, required by the Ethics in Government Act of 1978, may be substituted here.)

My Form SF 278 is provided.

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

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

I served briefly and minimally as a legal consultant to the 1984 Reagan-Bush campaign in the State of New York. I also served as general counsel to James C. Miller III in his 1994 and 1996 campaigns for the Republican nomination for U.S. Senate in Virginia.

III. GENERAL (PUBLIC)

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

I understand that the following provisions are or may be applicable to my professional responsibilities, and I believe I practice in satisfaction of them:

> **DC Rule 6.1 — Pro Bono Publico Service**
>
> A lawyer should participate in serving those persons, or groups of persons, who are unable to pay all or a portion of reasonable attorney's fees or who are otherwise unable to obtain counsel. A lawyer may discharge this responsibility by providing professional services at no fee, or at a substantially reduced fee, to persons and groups who are unable to afford or obtain counsel, or by active participation in the work of organizations that provide legal services to them. When personal representation is not feasible, a lawyer may discharge this responsibility by providing financial support for organizations that provide legal representation to those unable to obtain counsel.
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> * * *
>
> **NY EC 2-25** A lawyer has an obligation to render public interest and pro bono legal service. A lawyer may fulfill this responsibility by providing professional services at no fee or at a reduced fee to individuals of limited financial means or to public service or charitable groups or organizations, or by participation in programs and organizations specifically designed to increase the availability of legal services. In addition, lawyers or law firms are encouraged to supplement this responsibility through the financial and other support of organizations that provide legal services to persons of limited means.

I satisfy these professional responsibilities through a number of substantial activities and personal commitments.

I serve on the Board of the American Heart Association, and as co-founder and Chair of the Lawyers Have Heart event to benefit the American Heart Association. The proceeds from these activities are beneficial to the disadvantaged and minorities. We have specifically designed and promoted this event as an important opportunity for members of the legal community in Washington DC to serve the public interest. I have been

involved with the American Heart Association for over 15 years, and I dedicate approximately 50-75 hours per year to this cause as well as significant financial support.

With my wife, I am active in supporting the Children's Law Center, which provides legal services to disadvantaged children and families in Washington.

I have provided pro bono services to the Washington Legal Foundation, Members of Congress, a disabled veteran in the Federal Circuit, and an under-privileged family in a business dispute.

I serve on the Advisory Council for the Atlantic Legal Foundation, a public interest law firm that litigates cases on a pro bono basis. I dedicate approximately 50 hours per year to this Foundation.

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

I do not and have not belonged to any discriminatory organization. My undergraduate college social club (analogous to a fraternity), the Fly Club, was and is all male. My daughter attends and I contribute to a school for girls (National Cathedral School), and one of my sons attends and I contribute to a school for boys (Landon School).

Alan Charles Raul **October 21, 2005**

AFFIDAVIT

I, Alan Charles Raul, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10/21/05
(DATE)

(NAME)

Khin Brody
(NOTARY)

KHIN BRODY
NOTARY PUBLIC
District of Columbia
My Commission Expires May 31, 2006

FINANCIAL STATEMENT

NET WORTH

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

SEE ATTACHED NET WORTH STATEMENT PREPARED BY MERRILL LYNCH 5/24/2005 (Specific securities owned and liabilities owed – other than debt secured by principal residence – are reflected on the SF 278 provided with this questionnaire.) Mortgage on primary residence and home equity loan are secured by that residence are held by Merrill Lynch and serviced by PHH.

Changes from 5/24/2005 Net Worth Statement:
Approximately $150,000 assets in Merrill Lynch 529 college funds held for 3 children
Firm capital account equals $210,000 asset (Held by Sidley Austin)
Cash on hand equals approximately $25,000 (up from approximately $15,000)(held by Merrill Lynch for investment)
Personal debt is now approximately $150,000 (up from $70,000 shown on ML statement) (Citibank revolving loans and Merrill Lynch home equity account)
Bills payable are approximately $30,000 (Visa account fluctuating balance)
Net addition to net worth equals $260,000 for total net worth of approximately $2,450,000

ASSETS				LIABILITIES			
Cash on hand and in banks				Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			

Alan Charles Raul **October 21, 2005**

Listed securities-add schedule Retirement accounts and college funds (529s)				Notes payable to relatives			
Unlisted securities--add schedule Firm capital account				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule				Chattel mortgages and other liens payable			

Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance							
Other assets itemize:							
				Total liabilities			
				Net Worth			
Total Assets				Total liabilities and net worth			

Alan Charles Raul **October 21, 2005**

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

Attachments

NET WORTH STATEMENT PREPARED BY MERRILL LYNCH

Printouts of Westlaw searches for articles specifying ACR as author (comprehensive).

List of articles and relatively recent congressional testimony (partial).

Copies of ACR congressional testimony on anti-spam legislation, presidential pardons, and the non-delegation doctrine.

Privacy and the Digital State: Balancing Public Information and Personal Privacy (Kluwer Academic Publishers 2001)

NET WORTH

ASSETS			
Personal Assets			
Primary Residence	$2,250,000		
Automobiles	20,000		
Other Personal Property	100,000		
Total Personal Assets			**$2,370,000**
Investment Assets			
Retirement Assets			
Traditional IRA Accounts	$327,942		
Roth IRA Accounts	36,000		
Profit Sharing	590,117		
Deferred Compensation	182,000		
Total Retirement Assets		**$1,136,059**	
Portfolio Assets			
Checking Accounts	$13,489		
Stock Mutual Funds	6,575		
Total Portfolio Assets		**$20,064**	
Total Investment Assets			**$1,156,123**
TOTAL ASSETS			**$3,526,123**
LIABILITIES			
Primary Residence Mortgage	$1,250,000		
Auto Loan Balance	3,000		
Unsecured Personal Debt	70,000		
TOTAL LIABILITIES			**$1,323,000**

Total Net Worth $2,203,123

The previous table shows your current financial position. Your net worth includes only the assets and liabilities you listed in your Financial Foundation Profile questionnaire and assumes all employee retirement benefits are fully vested. It does not include assets which you do not directly and personally control, such as defined benefit pension plans and trust funds from which you cannot withdraw principal.

Life insurance proceeds (face value) are not included because they are not available to you while you are alive.

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

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Raul			First Name and Middle Initial: Alan C. (Charles)	
Position for Which Filing	Title of Position: Vice Chairman			Department or Agency *(If Applicable)*: Privacy and Civil Liberties Oversight Board	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 1501 K ST NW Washington DC 20005			Telephone No. *(Include Area Code)*: 202-736-8477	
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: Partner (1997-present)				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Homeland Security and Governmental Affairs			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date *(Month, Day, Year)*: 06/06/05	
Other Review (If desired by agency)	Signature of Other Reviewer			Date *(Month, Day, Year)*	
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			Date *(Month, Day, Year)*	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

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

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

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

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

Reporting Periods

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

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

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

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

Schedule B--Not applicable.

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

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

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

Agency Use Only

OGE Use Only

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U.S. Office of Government Ethics

Reporting Individual's Name: Raul, Alan C. (Charles)

SCHEDULE A

Assets and Income — BLOCK A

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

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

None ☐

Valuation of Assets at close of reporting period — BLOCK B

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

	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	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State																															Law Partnership Income $150,000	
	Kempstone Equity Fund					x																											
	IRA Heartland 500 Index Fund							x																	x								
1	Sidley Austin Brown & Wood llp (accrual retirement balance)					X																										accrual accounting income 20K	
2	Vanguard Equity Fund				X									X																		no individual dividends reported	
3	SSgA S&P 500 Index Fund					X								X																		no individual dividends reported	
4	Harbor Capital Appreciation						X							X																		no individual dividends reported	
5	Harbor International Fund				X									X																		no individual dividends reported	
6	Alliance Bernstein					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.

Prior Editions Cannot Be Used.

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Reporting Individual's Name: Raul, Alan C. (Charles)

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$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)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	NASDAQ 100 TR Unit Ser. 1				X								X								X											
2	Diamond Trust Series 1			X									X									X										
3	MFS Equity Portfolio (Merrill Lynch College Savings 529)					X							X							X												
4	Bristol Myers Squibb		X													X					X											
5	Citigroup Inc			X												X					X											
6	Digene Corp		X													X				X												
7	Safeway Inc.		X													X				X												
8	Schering Plough		X													X				X												
9	Target Corp.			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: Raul, Alan C. (Charles)

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Time Warner Inc		X														X				X												
2	Sidley Cash Balance Plan (asset list attached)					X								X																		no individual report	
3	Qualcomm			X													X				X												
4	Research in Motion		X														X				X												
5	Sidley Austin Brown & Wood LLP					X																										partnership income/$50K	
6	Merrill Lynch Money Market		X											X							X												
7	S&P 500 Index Fund			X										X								X											
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.

Sidley Cash Balance Plan Assets

SIDLEY AUSTIN BROWN & WOOD

as of December 31, 2004 FINAL

Equity Domestic
Large Capitalization
GMO US Quality Equity Fund - III
Small Capitalization
Frontier Small Cap Group
Skyline Special Equities Portfolio
Subtotal Domestic Equity

International
GMO International Intrs. Value III
GMO Emerging Markets Fund III
Subtotal International Equity

Hedge Funds
AQR
Archipelago
Black Bear Offshore Fund
Cavalry Tech Offshore LTD
Chilton New Era Intl.
GMO Multi Strategy Offshore Fund
Highline Capital Intl. Ltd
Maverick Fund
North River
Oechsle Asia Pacific Offshore Fund A
Oechsle Partners Offshore Fund A
PAW Offshore Fund Ltd
Pinter Creek
Quinsett Class A
Standard Pacific Capital Offshore Fund
Waterstreet
Wellington Spindrift Partners
Subtotal Hedge Funds

Total Common Stock

Alternative Equity
Private Equity/Venture Capital
Advent Atlantic & Pacific II
Advent Global Private Equity II
Advent Global Private Equity III
Advent Global Private Equity IV
Advent VII
Advent VIII
TA Associates IX
Bain Capital Fund VIII LP
BCN I
Benchmark Capital Partners IV
Benchmark Europe I
Bowman Crossover Fund
Foundation Capital IV
Madison Dearborn Capital Partners IV
MDCP IV Global Investments LP
MDV VII
Mohr Davidow Ventures VI
Nexus Capital Partners II
Thomas H Lee Equity Fund V
WCAS Capital Partners II
WCAS Capital Partners III
WCAS VI
WCAS VII
WCAS VIII
WCAS IX
Subtotal Private Equity/VC
Inflation Hedge
Advent Realty Associates Fund III
Advent Realty Associates Fund IV
Beacon Capital Strategic Partners II
Broadreach Capital Partners REIT
EnCap Energy Fund V
GMO Forestry 8-B
Park Street Capital Nat. Resources Fund
Park Street Capital Nat. Resource Fund II
PIMCO All Asset Fund
PIMCO Comm Real Return Strategy 45
TCW Energy
Subtotal Inflation Hedge

Subtotal Alternative Equity

Fixed Income
PIMCO Foreign Fund Institutional 103
PIMCO Total Return Fund 35
SSgA Cash Equivalents
Subtotal

TOTAL ASSETS

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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: Raul, Alan C. (Charles)

SCHEDULE B

Part I: Transactions

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

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

None ☐

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

SCHEDULE C

Part I: Liabilities

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

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000*
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.											
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					X						
1	Citibank, Washington, DC	credit line		prime				X								
2	MBNA (closed)	credit line						X								
3	Citibank, Washington, DC	credit line		prime			X									
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	Continuing partnership, benefits and retirement plans with Sidley Austin Brown & Wood LLP	Sidley Austin Brown & Wood LLP, Washington, DC	
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Raul, Alan C. (Charles)		7 of 8

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	Sidley Austin Brown & Wood LLP, Washington DC	Law Firm	Partner	07/1997	present
2	American Heart Association, Nations Capital Regional, Washington DC	Non-profit	Board Member	01/2002	present
3	Atlantic Legal Foundation, New York NY	Non-profit	Advisory Council Member	01/2002	present
4	American Bar Association, Section of Admin Law & Prac, Chicago IL	Non-profit	Council Member	04/2004	present
5	Federalist Society, Washington, DC	Non-Profit	Nat'l Practitioners Council	01/2000	present
6	Council on Foreign Relations	Non-Profit	Member	01/1990	present

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	Sidley Austin Brown & Wood LLP, Washington DC	legal services
2	List of clients over $5,000 follows	legal services (for all parties identified below)
3	Aramark, AT&T, BAnk of New York, Boothe Eye Care, William Boothe, MD	
4	Borden Chemical, Canyon Partners, CDW, Church of Jesus Christ of Latter-Day S	
5	Costco, Countrywide, Peru, Hoffman-La Roche,KPMG, Raytheon,Recording Indus	
6	Retail Services/Freebie Inc, Sara Lee, Schering Plough, Svoboda Collins	

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Reporting Individual's Name	SCHEDULE D	Page Number
Raul, Alan C. (Charles)		8 of 8

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	TWE Holding Trusts, Tyson Foods, USA-ITA, Wahluke County, Walter E Smithe	
2	Washington Legal Foundation, Donald A Manzullo, Anheuser-Busch	
3	Atkins Nutritionals, Organization for International Investment	
4	American Heart Association, Atlantic Legal Foundation	
5		
6		

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Senator CORNYN. Thank you, Mr. Raul, and thanks to you, Ms. Dinkins, for both bringing members of your family here with you. This is, I know, a proud moment for them as well.

Let me ask you, please, to stand so I can administer the oath to both of you.

Do you swear that in your testimony before the Committee, you will tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. RAUL. I do.

Ms. DINKINS. I do.

Senator CORNYN. Thank you. Please have a seat.

I guess one of the big challenges that this Board has is being a new board and being really not a lot of guidance, I guess, for exactly how you are supposed to carry out your functions. I would be interested in hearing from each of you how you intend to proceed, if only maybe in general terms right now, if you are confirmed to this position. How do you see getting started, Ms. Dinkins?

Ms. DINKINS. Thank you, Mr. Chairman. It will be quite a challenge given that the Board does not currently exist and it is brand new. As I said earlier, our first order of business will be to engage an Executive Director. We will then evaluate what other types of people we might need to staff the functioning of the Board, and seek additional resources from the various departments through detailees, for example.

Once we have an Executive Director and office space, to speak very practically, then the Board will begin to identify who we would want to reach out to and speak with about what their views are regarding the things that the Board should be looking at and delving into. And we will use that to guide us in setting our agenda, and more importantly, within the agenda, to set priorities.

That's very general, but other than that, we'll be guided by what is in our statutory mandate.

Senator CORNYN. Mr. Raul, do you have any other thoughts?

Mr. RAUL. Well, I agree with Ms. Dinkins that we will seek to reach out and be educated by the views of the people, both inside and outside the Government, the Executive Branch and in the Congress, to learn from people who have been following this issue and very concerned about it for a long time. So we'd like to hear from people who are interested in sharing their thoughts with us. Obviously, we'll convene as a Board, the five of us, to determine initial priorities and so on, but as Ms. Dinkins indicated, finding an Executive Director, getting the logistics of getting an organization in place will be, will have to be a top priority.

Senator CORNYN. As I said, the statute is not really expansive about exactly how you are supposed to function, but it does say that the role of the Board is to advise counsel and oversee the Executive Department's development and implementation of policy, including reviewing proposed regulations and executive branch policies in the area of terrorism prevention and so forth, reviewing the implementation of laws, regulations and executive branch policies related to terrorism prevention, including the implementation of information-sharing guidelines under Sections (d) and (f) of Section 1016 of the National Intelligence Reform Act, and then to advise the President and department and agency heads, to ensure

that privacy and civil liberties are appropriately considered in the development and implementation of such regulations and Executive Branch policies.

It is my impression that some people feel that this is a zero-sum game, Ms. Dinkins, between national security and terrorism prevention on one hand, and civil liberties and privacy rights on another. How do you see it?

Ms. DINKINS. Both of those are of fundamental importance to our way of life and to our future. We must protect the country from those who would destroy us and destroy our people and our culture, but on the other hand, we can't give up or give short shrift to what makes this such a special Nation, and we must protect our privacy and our civil liberties.

And these are things that require careful balancing, things that require a great deal of back and forth to make sure that the tension is properly resolved so that we do not sacrifice our civil liberties while we are fighting those who wish to destroy us. I don't think that it's an easy tension, but it's one that we must grapple with and we must come out on the right side of it.

Senator CORNYN. I know as we have debated the PATRIOT Act—I was not here when that was passed and signed by the President, but I have been here during the debate since that time, and aware of the fact that the PATRIOT Act has been condemned, I guess, by the resolution of, I think, over 300 different municipal governments. Now, it is a matter of curiosity to me why city councils and mayors would be passing resolutions condemning the PATRIOT Act, particularly in light of the fact that it has been so important, particularly in terms of information sharing, in terms of making sure that our intelligence and law enforcement authorities have the tools they need in order to root out terrorist activity, and to keep us safe.

I say that just because it has always struck me that this is an area where there is a lot of misinformation, you might even say disinformation, and perhaps the best thing you could say is it is an area where people just do not know s much as they probably would need to know in order to make good decisions about this balance.

I am curious, Mr. Raul, do you happen to know, will the Board be privy to classified information and be given an opportunity, in evaluating privacy and civil liberty concerns, to be able to weight that in the balance with concerns about threats?

Mr. RAUL. Yes, Mr. Chairman. The statute establishing the Board is very clear that the members of the Board are to be provided with security clearances, specifically for the purpose of allowing us, if confirmed, to have information that will let us balance these issues in an informed way. We need to have, and I believe the statute contemplates that we will have, access to information so that we can advise the President, department heads and agency heads, and make our report to Congress. And the statute says "in an unclassified fashion to the greatest extent possible," thereby contemplating that portions of it might remain classified.

But I believe that it was the intention in establishing the Board that we would have the clearances that are necessary and commensurate with the type of information that we will need to balance

the issues between fighting the war on terrorism while ensuring that civil liberties concerns are considered as we do that.

Senator CORNYN. I think that is very important, because as our own history shows us, the more people feel threatened by whether it is terrorism or by enemies of this country, the more perhaps we are willing to accept in terms of loss of privacy rights. I think people do have to strike a balance, and that will be important information for you to have, I think, as you go through this job, and as you review these rules and regulations, and as you advise the President and other agencies.

I also think you could perform an important role for the President by, as you said, by reaching out to various organizations that do have concerns in these areas, and I think part of that is going to be not only listening to their concerns, but perhaps helping them to understand what the facts are because this is an area that can be very emotional, and sometimes disputes can be resolved by pointing out the facts or correcting misimpressions or misapprehensions about exactly what Congress and the Federal Government is about.

I know you will not be too surprised that I do not have a lot more for you, and actually it may turn out to be fortuitous that we do have votes now, but I think at this point what I will do is we are going to leave the record open so that any member of the Committee can ask any additional questions they may have of you in writing, and we will leave that record open until 5 p.m. on Tuesday, November the 15th, for that purpose.

What we are going to do, after a little consultation with staff here, we are going to recess the hearing, and we have two votes so it may be a few minutes, maybe 30 minutes or so, and then we will come back.

I am actually through with the questions I had of you, but Senator Feingold, I understand, will be coming, and either he will reconvene the hearing and ask those questions, or I will be back for that purpose.

But thank you for being understanding about our crazy schedule around here. Thank you for your willingness to serve.

We will recess the hearing at this time.

[Recess from 2:56 p.m. until 3:32 p.m.]

Senator CORNYN. One thing I neglected to do is to give you each a chance to introduce your family members that are here with you. I had a chance to meet them informally, but, Ms. Dinkins, would you care to introduce your family for the record?

Ms. DINKINS. Yes, thank you so much. Mr. Chairman, may I please present my husband, Bob Brown.

Senator CORNYN. Congratulations, nice to see you.

Mr. Raul, I know you have several members of your family here with you.

Mr. RAUL. Yes, I have a nice cohort here. Thank you, Mr. Chairman.

I have my wife, Mary Tinsley Raul, and my daughter Caroline, my son, William, and my son, Alexander, and I also have my sister-in-law, Sarah Tinsley Demarest.

Senator CORNYN. That is great. Well, welcome to all of you, and thank you for being here and being so supportive of your spouse, and father and brother, excuse me.

Senator Feingold had said he wanted to come over and ask a few questions, but unfortunately, he is otherwise committed, so he is going to submit those questions in writing, like other members of the Committee. There may be additional questions that you will be asked to answer. Those will be submitted no later than 5 o'clock, next Tuesday.

With that, the hearing is adjourned.

[Whereupon, at 3:33 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Senator Dick Durbin
Questions for Carol E. Dinkins
Nominee to be Chairman of the Privacy and Civil Liberties Board

1. You are a Partner in a large law firm in Houston, which must consume a great deal of your time. The Board has substantial responsibilities, including ensuring that privacy and civil liberties concerns are appropriately considered in the Executive Branch's development and implementation of all counterterrorism-related laws, regulations, and policies.

a. If confirmed, how much time do you estimate that you will spend per week on the Board's work?

b. How often do you plan to travel to Washington in your capacity as Chairman?

c. How often do expect Board members to meet?

d. The Intelligence Reform law states that the Board Chairman may be full-time. You are going to be Chairman on a part-time basis. How do you plan to carry out the Board's broad statutory mandate on a part-time basis?

(I note that my response to this question tracks in certain respects my answer to a similar question posed by Senator Feingold.) I am honored to have been nominated to chair the Privacy and Civil Liberties Oversight Board, and, if confirmed, I am committed to doing whatever is needed to make it a success. I anticipate that that this will include a substantial commitment of my personal time, and I expect to travel to Washington, D.C. frequently to chair Board meetings and to attend to other Board business. The Board will collectively make a decision about how often we will meet, and I do not want to pre-commit the Board to a particular meeting schedule. However, it is my expectation that the Board will meet as often as necessary to fulfill its statutory mission.

While I and the other members of the Board will continue to meet our professional and business obligations in the private sector, I am convinced that the individuals the President has nominated or appointed have the experience and proven dedication to public service necessary to make the Board effective and influential. I do not believe that my part-time status will preclude the Board from effectively fulfilling its mission.

2. We are approaching the one-year anniversary of the passage of the Intelligence Reform Legislation and it is important that the Board begin its important work as soon as possible. What is your timeline for making the Board operational, including hiring an Executive Director and staff and securing office space?

I agree that it is critical that, after a Chair and Vice Chair are confirmed, the Board get up and running as quickly as possible. If confirmed, I would view the hiring of an executive director as the Board's first priority. My other initial priorities, as I noted in my response to a question from Senator Feingold, would be (i) to convene the Board for

the purpose of developing both a substantive agenda and internal procedures; and (ii) to reach out to Executive Branch departments and agencies, members of Congress who have a particular interest in the work of the Board, organizations with interest and expertise in privacy and civil liberties issues, and other members of the public who may be helpful in bringing issues to the Board's attention. I do not believe that securing office space will present a problem.

3. When did the White House first contact you about serving on the Board? What were you told about the how the Board will function and the timeline for establishing the Board? When were you offered the position of Chairman?

To the best of my recollection, I was contacted about this position in April, and offered the position of Chair within a few weeks thereafter (perhaps in early May). I do not recall conversations addressing the Board's future operations in any detail, but have always had the expectation that the Board would begin functioning promptly after the confirmation of the Chair and Vice Chair.

4. The White House proposed a budget of $750,000 for the Board for Fiscal Year 2006. The Senate increased this to $1.5 million. How will the Board set up an office, hire staff, and otherwise function effectively with such a small budget?

It is difficult to anticipate at this preliminary point what the Board's budgetary needs will be. I do note, however, that it is my understanding that the Board will have the authority to use agency detailees on a non-reimbursable basis, which could substantially minimize staff expenses. In any event, I anticipate that the funding needs for the Board's operation will be periodically re-evaluated to ensure that the Board has the necessary resources to fulfill its mission.

Senate Judiciary Committee
Hearing on "Executive Nominations"
Tuesday, November 8, 2005

Questions Submitted by U.S. Senator Russell D. Feingold
to Carol Eggert Dinkins

1. *As the first Chair of the Privacy and Civil Liberties Oversight Board, you would have a hand in setting the tone and shaping the Board's role as part of the Executive Office of the President. You would have no precedent or past practice to rely on.*

   a. *What do you see as the Board's role, and what range of issues do you think the Board can and should address?*

   b. *Please list at least ten issues that you believe the Board should address.*

The substantive purview of the Board is set forth in section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA): the Board's function is to provide advice and oversight to the President and Executive Branch officials to ensure that privacy and civil liberties concerns are appropriately considered during the development and implementation of Executive Branch counter-terrorism policies. I am reluctant to identify a list of specific substantive issues that I believe the Board should consider in fulfilling its statutory mandate, for two reasons. First, the Board has not yet met, and I do not wish to make statements that might be perceived, were I to be confirmed, as pre-committing the Board to focus on particular subjects; these are decisions for the Board to make together. Second, the Board will need to be flexible in order to fulfill its advisory functions as new Executive Branch counter-terrorism policies are developed, and identifying a lengthy list of specific substantive priorities at the outset of the Board's work might impede the Board in fulfilling this function.

With that said, there are several issues that I would expect that the Board would be likely to address. One of these issues is information sharing. The Board's functions will include (i) reviewing any guidelines established (pursuant to section 1016(d) of IRTPA) for the acquiring, accessing, sharing, and use of terrorism information; and (ii) examining the practices of relevant executive departments in implementing those guidelines, in order to determine whether such practices appropriately protect privacy and civil liberties. Other issues that the Board might address include: USA Patriot Act policy development and implementation; privacy and civil liberties issues raised by new technological

tools, including "data-mining" technologies; "no-fly" lists, passenger screening, and related issues involving privacy in the context of aviation security; and the development of policies, procedures, and technologies that will enhance cooperation and coordination among agencies in protecting privacy and civil liberties.

2. *What do you see as the three highest priorities for the Board in its first few months of existence?*

If confirmed, I would view the first priority of the Board as that of hiring an executive director and other necessary staff to help the Board get up and running. Second, the Board will need to convene to develop its procedures and to set its agenda so it can move forward on the matters it believes to warrant immediate attention. Third, it will be important for the Board to reach out to Executive Branch departments and agencies, members of Congress who have a particular interest in the work of the Board, organizations with interest and expertise in privacy and civil liberties issues, and other members of the public who may be helpful in bringing issues to the Board's attention.

3. *Congress's goal in creating this Board was to ensure internal oversight within the Executive Branch of the privacy issues that cut across agencies, by creating an entity whose sole purpose is to consider the privacy implications of government policies. The Board was placed inside the Executive Office of the President to ensure that the Board members would have a seat at the table when important Executive Branch decisions implicating civil liberties are made.*

   a. *How will you make sure that Board members get a seat at the table? How will you make sure that Board members know what decisions are being made, and that it has input into those decisions?*
   b. *Placing the Board inside the Executive Office of the President may make it more difficult for the Board to retain its independence. What steps do you plan to take to ensure the independence of the Board?*

If confirmed, one of my top priorities would be to develop procedures to facilitate the Board's involvement in the process by which counter-terrorism policies are developed and implemented. I believe that the senior Executive Branch experiences that I and my potential colleagues on the Board have held in the past will position us well to develop procedures that will ensure that we have an important voice in the policy development process.

As to the issue of independence, the President will be best served if the Board offers unvarnished and candid advice concerning whether counter-terrorism policies are developed with adequate consideration of privacy and civil liberties issues. I am confident that, if confirmed, both I and my distinguished colleagues will exercise independent judgment, and advise the President accordingly. I also note that I do not view the placement of the Board within the Executive Office of the President as an impediment to the Board's effectiveness. Quite the contrary; the location of the Board within the Executive Office of President will provide it with a proximity to the senior Executive Branch decisionmaking process that will make it more likely that the Board is informed and influential.

4. *You have worked inside the Executive Branch in different capacities over the years. Your role on the Privacy and Civil Liberties Oversight Board will be to serve as a check on the government's decision-making. What experiences can you point to that would demonstrate to this Committee that you would be willing and able to question the power of the Executive Branch? In what circumstances have you actually done so?*

As Deputy Attorney General, and prior to that as Assistant Attorney General in charge of the Environment and Natural Resources Division at the Department of Justice, I had responsibility to ensure the integrity of law enforcement and criminal investigations. When I held those positions, I was responsible for oversight of federal law enforcement activities, and for insulating the law enforcement process from inappropriate political pressure from Congress or the Executive Branch. Through these experiences I developed a heightened appreciation of the importance of institutionalized checks on government authority, and an increased awareness of the fact that the development and implementation of Executive Branch policies must take into account Americans' privacy and civil liberties. If confirmed, I will draw upon these experiences as Chair of the Board.

5. *In last Sunday's Washington Post (11/6/05), there was a lengthy story about the FBI's use of National Security Letters, which FBI field offices can issue without judicial approval to obtain certain types of business records. The National Security Letter authority was significantly expanded by the Patriot Act.*

   a. *If you had already been confirmed to the Board when that story was published, what would you have done in response?*
   b. *Do you think there needs to be more oversight of the FBI's use of National Security Letters? Do you think the Privacy and Civil Liberties Oversight Board should play a role in that?*

c. *Do you think it is appropriate for the FBI to retain all of the information it obtains through the use of National Security Letters, including information on innocent Americans, even if it has determined that the information has not generated any leads?*

d. *As a Board member, would you be prepared to recommend changes in existing laws or guidelines governing National Security Letters if you thought that was the appropriate response?*

As noted above, I am reluctant to make any statements to the Committee that could be perceived as committing the Board to review a particular area, or to a particular process for conducting its oversight responsibilities. It will be up to the members of the Board, sitting together, to make these decisions in a manner consistent with its statutory mandate.

Were the Board to decide that it was appropriate to address this issue, however, I believe it would be important at the outset to develop a clear understanding of the facts, as published articles addressing this issue suggest that there is disagreement concerning the nature and extent of oversight of the National Security Letter process. With that said, any issue concerning the retention of information pertaining to American citizens in the context of counter-terrorism policy development and implementation raises privacy issues that it could be appropriate for the Board to examine. In response to sub-question (d), if confirmed I would not hesitate to recommend changes to Executive Branch guidelines governing National Security Letters, if based upon the Board's inquiries the Board reached the conclusion that this was an appropriate response.

6. *I have expressed concerns about the efficacy and the privacy implications of data mining technology. I believe that the American public and the Congress need more information about what the government is planning and what it is already doing in this area.*

a. *What potential privacy and civil liberties issues do you think relate to data mining? What will you do to promote transparency in the Executive Branch on this issue?*

b. *If there had been a Privacy and Civil Liberties Oversight Board when the revelations about the Total Information Awareness program at the Pentagon became public, what do you think the Board should have done in response?*

Without pre-committing the Board to consider any specific issue, I do expect—as noted above—that the appropriateness of the use of "data-mining" technologies as part of or in furtherance of government counter-terrorism policy is an issue that the Board may confront. In reviewing Executive Branch policies in

this area, I would work with interested entities and groups outside the Executive Branch to identify the potential privacy and civil liberties issues raised by these technologies, and what steps might be appropriate to enhance public awareness of how publicly available information about American citizens is used by the government.

In response to the specific question about whether and how the Board would have addressed revelations about the Department of Defense's Total Information Awareness Program, I believe that the appropriate first step would have been to reach out to the appropriate policymakers in the White House and the Department of Defense to learn more about the policies at issue. The next step would have been to consider whether the Board—as opposed to an entity within the Department of Defense—should evaluate the issue before the Department had conducted its own robust review. The Board will not be—and must not be—the only entity in the Executive Branch addressing and advancing privacy and civil liberties issues, and it may be appropriate in some circumstances for agency-level entities to take the lead in studying issues in the first instance, and for the Board to then review and judge the agency-level assessment. (In this specific case, Secretary Rumsfeld commissioned a special advisory panel to examine the legal and policy issues raised by these technologies; therefore, had it existed at that time, the Board would have determined how to factor in this panel's work in carrying out the Board's own responsibilities.) Upon taking stock of the overall situation, the Board would have made recommendations to the President and the Secretary of Defense concerning whether privacy and civil liberties concerns were adequately considered in connection with the program.

7. *One failing prior to September 11 was that our intelligence and law enforcement agencies were not sufficiently sharing information with each other to effectively combat terrorism, in large part due to a culture of competition and distrust that had developed over the years. Congress has been working to encourage agencies to share important terrorism information and to better coordinate their work. What kinds of privacy and civil liberties issues do you think might arise as agencies share more information with each other than ever before?*

As noted above, issues concerning the collection, sharing, and use of terrorism information are at the heart of the Board's statutory mandate. Section 1061 of IRTPA reflects Congress's view that the vigorous prosecution of the war on terror may require the federal government to exercise new or enhanced authorities, and that one of the Board's functions is to ensure that appropriate concerns about civil liberties and privacy are considered as these authorities are developed and exercised. While many have emphasized the importance of robust

information sharing for the effective prosecution of the war on terrorism, the collection, sharing, and use of information concerning American citizens implicate privacy and civil liberties issues. It will be one of the Board's central functions to review proposed information-sharing guidelines to ensure that privacy and civil liberties issues are given appropriate consideration, and to take steps to ensure existing laws and regulations in this area are followed when agencies share information.

8. *How would you plan to conduct oversight of the government's domestic surveillance powers under the Foreign Intelligence Surveillance Act and other laws?*

As I have indicated, I wish to avoid making any statements that might be perceived as pre-committing the Board to advise or perform oversight in a particular area. The Foreign Intelligence Surveillance Act (and implementing regulations and policies) establishes a system of judicial, congressional, and Executive Branch oversight of domestic surveillance activities, and it would be inappropriate for me to assume without further study that existing oversight mechanisms in this area are inadequate. However, should the Board review those oversight processes and conclude that further oversight mechanisms are needed, I would, if confirmed, make appropriate recommendations in this area to the President and the Attorney General.

9. *What would you have advised the Administration in the months after September 11 when it was developing its policies on enemy combatants and the detention of individuals at Guantanamo Bay? Please comment specifically on the Administration's policies regarding: (1) the detention of enemy combatants at Guantanamo Bay; (2) the indefinite detention of U.S. citizens without charges as enemy combatants; (3) the use of Combatant Status Review Tribunals; and (4) the trial of enemy combatants who have been charged in military commissions.*

A thoughtful response to these questions would require familiarity with several complicated and interrelated areas of law and policy, including: the Geneva Conventions, the customary laws of war, and other applicable areas of international or common law; the Supreme Court's decisions concerning the scope of constitutional and statutory protections for enemy combatants and other detainees; and the current procedures in place at Guantanamo Bay. While I am generally familiar at this time with the topics raised in this question, I cannot claim sufficient knowledge or expertise about them to offer what I would judge to be an appropriately informed answer to these difficult legal and policy questions.

10. *As a new entity, the Board has no existing infrastructure.*

a. *How many staff members do you think the Board will need to fulfill its statutory mission?*
b. *How quickly do you think the Board will be up and running?*

If confirmed, my immediate priority will be to engage an executive director who, together with members of the Board, would take the lead in hiring or obtaining the appropriate number administrative staff to run the office. It is difficult to anticipate the Board's precise staffing needs until the Board meets to develop its agenda. It is worth noting, however, that Congress has given the Board considerable flexibility in developing an appropriate staff; section 1061 of IRTPA authorizes the Board to satisfy its personnel needs through new hires, consultants, or detailees from other government organizations. If confirmed, I would be inclined towards utilizing a mix of these personnel authorities, complementing a comparatively small full-time generalist staff with "surges" of detailees and consultants with expertise or experience in particular substantive areas. If Alan Raul and I are confirmed, we will promptly convene the Board for its initial meeting, with the intention of getting the Board up and running as soon as possible.

11. *The statute creating the Board requires it to report to Congress. What role do you think the Board should play in communicating more broadly with the American public on privacy and civil liberties issues?*

Section 1061 of IRTPA directs the Board to prepare periodic reports to Congress that are "unclassified to the greatest extent possible," which should facilitate transparency. I also believe that outreach is essential and, if I am confirmed, I will make consultation with interested groups and organizations a top priority. This process will not only generate useful ideas for the Board, but will provide the Board with an opportunity to communicate with individuals and groups outside government about its activities.

12. *The statute establishing the Board states that the Chair may be a full-time position. In your answers to the questionnaire you stated that you would continue to practice law at Vinson & Elkins in Houston while serving as Chair of the Board.*

a. *How frequently do you plan to come to Washington to fulfill your role as Chair?*
b. *How did you come to the decision to be a part-time Chair? Is it your belief that the Board will not need your full attention?*
c. *If the Board's work turns out to be more than you anticipate, are you prepared to scale back even further, or leave, your private practice?*

I am honored to have been nominated to chair the Privacy and Civil Liberties Oversight Board, and, if confirmed, I am committed to doing whatever is needed to make it a success. I anticipate that that this will include a substantial commitment of my personal time, and I expect to travel to Washington, D.C. frequently to chair Board meetings and to attend to Board business. While I and the other members of the Board will continue to meet our professional and business obligations in the private sector, I am convinced that the individuals the President has nominated or appointed have the experience and proven dedication to public service necessary to make the Board effective and influential.

13. *You have extensive experience in environmental, natural resource, and energy law. But your record does not indicate that you have any experience dealing with privacy and civil liberties issues.*

a. *Why are you qualified to serve on the Board?*
b. *Why are you qualified to serve as Chair of the Board?*
c. *How will you be able to effectively carry out the Board's mission, having never worked with these issues before?*
d. *What can you point to in your experience that will show the Committee that you can be the strong, confident, independent voice the Board needs, even though you have no background in the area?*

In my role as Deputy Attorney General of the United States, I frequently dealt with the privacy and civil liberties issues that arise in the context of domestic surveillance and counterintelligence, and I believe that this substantive experience will be an asset to the Board. I also note that being Chair of the Board will require, perhaps above all else, strong leadership and management skills, and I have extensive leadership experience both inside and outside of government. In addition to my service as Deputy Attorney General and Assistant Attorney General, I have chaired a number of organizations, and have assumed several high-level management responsibilities in my law firm. While I cannot speak to the reasons that led the President to nominate me for this position, I believe that I have both the management skills and the substantive experience needed to lead the Board effectively. If confirmed, I would also have the benefit of the experience and talents of an exceptional group of colleagues whom the President has nominated or appointed to serve with me on the Board.

14. *In your confirmation hearing, you said that one of the Board's first priorities would be to identify and reach out to experts for guidance on your agenda and policies. What factors will you consider in deciding whom to consult? Will you look beyond the government and across the political spectrum?*

If confirmed, I will consult a wide range of experts and organizations to seek their views concerning the Board's agenda and policies. This consultation process would include outreach both to current and former government officials, and to those outside the government who might provide relevant insights (including non-governmental organizations with expertise on privacy and civil liberties issues). If confirmed, I will look beyond the government and across the political spectrum to consult with those having an interest in the work of the Board.

Questions from Senator Patrick Leahy
Ranking Member, Committee on the Judiciary
Hearing on "Executive Nominations"
to the Privacy and Civil Liberties Oversight Board
November 8, 2005

Questions for Carol Eggert Dinkins

1. I reviewed your questionnaire responses, and I noticed that you have a good deal of experience and have authored articles on environmental and energy law issues. However, I did not see many details on your privacy background. Can you please describe any cases or experiences you have had in addressing privacy matters, including the circumstances raising those issues, your role in those matters, and how they were resolved?

(I note that this response tracks in certain respects my responses to similar questions from Senator Feingold.) In my role as Deputy Attorney General of the United States, I frequently dealt with the privacy and civil liberties issues that arise in the context of domestic surveillance and counterintelligence. As a related matter, both as Deputy Attorney General and as Assistant Attorney General in charge of the Environment and Natural Resources Division of the Department of Justice I had the responsibility to ensure the integrity of law enforcement and criminal investigations. In both of these positions, I was responsible for oversight of federal law enforcement activities, which included ensuring that the privacy and civil liberties of criminal suspects and criminal defendants were protected. Through these experiences I developed a heightened appreciation of the importance of institutional checks on government authority, and an increased awareness of the fact that the development and implementation of Executive Branch policies must take into account Americans' privacy and civil liberties. If confirmed, I will draw upon these experiences as Chair of the Board.

2. If you are confirmed, how soon would you have a fully functioning Board? What will your first priorities be?

(I note that this response tracks in certain respects my response to a similar question from Senator Feingold.) If Alan Raul and I were to be confirmed, I would promptly convene the Board for its initial meeting. I would view the hiring of an executive director and other necessary staff as a top priority, to help the Board move forward quickly in fulfilling its statutory mission. It would also be very important for the Board to develop internal procedures and to set a substantive agenda. In developing this agenda, it will be critical for the Board to reach out to Executive Branch departments and agencies, members of Congress who have a particular interest in the work of the Board, organizations with interest and expertise in privacy and civil liberties issues, and other members of the public who may be helpful in bringing issues to the Board's attention.

3. One of the goals of the Intelligence Reform Act was to improve information sharing because this area has been a significant weakness in our response to terrorism. But it is important to have effective guidelines in place that protect individual privacy and liberty as this new environment is developed. One of the key responsibilities of the new Board will be to review the Executive Branch's implementation of the information sharing requirements in subsections (d) and (f) of Section 1016 of the Intelligence Reform Act to make sure they properly protect privacy and civil liberties.

Many of the information sharing efforts are underway, so it will be important for the Board to participate in these developments as soon as possible.

What are your plans for assessing the information sharing environment? What are your thoughts on how to balance the goals of effective sharing, while also protecting privacy and civil liberties?

(I note that certain parts of this response track my response to a similar question from Senator Feingold.) Issues concerning the collection, sharing, and use of terrorism information are, as you rightly point out, at the heart of the Board's statutory mandate. The provision of the Intelligence Reform and Terrorism Prevention Act of 2004 that creates the Board expresses Congress's view that the vigorous prosecution of the war on terror may require the federal government to exercise new or enhanced authorities, and that one of the Board's functions is to ensure that appropriate concerns about civil liberties and privacy are considered as these authorities are developed and exercised. While many have emphasized the importance of robust information sharing for the effective prosecution of the war on terrorism, the collection, sharing, and use of information concerning American citizens clearly implicate privacy and civil liberties issues.

IRTPA recognizes the need for a balance between increased information sharing and privacy protection, and indeed specifically provides that the new Information Sharing Environment be governed by guidelines for the protection of privacy and civil liberties. I view it as one of the Board's central functions to review information-sharing guidelines to ensure that privacy and civil liberties issues are given appropriate consideration during the policymaking process. To the extent the development of these rules is already underway, I share your view that it is important that the Board become involved in the process promptly after a Chair and Vice Chair are confirmed.

4. We are in an era in which advanced technologies provide important protective tools, but also create significant challenges to liberties.

How would you describe your experience and understanding of advanced technologies capable of tracking and sharing personal data?

I do not have expertise in this particular area, which I recognize to be one that the Board very well may confront. I note that some of my potential colleagues on the Board—including Alan Raul, whom the President has nominated to be Vice Chair—do

have experience in addressing these issues, and I would look forward to working with them (and experts in the field inside and outside of government) to increase my understanding in this area. With that said, as a general matter, I am of the view that the goals of protecting privacy and sharing information are not always at cross-purposes. As groups that have explored this area—including the Markle Foundation and the Robb-Silberman Commission—have observed, and as your question suggests, some of the same new technologies that could enhance information sharing also have capabilities that can be used to protect against the misuse of information (such as auditing capabilities or sophisticated access controls). While I am hesitant to venture too far into a discussion of this issue without further study, this seems to me a valuable insight.

Senator Dick Durbin
Questions for Alan Charles Raul
Nominee to be Vice Chairman of the Privacy and Civil Liberties Board

1. You are a Partner in a large law firm, which must consume a great deal of your time. The Board has substantial responsibilities, including ensuring that privacy and civil liberties concerns are appropriately considered in the Executive Branch's development and implementation of all counterterrorism-related laws, regulations, and policies. If confirmed, how much time do you estimate that you will spend per week on the Board's work?

If confirmed, I would ensure that I make the necessary time available for work on the Board. As a matter of both legal obligation and professional responsibility, it would be inconceivable not to dedicate the personal time and effort required to make the Board a success if I am given the opportunity to serve on it. I believe the Board and its work are fundamentally important, and if confirmed as Vice Chairman, I will conduct myself accordingly, consistent with Congress' creation of the position as a part-time post to be filled by someone working outside government.

2. We are approaching the one-year anniversary of the passage of the Intelligence Reform Legislation and it is important that the Board begin its important work as soon as possible. What is your timeline for making the Board operational, including hiring an Executive Director and staff and securing office space?

If confirmed, and assuming Carol Dinkins' confirmation, I would anticipate that the members of the Board would be convened promptly after confirmation and that candidates for Executive Director will be considered—and, I hope, a suitable candidate selected—very quickly. Once the Board is fully constituted, I would expect that the Board would seek and quickly obtain suitable and sufficient space. I cannot predict exactly when this will happen, but my expectation is that Ms. Dinkins and I, and the other members of the Board, are prepared and eager to move forward quickly, assuming confirmation.

3. When did the White House first contact you about serving on the Board? What were you told about the how the Board will function and the timeline for establishing the Board? When were you offered the position of Vice-Chairman?

To the best of my recollection, I was contacted by the White House in or around May 2005. I believe I was informed of the President's decision to nominate me as Vice Chairman at the end of May or beginning of June 2005, subject to background investigations. I do not recall discussing any specifics about the timeline for establishing the Board or the Board's functioning.

4. The White House proposed a budget of $750,000 for the Board for Fiscal Year 2006. The Senate increased this to $1.5 million. How will the Board set up an office, hire staff, and otherwise function effectively with such a small budget?

Before being confirmed, and convening with my potential fellow Board members, I cannot predict what the precise administrative needs of the Board will be. However, I believe that the authorizing statute provides considerable flexibility for the Board, including the ability to rely on non-reimbursable detailees from other agencies, and also authorizes the use of consultants. Accordingly, I believe the Board should have sufficient ability to hire key staff from within the appropriated budget, and supplement the paid staff with detailees and consultants.

Senate Judiciary Committee
Hearing on "Executive Nominations"
Tuesday, November 8, 2005

Questions Submitted by U.S. Senator Russell D. Feingold
To Alan Charles Raul

1. *As the first Vice Chair of the Privacy and Civil Liberties Oversight Board, you would have a hand in setting the tone and shaping the Board's role as part of the Executive Office of the President. You would have no precedent or past practice to rely on.*

   a. *What do you see as the Board's role, and what range of issues do you think the Board can and should address?*
   b. *Please list at least ten issues that you believe the Board should address.*

Section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) sets forth the Board's role and responsibilities. It is to provide advice to and oversight of the Executive Branch with regard to the privacy and civil liberties implications of policies and actions designed and implemented to fight the war on terrorism. Specifically, the Board must ensure that privacy and civil liberties concerns are appropriately considered in the development and implementation of policies designed to protect the nation from terrorism, including especially the guidelines for sharing information among intelligence, counter-terrorism, and law enforcement agencies of government.

In advance of possible confirmation, and prior to an opportunity to convene as a group with the others members of the Board to determine the Board's collective priorities, I would not wish to make statements to the Committee that might be viewed as pre-committing the Board to a particular or comprehensive list of issues. As a general matter, however, the following are among the subjects that I expect the Board would be likely to address:

Information sharing policies and procedures among federal agencies.

USA PATRIOT Act policy development and implementation.

The use of "data mining" technologies by federal agencies.

"No-fly lists," "watch lists," and ethnic profiling.

The adequacy of existing agency policies and procedures designed to ensure compliance with constitutional and statutory privacy and civil liberties protections.

2. *What do you see as the three highest priorities for the Board in its first few months of existence?*

Were I to be confirmed, I would recommend that the Board take the procedural steps necessary to begin carrying out its statutory mission quickly and effectively. These steps include:

Convening the Board and setting a substantive agenda.

Appointing an Executive Director and hiring key staff.

Drafting and approving a charter for the Board's activities.

Obtaining briefings from relevant Executive Branch personnel.

Consulting knowledgeable and concerned parties outside of the Executive Branch.

Assuring that the Board has a well-defined role in the Executive Office of the President's policy clearance process.

3. *Congress' goal in creating this Board was to ensure internal oversight within the Executive Branch of the privacy issues that cut across agencies, by creating an entity whose sole purpose is to consider the privacy implications of government policies. The Board was placed inside the Executive Office of the President to ensure that the Board members would have a seat at the table when important Executive Branch decisions implicating civil liberties are made.*

a. *How will you make sure that Board members get a seat at the table? How will you make sure that Board members know what decisions are being made, and that it has input into those decisions?*
b. *Placing the Board inside the Executive Office of the President may make it more difficult for the Board to retain its independence. What steps do you plan to take to ensure the independence of the Board?*

The Board's ability to influence the development and implementation of policy will depend on the focus and determination of the Board's members, and the Board and staff's ability to become sufficiently informed about relevant

processes and practices. Having previously worked in the White House and in the Office and Management and Budget, I hope and believe I could bring to the Board valuable experience in, and understanding of, the Executive Branch policy development, clearance, and approval process.

Ultimately, the Board's independence is a function of the character and commitment of the Board's members. Of course, IRTPA states that the Board is part of the Executive Office of the President, and its members serve at the pleasure of the President. But the placement of the Board within the Executive Office of the President brings with it real advantages, as proximity to the senior policymaking process will give the Board additional opportunities to be informed and influential. The President will be best served if the Board exercises and expresses independent judgment to ensure that IRTPA's objectives are carried out, and that privacy and civil liberties issues are appropriately considered in the nation's war against terrorism.

4. *You have worked inside the Executive Branch in different capacities over the years. Your role on the Privacy and Civil Liberties Oversight Board will be to serve as a check on the government's decision-making. What experiences can you point to that would demonstrate to this Committee that you would be willing and able to question the power of the Executive Branch? In what circumstances have you actually done so?*

I would not have agreed to be nominated for Vice Chairman of this Board, and if confirmed, to serve in that capacity, if I were not prepared and did not intend to provide the President and the Executive Branch advice that reflects my independent judgment. I recognize that, if confirmed, I and the other members of the Board will likely confront situations and issues where it will be appropriate to raise questions about Executive Branch proposals, and I will not hesitate to do so if I believe that to be the proper course.

I believe that actions I have taken in my career show that I am willing to question the use of executive power, and to advance the position that institutional checks on the exercise of that power are necessary and appropriate. Of particular relevance to the Committee's consideration of my nomination, I recommended in December, 2001, that the President establish an independent commission to advise the President on civil liberties issues. I did so because I believed, and continue to believe, that these considerations must influence our country's actions—even during the war against terrorism—and that the public must appreciate that these considerations are given appropriate weight by government decisionmakers.

5. *In last Sunday's Washington Post (11/6/05), there was a lengthy story about the FBI's use of National Security Letters, which FBI field offices can issue without judicial approval to obtain certain types of business records. The National Security Letter authority was significantly expanded by the Patriot Act.*

a. *If you had already been confirmed to the Board when that story was published, what would you have done in response?*
b. *Do you think there needs to be more oversight of the FBI's use of National Security Letters? Do you think the Privacy and Civil Liberties Oversight Board should play a role in that?*
c. *Do you think it is appropriate for the FBI to retain all of the information it obtains through the use of National Security Letters, including information on innocent Americans, even if it has determined that the information has not generated any leads?*
d. *As a Board member, would you be prepared to recommend changes in existing laws or guidelines governing National Security Letters if you thought that was the appropriate response?*

First and foremost, I would absolutely be prepared to recommend changes if I believed them to be necessary or appropriate. As to responding to the specific issues presented in the Washington Post article, I believe that, if confirmed, I would need to review the facts from all relevant perspectives and, of course, consult my fellow Board members. I am confident that if the Board had been in existence at the time of the article's publication, the Board would have made appropriate inquiries within the Executive Branch and then proceeded to determine how the Board should address the issues presented.

While I obviously do not have all of the relevant facts at this time, and I cannot presume to predict how the Board would or should have responded, I believe that I would have encouraged the Board to inform itself about the uses of National Security Letters, the existing means of oversight in place with respect to such Letters, and existing policies on the maintenance and disposition of information collected pursuant to such Letters. While I cannot assess at this time whether the cited article contains all the relevant facts concerning the National Security Letter process, the article does reflect the importance of and public interest in the government's reliance on this tool in the war against terrorism. While the press must not, of course, dictate the Board's priorities, articles like the one in the Washington Post on November 6, 2005, can serve to raise issues worthy of further attention by advisory and oversight bodies such as the Board.

6. *I have expressed concerns about the efficacy and the privacy implications of data mining technology. I believe that the American public and the Congress*

need more information about what the government is planning and what it is already doing in this area.

a. *What potential privacy and civil liberties issues do you think relate to data mining? What will you do to promote transparency in the Executive Branch on this issue?*
b. *If there had been a Privacy and Civil Liberties Oversight Board when the revelations about the Total Information Awareness program at the Pentagon became public, what do you think the Board should have done in response?*

If confirmed, I believe that I would encourage the Board to develop a thorough understanding of actual and prospective governmental data mining practices. Without prejudging the priorities of the Board, I believe that data mining presents issues as complex and important as any the Board may face. At this time, I do not view myself as having enough information or perspective to commit to what recommendations I would make, if confirmed, for the consideration of my potential fellow Board members. I would expect, however, that the Board would wish to benefit from points of view on the subject of government data mining from knowledgeable parties both within and outside of the Executive Branch. This will be an area where I suspect that the Board would benefit from a great deal of education, analysis, and philosophical debate.

With respect to how the Board would have addressed revelations about the Department of Defense's Total Information Awareness Program, I believe that the Board would likely have embarked in earnest, if it had not already done so, on the education process mentioned in the prior paragraph. The Board would likely have sought to benefit from the prior work and analysis undertaken by the review panel established by Secretary Rumsfeld to advise on this specific subject, and then determined what further inquiry, advice, or oversight was necessary or appropriate if it appeared that the program in question was going forward. If the program or policy were to be implemented or continued, I assume the Board would have seen fit to weigh the recommendations of Secretary Rumsfeld's distinguished review panel and provide any further advice and oversight necessary or appropriate to ensure adequate consideration of the privacy and civil liberties implications of the program.

7. *One failing prior to September 11 was that our intelligence and law enforcement agencies were not sufficiently sharing information with each other to effectively combat terrorism, in large part due to a culture of competition and distrust that had developed over the years. Congress has been working to encourage agencies to share important terrorism information and to better coordinate their work. What kinds of privacy and civil liberties issues do you*

think might arise as agencies share more information with each other than ever before?

I understand that the legislation creating the Board reflected Congress' desire to ensure that privacy and civil liberties implications be appropriately considered as part of the process for putting enhanced information sharing practices into effect. The lessons of 9/11 teach that all of the country's law enforcement, intelligence, and counter-terrorism agencies must work together and share information in order to protect American citizens as effectively as possible. The lessons of human nature suggest, however, that this necessary and desirable exchange of information could, if unchecked, lead to the misuse of information. Congress has established the Board, as I understand it, to play a role in helping the Executive Branch determine what lines may be appropriate to draw so that Fourth Amendment guarantees and other rights provided by law to criminal suspects and defendants—as well as the legal privacy rights of all Americans—will continue to be respected as more information is shared to prevent and protect the country against terrorism.

8. *How would you plan to conduct oversight of the government's domestic surveillance powers under the Foreign Intelligence Surveillance Act and other laws?*

Without having been confirmed, and without having met with my potential fellow Board members, I would not wish to presume to know at this time how the Board will discharge its statutory obligations with respect to domestic surveillance under the Foreign Intelligence Surveillance Act and other laws. This will be an area in which, if confirmed, I would encourage the Board to educate itself substantially, and obtain briefings regarding the existing practices and procedures for authorizing, approving, monitoring, and evaluating surveillance activity. I believe it would be premature to have a view at this point concerning whether existing judicial, congressional, or executive branch oversight procedures are adequate, or to have a plan in mind as to how any additional oversight should be conducted. It will be critical, however, for the Board to obtain a thorough and comprehensive understanding of all of the existing mechanisms for oversight of domestic surveillance.

9. *What would you have advised the Administration in the months after September 11 when it was developing its policies on enemy combatants and the detention of individuals at Guantanamo Bay? Please comment specifically on the Administration's policies regarding: (1) the detention of enemy combatants at Guantanamo Bay; (2) the indefinite detention of U.S. citizens without charges as enemy combatants; (3) the use of Combatant Status Review Tribunals; and (4) the trial of enemy combatants who have been charged in military commissions.*

With respect, this is an important and highly complex area where I do not feel I have the necessary information in hand and the legal analysis in mind to comment meaningfully. I am reluctant to offer hypothetical advice on this subject without a more thorough review and analysis of the Administration's positions and policies, and of the Supreme Court's rulings, in this complicated area.

10. As a new entity, the Board has no existing infrastructure.

a. How many staff members do you think the Board will need to fulfill its statutory mission?
b. How quickly do you think the Board will be up and running?

If confirmed, and assuming Carol Dinkins were also confirmed, I would certainly be prepared to convene promptly an initial meeting with my fellow Board members. I believe that the Board should be in a position to begin procedural deliberations very quickly upon the confirmation of the Chairman and Vice Chairman. The number of staff to be hired would presumably be an early matter for the Board's consideration after an Executive Director is appointed. I do not have a preconceived view of how many staff would be appropriate for the Board, but I believe the IRTPA provides the Board with sufficient authority and flexibility to obtain whatever personnel resources the Board deems necessary to assist it in carrying out its statutory responsibilities.

11. The statute creating the Board requires it to report to Congress. What role do you think the Board should play in communicating more broadly with the American public on privacy and civil liberties issues?

If confirmed, I would encourage the Board to reach out to knowledgeable and interested members of the public to benefit from their information, experience and perspectives. I also believe that the Board should consider whether there is an appropriate role for it to communicate more broadly with the public to help explain how privacy and civil liberties issues are considered within the Executive Branch. Whether or not this is a good idea, and if so, how it could be executed, would need to be assessed by the entire Board. If confirmed, I believe that I would want to discuss this with my potential fellow Board members, but I would not presume to pre-judge how this issue would be resolved.

12. Your record shows that your experience with privacy issues has been largely in the corporate world, dealing with consumer privacy issues. Please explain the difference between the privacy concerns related to private companies collecting and using personal information and those implicated by the

government's collection and use of personal information, particularly for counterterrorism purposes.

The government's collection and use of personal information is constrained by constitutional, statutory, and regulatory provisions that are not implicated when private sector actors engage in similar conduct—and with good reason. The federal government has greater powers to collect—and therefore, theoretically, a greater ability to misuse—information than does any corporation or private citizen. Also, the government at times is in a position to collect and use information about individuals without their consent or knowledge, a circumstance that is not generally presented when private sector actors collect information, as private entities typically (though not exclusively) obtain information directly from individuals in consensual interactions. With the federal government's potentially sweeping powers to collect and use personal information come great moral obligations, in addition to constitutional and statutory restraints. As Congress has noted in adopting the Privacy Act, it is necessary and proper to regulate the collection, maintenance, use, and dissemination of information by federal agencies.

Questions from Senator Patrick Leahy
Ranking Member, Committee on the Judiciary
Hearing on "Executive Nominations"
to the Privacy and Civil Liberties Oversight Board
November 8, 2005

Questions for Alan Charles Raul

1. The government is increasingly using the private sector to access individual's personal data and so-called "actionable intelligence" to aid law enforcement and national security efforts. Earlier this year, a January 20 Washington Post article quoted the vice-president of ChoicePoint, a commercial data broker that provides such services to the government, as stating: "We do act as an intelligence agency, gathering data, applying analytics." A November 2005 article in the National Journal, "The Private Spy Among Us," reported that ChoicePoint has built an exclusive data-searching system for the FBI and DOD to access information about Americans.

Recently, the Washington Post also reported that the FBI is not only gathering an unprecedented amount of data on Americans from private entities through National Security Letters, but is also entering this information into government databases that can be mined and accessed, seemingly in perpetuity.

These developments raise concerns about inadequate oversight, potential for mission creep, or simply ineffective or overly intrusive applications.

(a) What are your thoughts on how to address government use of personal data in an age where the boundaries between privately-collected data and government data are being blurred?

(b) Should there be any limitations or guidelines on the government's reliance on commercial data brokers for law enforcement functions? How would you go about evaluating the impact of those efforts on privacy and civil liberties?

(c) There are several types of data mining, ranging from mere linking to a perhaps more controversial form, pattern-recognition analysis. What are your views on data mining? Should there be any limitations or guidelines on the government's use of data mining, and if so, what should those be?

I have provided the following response to Senator Feingold which addressed a similar question he posed to me on the issue of data mining:

If confirmed, I believe that I would encourage the Board to develop a thorough understanding of actual and prospective governmental data mining practices. Without prejudging the priorities of the Board, I believe that data mining presents issues as complex and important as any the Board may face. At this time, I do not view myself as having enough information or perspective to commit to what recommendations I would make, if confirmed, for the consideration of my potential fellow Board members. I would expect, however, that the Board would wish to benefit from points of view on the subject of government data mining from knowledgeable parties both within and outside of the Executive Branch. This will be an area where I suspect that the Board would benefit from a great deal of education, analysis, and philosophical debate.

With respect to how the Board would have addressed revelations about the Department of Defense's Total Information Awareness Program, I believe that the Board would likely have embarked in earnest, if it had not already done so, on the education process mentioned in the prior paragraph. The Board would likely have sought to benefit from the prior work and analysis undertaken by the review panel established by Secretary Rumsfeld to advise on this specific subject, and then determined what further inquiry, advice, or oversight was necessary or appropriate if it appeared that the program in question was going forward. If the program or policy were to be implemented or continued, I assume the Board would have seen fit to weigh the recommendations of Secretary Rumsfeld's distinguished review panel and provide any further advice and oversight necessary or appropriate to ensure adequate consideration of the privacy and civil liberties implications of the program.

Senator Feingold also asked me a question concerning National Security Letters, to which I responded as follows:

First and foremost, I would absolutely be prepared to recommend changes if I believed them to be necessary or appropriate. As to responding to the specific issues presented in the Washington Post article, I believe that, if confirmed, I would need to review the facts from all relevant perspectives and, of course, consult my fellow Board members. I am confident that if the Board had been in existence at the time of the article's publication, the Board would have made appropriate inquiries within the Executive Branch and then proceeded to determine how the Board should address the issues presented.

While I obviously do not have all of the relevant facts at this time, and I cannot presume to predict how the Board would or should have

responded, I believe that I would have encouraged the Board to inform itself about the uses of National Security Letters, the existing means of oversight in place with respect to such Letters, and existing policies on the maintenance and disposition of information collected pursuant to such Letters. While I cannot assess at this time whether the cited article contains all the relevant facts concerning the National Security Letter process, the article does reflect the importance of and public interest in the government's reliance on this tool in the war against terrorism. While the press must not, of course, dictate the Board's priorities, articles like the one in the Washington Post on November 6, 2005, can serve to raise issues worthy of further attention by advisory and oversight bodies such as the Board.

On the general issue of the government's use of commercial data sources, if confirmed, I would encourage the Board to become informed on how the government uses data from commercial sources, and to hear from concerned and knowledgeable parties who believe that such uses could circumvent legal restrictions otherwise applicable to the government. As a threshold matter, I do not believe the federal government may evade legal limits on its information collection practices by relying on third parties to do indirectly what it would not be authorized to do directly. However, it would also seem unreasonable to categorically prohibit the government from purchasing commercially available information that is legally collected by private purveyors. There are numerous laws such as the Electronic Communications Privacy Act and the Privacy Act, in addition to the Fourth Amendment itself, that impose constraints and restrictions on the federal government that do not apply to the same type of data when collected or maintained by the private sector. Sorting out the application and consequences of these different rules in the context of government reliance on commercial data brokers is a highly complex subject. I would expect the Board to receive considerable information and insight from all sides of the public debate.

Your question also makes reference to ChoicePoint. I wanted to bring to your and the Committee's attention the fact that ChoicePoint has consulted me recently regarding certain legal issues faced by that company. I have not yet been retained by ChoicePoint, and if confirmed, I will not represent it in a manner that constitutes lobbying the federal government to procure and use ChoicePoint's data or services. However, if confirmed, I will consult with the ethics lawyer assigned to the Privacy and Civil Liberties Oversight Board concerning recusal where appropriate from matters before the Board which could have an impact on litigation or other matters on which I am representing ChoicePoint, as well as any matters before the Board to which ChoicePoint is a party.

2. In a December 5, 2001 editorial in the Los Angeles Times, you suggested that the President should establish a "blue-ribbon civil liberties council that would advise him privately on the wisdom and implications of new anti-terror measures" and help the President assess whether "the country is better off limiting certain civil liberties for a time in favor of safeguarding American lives and livelihoods", and serve as a "confidential sounding board" to make "hard-nosed calls".

But Congress has empowered this Privacy Board to be more than just a private sounding board for the President. The statute empowers the Board to engage and advise any Department or Agency in the Executive branch on regulations and laws, and compel access to records, audits, reports and other documents as necessary. More importantly, the statute directs the Board to consider whether the Department or Agency has provided adequate supervision and guidelines for its use of power, and has explained how the need for the power "is balanced with the need to protect privacy and civil liberties." In addition, the Board is directed to regularly review policies and report to Congress annually. .

Given the responsibilities and powers that Congress has granted, do you view your role and that of the Board differently than the council you described in 2001? Do you view this Privacy Board as more than just a private sounding board for the President?

I am proud to have been an early, and perhaps even one of the first proponents of a civil liberties panel to advise the President in the aftermath of 9/11. I recognize, however, that the Board created by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) is not fully congruent with the council I recommended in the Los Angeles Times. The statutory Board established by IRTPA has formal oversight as well as advisory responsibilities, and is obligated to report to Congress on an annual basis. The Chairman and Vice Chairman are subject to Senate confirmation. As constituted by law, I believe—and if confirmed, would recommend—that the Board would be well served to consult with knowledgeable and concerned parties inside and outside of government and engage in meaningful public outreach activities. Accordingly, I do view the Privacy Board as more than a private sounding board for the President.

SUBMISSIONS FOR THE RECORD

STATEMENT OF SENATOR JOHN CORNYN
Before the United States Senate Committee on Judiciary
Executive Nominations
November 8, 2005

The Committee will come to order.

I want to thank Chairman Specter for scheduling today's hearing. This hearing involves two very important positions recently created by the Congress. The Privacy & Civil Liberties Oversight Board was created based on recommendation of the 9/11 Commission and is designed to oversee our government's commitment to defend civil liberties. As the chair and vice chair of this Board, you both will fill vital positions within our government. I hope we can get your nominations voted out of the Committee - and through the Senate - as soon as possible.

Introduction

As a country, we cherish our civil liberties and are committed to vigorously defend them, to ensure that we maintain our way of life. Congress works hard to strike both a careful and wise balance between national security and civil liberties. While this is not always easy, I believe we do so with the best interests of our nation in mind -- and we do so in a manner that is both honest and in good faith.

That is why I am disappointed when we witness false reports or scare tactics about phantom civil rights violations. False reports and scare tactics serve no legitimate cause -- but they do a grave disservice to the American people. The war on terrorism must be fought aggressively -- but *consistent* with the protection of civil rights and civil liberties. Whenever **real** civil liberties problems do arise, we must learn about them right away, so that we can fix them swiftly.

Every false allegation undermines every true allegation, and that hurts us all. If anything, false claims about civil liberties violations actually make it harder to monitor real civil liberties issues in the future – for the same reason that eventually no one listened to the fabled little boy who "cried wolf." That is why I encourage **honest, responsible, and fair** discussions about the war on terrorism, civil liberties, and the USA PATRIOT Act.

The Privacy & Civil Liberties Oversight Board will play an important role in this debate. Both of you will be expected to give honest, responsible and fair review of the development and implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism, and you will also be expected to ensure that concerns with respect to privacy and civil liberties are appropriately considered. And I stand prepared to work with you to ensure that this is done.

Nominees

Carol Dinkins

We have two very distinguished nominees today. Carol Dinkins is the President's nominee to Chair the Privacy & Civil Liberties Oversight Board. Ms. Dinkins comes to this position with substantial public service and private-sector experience. She has previously served as the Deputy Attorney General under former President Reagan, the second-highest ranking position in the Department of Justice. As deputy attorney general, Ms. Dinkins was responsible for the day-to-day management of the Justice Department's more than 60,000 employees. She has also previously served as the Assistant Attorney General for the Environment and Natural Resources Division. Ms. Dinkins has been a long-time partner in the distinguished Texas law firm of Vinson & Elkins.

Additionally, Ms. Dinkins has devoted a substantial amount of her time to a variety of public service initiatives. She is active in the American Bar Association having become a member of their Board of Governors this past August. She has also previously served as the chair of the ABA Standing Committee on the Federal Judiciary, among the many assignments she has carried out for the ABA. Ms. Dinkins has also served in various capacities in her local bar association and has donated significant time to activities designed to protect the environment.

Ms. Dinkins will bring a wealth of practical experience to this position.

Alan Raul

Alan Raul is the President's nominee to serve as the Vice Chair of the Privacy & Civil Liberties Oversight Board. He is a Partner in the prestigious Washington, D.C. office of the international law firm of Sidley Austin Brown & Wood and he, too, brings substantial public service and private-sector experience.

Mr. Raul has previously served in the White House as Associate Counsel to President Reagan. He has also served as the General Counsel of the Office of Management and Budget, and as General Counsel of the U.S. Department of Agriculture.

His past experience will serve him well in this position.

Welcome to both of you today.

United States Senate

WASHINGTON, DC 20510

May 11, 2005

Andrew H. Card, Jr.
Chief of Staff
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Card:

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458). This historic legislation reorganized the intelligence community for the first time in more than 50 years.

In response to the 9/11 Commission's recommendation, Section 1061 of this Act established a Privacy and Civil Liberties Oversight Board in the Executive Office of the President. The Board is to ensure that privacy and civil liberties concerns are appropriately considered in the Executive Branch's implementation of all laws, regulations, policies, and procedures related to efforts to protect the Nation against terrorism. Further, the Board is empowered to advise Executive Branch agencies in their development of all such regulations, policies, and procedures.

We would appreciate if you would provide us with an update on the implementation of Section 1061. In particular, please inform us of the timeline and milestones for establishing the Board, including appointing Board members, hiring an Executive Director and other staff, and securing office space. We are concerned that, as of the date of this letter, the Chairman and the Vice Chairman of the Board have not been nominated. We urge that this be done as quickly as possible so the Board's important work can begin.

In addition, the Board's proposed budget for Fiscal Year 2006 is only $750,000. We are concerned that this is an inadequate level of funding for the Board to carry out its broad statutory mandate. By way of comparison, the proposed budgets for other offices within the Executive Office of the President are $4 million for the Council of Economic Advisors, $24 million for the Office of Drug Control Policy, $6 million for the Office of Science and Technology Policy, and $39 million for the Office of the United States Trade Representative. In addition, the Department of Homeland Security's Officer for Civil Rights and Civil Liberties, who is charged with addressing civil liberties issues facing one department, not the entire Executive Branch, has a proposed budget of $13 million.

Please provide us with details of the proposed budget for the Board and describe how the Board will set up a new office, hire the requisite staff, carry out its statutory mandates, and otherwise function effectively with this level of funding. Please inform us how many Full-Time Equivalents will be dedicated to the Board and its staff.

As the 9/11 Commission made clear, a strong and independent Privacy and Civil Liberties Oversight Board is a critical component of the enhanced system of checks and balances needed to protect the precious liberties that are vital to our way of life. Accordingly, we urge the White House to take the steps necessary to allow the Board to begin functioning effectively as soon as possible.

Thank you for your time and consideration.

Sincerely,

Richard J. Durbin
United States Senator

Susan M. Collins
United States Senator

Joseph L. Lieberman
United States Senator

Patrick J. Leahy
United States Senator

Statement Of Senator Patrick Leahy, Ranking Member
Senate Judiciary Committee
Hearing on "Executive Nominations"
To The Privacy And Civil Liberties Oversight Board
November 8, 2005

Mr. Chairman, today we consider nominees to fill the important posts of Chair and Vice Chair of the Privacy and Civil Liberties Oversight Board. Filling these positions is long overdue. On December 14, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. Section 1061 of this Act implemented a 9/11 Commission recommendation to establish an independent board within the Executive Office of the President to fill a clear void in government structure for protecting our liberties.

Creating the Board was no easy feat. First, the Administration tried to defuse the 9/11 Commission's recommendation for a Privacy Board by pointing to previous purported efforts to protect privacy and civil liberties. Against the backdrop of secretive data mining efforts and resistance to Congressional oversight of Executive Branch use of invasive powers, this was not persuasive. The Administration then tried to circumvent a congressionally authorized, independent board by issuing an Executive Order establishing an anemic alternative. That entity was not independent, had no authority to access information, had little accountability and was comprised solely of Administration officials from the law enforcement and intelligence communities -- the very communities in need of oversight. It was the proverbial case of the fox guarding the henhouse. But many of us in Congress were committed to creating an effective Board in keeping with the 9/11 Commission's recommendations.

But that was almost a year ago, and the delay in filling these positions has concerned me. Earlier this year on May 11, I joined Senators Durbin, Collins and Lieberman in writing to the President urging him to nominate Board members as soon as possible. We also expressed concern about the inadequate funding in the White House Budget proposal, which would only have provided an underwhelming and insufficient $750,000 for its operations. Fortunately, the Transportation, Treasury and HUD Appropriations Subcommittee, on which I serve, has raised the amount to $1.5 million to ensure a better start for the Board, although more resources will undoubtedly be needed for the Board to properly do its work as Congress envisioned. Regrettably, as the *Washington Post* recently reported, the delays and insufficient funds suggest that perhaps the Administration is simply going through the motions, rather than following through on a meaningful commitment to the Privacy Board and its role and responsibilities.

This Board is too important for us to simply go through the motions. Prior to the Board, there was no office within the government to oversee the collective impact of government actions and powers on our liberties. This is a critical blind spot. We have increased and consolidated the authority of an already-powerful government in an effort to address the realities of terrorism and modern warfare. Soon we will be conferencing on the renewed Patriot Act to solidify the government's powers further. As Lee Hamilton, Vice

Chairman of the 9/11 Commission, noted in a Judiciary Committee hearing on August 19, 2004, these developments represent "an astounding intrusion in the lives of ordinary Americans that is routine today in government."

It is regrettable that only two of the Board's positions – the Chairman and Vice Chairman – are Senate-confirmed, minimizing Congress's opportunities to ensure Board members' suitability for this important work. I am also somewhat concerned that one of our nominees' expertise appears to be in environmental and energy law, rather than in privacy law.

It is important that any nominee we confirm for this Board have the ability to think critically and independently about the policies we implement as a Nation and about how they affect our fundamental rights. It is expected that Board members will participate in the policymaking process, review technology choices and options, peer into various agencies and assess actions, review classified materials and investigate concerns. Board members must have the versatility to work closely with government officials, but at the same time be sufficiently independent to push for the full story and assess those government policies without fear, favor or compromise. Board members will also need to choose capable investigative staff to assist them in carrying out these duties.

It is also very important that Board members have a good understanding of technology and how those tools can help protect our nation, as well as how inappropriate use or lack of foresight and planning can undermine the very values and freedoms these tools are supposed to secure. We are in an era in which advanced technologies have opened up new possibilities that even a few years ago seemed out of reach. We now face the prospect of tracking devices like RFID chips integrated in identification documents. For example, the new U.S. passports will include those chips to store sensitive personal data and reserve space for biometrics like fingerprints and iris scans. Other advances include the rapid collection, sharing and analyzing of large amounts of data previously unavailable without great effort, if at all. These powerful tools have enhanced our law enforcement and homeland security efforts, as well as made our lives more convenient and enjoyable. But they also pose significant challenges to our liberties and to our privacy.

In executing their responsibilities, I would caution the nominees, if they are confirmed, to keep in mind the guidance of the 9/11 Commission: The "burden of proof for retaining a particular governmental power should be on the Executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the Executive's use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use."

Security and liberty are always in tension in a free society, and that is readily apparent today. It is our vigilant duty to work hard at striking the right balance, since the success of one is essential to the other. As the 9-11 Commission noted, "[t]his balancing is no easy task, but we must constantly strive to keep it right."

I look forward to hearing from our two nominees about their experience and plans to meet these important responsibilities.

I ask unanimous consent that the May 11, 2005, letter to the President about the Privacy and Civil Liberties Board and the August 8, 2005, *Washington Post* article, "Civil Liberties Panel Is Off to a Sluggish Start," be included in the record.

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washingtonpost.com

Civil Liberties Panel Is Off to a Sluggish Start
Critics Decry Administration's Lack of Urgency

By Caroline Drees
Reuters
Monday, August 8, 2005; A13

A civil liberties board ordered by Congress last year has never met to discuss its job of protecting rights in the fight against terrorism, and critics say it is a toothless, under-funded shell with inadequate support from President Bush.

Lawmakers including some Republicans, civil rights advocates, a member of the Sept. 11 commission and a member of the Privacy and Civil Liberties Oversight Board have expressed concerns.

Lanny Davis, the only well-known liberal among the five people Bush nominated after a six-month delay, said he had not received a call from anyone related to the board since it was formally announced in June. Davis said he could not comment on specifics because the members had not yet met.

All four other panel members declined to comment.

The inactivity comes as Congress is about to reauthorize several provisions of the USA Patriot Act, which gave the government new powers to go after suspected terrorists.

Asked why it was taking so long to set the board up, Rep. Christopher Shays (R-Conn.) said, "It's not a priority for the administration."

The intelligence reform law of December 2004 called for the oversight board in response to a recommendation from the Sept. 11 commission, which feared that increased governmental powers needed to fight terrorism could erode civil liberties.

Top White House officials have said the board would address those concerns, and get the resources needed to do the job.

But almost eight months after its inception, critics say the panel still exists only on paper, and lacks the money, power and presidential backing to ensure the entire government respects Americans' rights.

The Bush-appointed panel "is a very watered-down board without the kinds of powers which I believe are necessary to provide credibility and authority, such as independent subpoena power . . . and a bipartisan process in selection," said Richard Ben-Veniste, a member of the Sept. 11 commission.

"We don't think the board serves as a credible watchdog," said Tim Edgar, national security policy counsel at the American Civil Liberties Union.

One frequent complaint concerns the board's budget. Bush requested $750,000, which Congress doubled to $1.5 million.

The Department of Homeland Security's privacy office, with a similar mission limited to that department, has about a $13 million budget, said Rep. Bennie Thompson (Miss.), the top Democrat on the House Homeland Security Committee.

"I don't think you can do it for a million and a half," Shays said.

Critics, including Thompson, also ask why it took Bush half a year to nominate the five board members when the administration acted much faster to implement other, more complex parts of the 2004 law. The Senate must still confirm the chairman and vice chairman after it returns from its summer recess.

Shays, Rep. Carolyn B. Maloney (D-N.Y.) and other lawmakers have proposed an amendment granting the panel greater independence and powers, including subpoena authority.

Right now, Maloney said, "it does not have teeth. It does not have enforcement. It does not have strength behind it."

Asked for comment, the White House sent a copy of a June letter to Sens. Susan Collins (R-Maine) and Joseph I. Lieberman (D-Conn.) that said it would ensure the board had the resources to fulfill its mission and would reexamine the issue once the panel was up and running.

The two senators had written to the White House expressing concerns about the board's budget, as well as delays in setting it up and implementing other parts of the 2004 law.

"As we work to make America safer, it is equally important that we are careful to preserve the very liberties that we seek to protect," Collins said in an interview. "The board is critical in this regard."

Mary Fetchet, whose son died in the World Trade Center on Sept. 11, 2001, criticized the slow pace. "I am really shocked that in many instances in Washington I feel that there's this attempt to go back to the status quo, while I feel there should be a sense of urgency," she said.

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