

**Written Questions from Senator Charles E. Schumer to James B. Comey  
May 15, 2007 Hearing**

1. When the Attorney General testified before the Senate Judiciary Committee on February 6, 2006, he stated that there was little or no dissent within the Administration with respect to the program that “the President has confirmed.”
  - **Was the classified program over which you and others almost resigned in March 2004 the program that the President confirmed in early 2006? Was it a variant of the program the President confirmed in early 2006?**

**I do not believe I can answer these questions in an unclassified environment.**

2. You testified that in March of 2004, while Attorney General Ashcroft was hospitalized with pancreatitis, the powers of the Attorney General were transferred to you.
  - **Please describe the mechanism by which that power was transferred to you, what documentation was created, what public statements were made about the transfer, and what communications were had with White House personnel about the transfer.**

**David Ayres, the Attorney General’s Chief of Staff, handled the documentation and notifications to the White House. He would have worked with my Chief of Staff, Chuck Rosenberg. I do not recall what specific documents were created. There was media coverage about the fact that I was acting Attorney General and I believe DOJ Public Affairs made public statements to that effect.**

3. Please identify all the officials at the Department of Justice or elsewhere whom you have a basis to believe were prepared to resign in March 2004 over the classified program you alluded to in your testimony.

**I believe the following individuals were prepared to resign: Jack Goldsmith, Patrick Philbin, Chuck Rosenberg, Daniel Levin, James Baker, David Ayres, David Israelite, Robert Mueller. Although not involved with the matter, I believe a large portion of my staff would have resigned were I to depart.**

4. You testified that you believed that your former aide, Patrick Philbin, had been blocked from promotion as a result of his participation in the dispute over the classified program you alluded to. Specifically, it has been reported in the press that Mr. Philbin was blocked from taking the position of Principal

Deputy Solicitor General because of the objections of Vice President Cheney and his aide, David Addington.

- **Can you confirm the accuracy of these media accounts? If they are inaccurate, please identify the particular promotion that was denied to Mr. Philbin, the individuals who objected, and the circumstances surrounding Mr. Philbin's being rejected for the promotion.**

**I believe they are accurate.**

5. You testified that during the visit to Attorney General Ashcroft's hospital room on the evening of March 10, 2004, Mrs. Ashcroft was present when you first arrived and also later when Messrs. Gonzales and Card arrived.

- **Did you reveal classified information in Mrs. Ashcroft's presence?**

**No.**

- **Did either Mr. Gonzales or Mr. Card reveal classified information in Mrs. Ashcroft's presence?**

**Mr. Card did not. I do not recall whether Mr. Gonzales mentioned any aspects of the matter that would be considered classified, including the name of the program – which was itself classified, as I recall – when addressing Mr. Ashcroft.**

6. You testified that in or about March 2004, the Justice Department's Office of Legal Counsel determined that it could not certify the legality of the classified program you alluded to in your testimony.

- **Did the Office of Legal Counsel or any other office prepare a written opinion providing the basis for concerns about the legality of the classified program you alluded to in your testimony? If so, please identify the approximate date(s) of any such opinion, the author(s), and the recipients of any such opinion, inside and outside the Justice Department.**

**Yes. OLC prepared legal memoranda concerning the matter during early 2004, some of which would have been drafts. I also prepared at least one memorandum that I recall. The Department of Justice would be in the best position to supply dates and information about recipients.**

7. As you may know, Todd Graves has recently said that he was asked to resign in January of 2006, making him at least the 9<sup>th</sup> United States Attorney who was dismissed last year.

- **Did you form an opinion of the quality of Mr. Graves's work when you were the Deputy Attorney General? If so, what was it?**

**I had a positive impression of Mr. Graves and believed he was performing well as U.S. Attorney.**

- **What was John Ashcroft's opinion of Mr. Graves, if you know?**

**I believe Attorney General Ashcroft shared my opinion of Mr. Graves, although I do not recall a specific conversation with Mr. Ashcroft concerning Todd's performance.**

8. I know that you are familiar with the highest-ranking career official at the Justice Department, David Margolis. He has testified that in November of 2006, Kyle Sampson read him a list of several names of U.S. Attorneys who would be asked to resign. In response, Mr. Margolis made clear that so long as people were being dismissed, there were two U.S. Attorneys who were very poor performers who deserved to be fired. One, he said, was Kevin Ryan, who by many accounts had management and other issues in the Northern District of California. The other U.S. Attorney, whom Mr. Margolis did not identify, was not dismissed and continues to serve as a U.S. Attorney today.

- **What do you make of the fact that the same people who decided to fire Dan Bogden of Nevada for no apparent reason also refused to heed Mr. Margolis's advice with respect to this other U.S. Attorney?**

**I don't know what to make of it. Mr. Margolis is a wise person with significant experience in personnel matters, whose advice is always worthy of serious consideration.**

9. You are the Department official who decided – after I called for it – to appoint a Special Prosecutor in the Valerie Plame affair. After John Ashcroft recused himself from the issue, you appointed your former colleague, Patrick Fitzgerald. And you performed the delegation of duties to Mr. Fitzgerald with respect to the Plame investigation.

- **If Mr. Fitzgerald were fired as U.S. Attorney, would he have been able to continue as Special Prosecutor under your delegation of authority?**

**I don't believe so because he was appointed in his capacity as United States Attorney.**

10. You testified before the House a few weeks ago that you had a 15-minute conversation with Mr. Sampson on February 28, 2005 – shortly after Alberto

Gonzales took over as Attorney General. You testified that you discussed two things. One was a conversation about who you thought were the weakest U.S. Attorneys. You were never asked about the second topic.

- **What was the second subject? Please provide details of that portion of your conversation with Mr. Sampson.**

**This conversation occurred shortly after Attorney General Gonzales's confirmation. Mr. Sampson explained to me a vision for the operation of the Attorney General's office and the Office of the Deputy Attorney General that would involve operating those respective staffs as essentially one staff. My understanding was that this vision would entail the Deputy Attorney General and staff acting in much closer coordination with the Attorney General and his staff. I responded that I believed it was very valuable to the Attorney General and the Department for the Deputy Attorney General to act as a separate office and that I did not support this vision.**

**I thought such an arrangement risked elimination of the separate vetting and advice function of the DAG and his or her staff. There is great value in having that office -- called ODAG -- available to make decisions that need not reach the Attorney General or to review and advise on matters headed to the Attorney General for decision. The risk inherent in combining the staffs is that the separate review and advice function is lost, which would not be in the interest of the Attorney General or the Department.**