

Senator Chuck Grassley
Questions for the Record for
Attorney General Eric Holder

1. Memos to Attorney General

In your October 7, 2011, letter to Congress, you wrote: “On a weekly basis, my office typically receives over a hundred pages of so-called ‘weekly reports’ that, while addressed to me, actually are provided to and reviewed by members of my staff and the staff of the Office of the Deputy Attorney General. The weekly reports contain short summaries of matters that the agencies deem of interest that week.”

Questions:

- (a) In 2010, who in the Attorney General’s office was responsible for reading memos to the Attorney General’s office from Assistant Attorney General Lanny Breuer?
 - i. Was this same individual responsible for handling the entire portfolio of the Criminal Division within the Office of the Attorney General?
- (b) In 2010, who in the Attorney General’s office was responsible for reading memos to the Attorney General’s office from National Drug Intelligence Center Director Michael Walther?
- (c) In 2010, who in the Attorney General’s office was responsible for reading memos to the Attorney General’s office from ATF Acting Director Kenneth Melson?
- (d) At any time during 2010, did Monty Wilkinson have responsibility for reading memos to the Attorney General’s office from Assistant Attorney General Breuer, Director Walther, or Acting Director Melson, either in Wilkinson’s role as Counselor to the Attorney General or as Deputy Chief of Staff and Counselor?
- (e) At any time during 2010, did then-Deputy Chief of Staff and Counselor James Garland have responsibility for reading memos to the Attorney General’s office from Assistant Attorney General Breuer, Director Walther, or Acting Director Melson?
- (f) At any time during 2010, did Monty Wilkinson have responsibility for reading memos to the Attorney General’s office from Assistant Attorney General Breuer, Director Walther, or Acting Director Melson, either in Wilkinson’s role as Counselor to the Attorney General or as Deputy Chief of Staff and Counselor?

- (g) At any time during 2010, did then-Counselor to the Attorney General Molly Moran have responsibility for reading memos to the Attorney General's office from Assistant Attorney General Breuer, Director Walther, or Acting Director Melson?
- (h) At any time during 2010, did then-Counselor to the Attorney General John Bies have responsibility for reading memos to the Attorney General's office from Assistant Attorney General Breuer, Director Walther, or Acting Director Melson?
- (i) At any time during 2010, did Counsel Aaron Lewis have responsibility for reading memos to the Attorney General's office from Assistant Attorney General Breuer, Director Walther, or Acting Director Melson?

2. Communication Between Wilkinson and Burke

On December 14, 2010, your Deputy Chief of Staff Monty Wilkinson emailed U.S. Attorney Dennis Burke asking if he was available for a call that day. At 2 am the next morning of December 15, 2010, Burke said that he would call that day to explain in detail what was clearly a reference to Operation Fast and Furious.

You said in response to a question about this at the hearing:

The conversations that they had were about a variety of things. I've looked at the emails. Now the possibility of me coming out to at some point talk about being engaged in a press conference, other matters, but there was no discussion between them of the tactics that are of concern with regard to Fast and Furious and as a result of that, Mr. Wilkinson did not share information with me about his contacts with former U.S. Attorney Burke.

Questions:

- (a) Did that phone call between Wilkinson and Burke take place on December 15, 2010?
- (b) If the phone call did take place, what specific topics were discussed?
- (c) When did Mr. Wilkinson learn of the connection between an ATF operation and the guns recovered at the Terry murder scene? How did learn about it?
- (d) What other emails exist between Mr. Wilkinson and U.S. Attorney Dennis Burke on the issue of your participation in a press conference? Please provide copies of these emails to the Committee.

- (e) Did you see these emails contemporaneously, or did you review them later (either as part of the investigation into Fast and Furious or in preparation for the oversight hearing)?
- (f) Why did you ultimately opt not to participate in such a press conference?

3. ATF's Denial of Gun Walking Allegations

You said in the hearing that you “received things as late as March of 2011 from people at ATF, who assured [you] that gun walking did not occur.”

Questions:

- (a) What “things” did you receive?
- (b) Who at ATF made these representations to you?
- (c) Do you consider these documents to be responsive to the House Oversight and Government Reform Committee subpoena of October 12, 2011?
 - i. If so, please identify when the Department is planning on producing these documents pursuant to the House Oversight and Government Reform Committee subpoena.
 - ii. If not, please produce these documents to this Committee.

4. Refusal to Allow Witnesses to Testify

We have tried to schedule transcribed interviews with 12 Justice Department witnesses. The only one you have made available is the now-former U.S. Attorney Dennis Burke. Your department is refusing to schedule the other 11. For 3 of the witnesses, your staff cited the so-called “line attorney policy” as the reason for your refusal.

Questions:

- (a) Why is the Department refusing to schedule the other 8 witnesses?
- (b) It looks like a game of delay to get past the December 8th hearing in the House. Will you commit to setting dates for the other 8 witnesses by the end of this week and cooperating with staff on the order and timing—yes or no? And, if not, why not?

- (c) The line attorney on the anthrax investigation appeared recently on *PBS Frontline*. How is it appropriate to grant full access to a line attorney for the press while you're denying a Congressional request?
- (d) The line attorney policy is merely an arbitrary policy. It is not a legal privilege, so if the House subpoenas their testimony, it will not be a defense. Why is the Department so determined to prevent their testimony that you are willing to push the envelope and force these witnesses into a choice between contempt of Congress and following orders?
- (e) Congress has prohibited the use of appropriated funds to pay the salary of anyone who tries to prevent federal employees from communicating with Congress. How can you refuse to schedule an interview with someone willing to speak to us without violating that provision of the law?

5. Additional Gun Recoveries

In the DOJ's August 31, 2011 response to previous QFR's, it stated "ATF is aware of only one instance where a firearm associated with Operation Fast and Furious was...recovered in connection with a crime of violence in the United States." The weapons recovered in the death of Agent Terry were excluded from this calculation.

Questions:

- (a) Since the time of that letter, have there been any other instances of firearms associated with Operation Fast and Furious being recovered within the United States in connection to a crime of violence?
 - i. If so, how many additional guns have been recovered? How many crimes have these guns been connected to? How many violent crimes, as designated in FBI crime statistics, have these guns been connected to?

6. U.S.-Sourced Guns

You said in your statement, "[O]f the nearly 94,000 guns that have been recovered and traced in Mexico in recent years, over 64,000 were sourced to the United States."

Questions:

- (a) What definition of "sourced" does this statement rely on?

- (b) If “sourced” were instead defined as “traceable to an identifiable U.S. gun store,” how would the figure of 64,000 change?
- (c) Of the guns submitted by Mexico for tracing in 2009 and 2010, respectively, how many are traceable to an identifiable U.S. gun store?

7. Long Gun Reporting

On July 12, 2011, Chairman Issa and I sent you a letter regarding the Department’s decision to require Federal Firearms Licensees (FFLs) on the Southwest border to report multiple sales of long guns. That letter provides multiple examples of officials looking for ways to use Fast and Furious to justify the long-gun reporting requirement. In addition to emails between senior ATF officials contemplating using Operation Fast and Furious to push for a reporting requirement, we have now learned that your then-acting Deputy Attorney General and current Chief of Staff Gary Grindler was briefed on the subject on March 12, 2010. During that briefing, his handwritten notes indicate that the topic of long gun reporting was discussed within the context of Operation Fast and Furious.

Questions:

- (a) Why has the Department failed to respond to my July 12, 2011, letter?
- (b) As Chairman Issa and I asked in that letter, is there any other evidence suggesting that ATF or DOJ officials discussed how Operation Fast and Furious could be used to justify additional regulatory authorities for the ATF? If so, please provide such evidence to the Committee.
 - i. Are there any such indications prior to the March 12, 2010, briefing?
- (c) Rather than collecting additional information on law-abiding gun owners, what steps have you taken to ensure that the ATF is better able to act on the information it already possesses to interdict the flow of firearms to criminals?

8. Fraud Cases

Questions:

- (a) Please provide an annual breakdown of the number of health care fraud cases initiated Department-wide from 2001 to the present, including the number of cases to date in 2011.

- (b) Please provide an annual breakdown of the revenue generated from any health care fraud cases Department-wide from 2001 to the present, including the revenue to date in 2011.
- (c) Please provide an annual breakdown of the number of mortgage fraud cases initiated Department-wide from 2001 to the present, including the number of cases to date in 2011.
- (d) Please provide an annual breakdown of the revenue generated from any mortgage fraud cases Department-wide from 2001 to the present, including the revenue to date in 2011.
- (e) Please provide an annual breakdown of the number of procurement fraud cases initiated Department-wide from 2001 to the present, including the number of cases to date in 2011.
- (f) Please provide an annual breakdown of the revenue generated from any procurement fraud cases Department-wide from 2001 to the present, including the revenue to date in 2011.

9. Housing Testing Program in the Civil Rights Division's Housing and Civil Enforcement Section

Questions:

- (a) What criteria must an individual meet in order to be a tester in the Housing Testing Program?
- (b) At what level within the Housing and Civil Enforcement Section must individuals be approved in order to become testers for the Housing Testing Program?
- (c) What is the process for individuals becoming approved to be testers for the Housing Testing Program?
- (d) At what level within the Housing and Civil Enforcement Section must contractors be approved for the Housing Testing Program?
- (e) What is the process for contractors being approved for the Housing Testing Program?
- (f) What safeguards exist to ensure that travel in the Housing Testing Program is limited to the dates on which testing is conducted?

- (g) What was the contractor budget for the Housing Testing Program for fiscal years 2010 and 2011?
- (h) What is the proposed contractor budget for the Housing Testing Program for fiscal year 2012?
- (i) For each fiscal year from 2005 to 2011, what was the overall budget of the Housing Testing Program, including the travel budget for Department employees?
- (j) For each fiscal year from 2005 to 2010, what were the actual overall expenditures in the Housing Testing Program, including the expenditures by Department employees?

10. Misuse of Department Funds

Questions:

- (a) When OIG finds Department employees guilty of using official funds for personal purposes, is there any internal mechanism for recovering those funds from the employee if the U.S. Attorney declines to prosecute the case?
- (b) Are employees typically required to repay taxpayer funds when the OIG finds them guilty of using official funds for personal purposes?

11. Politicized Hiring in the Civil Rights Division

In response to my letter regarding reports of politicized hiring within the Department of Justice Civil Rights Division, your Assistant Attorney General responded that “[t]he examples of prior employment cited in these blog posts and your letter noting, for example, that numerous new hires for the Civil Rights Division had previously worked for civil rights organizations - reflect nothing more than that,” and further dismisses any claim that Civil Rights Division uses the affiliation of candidates with liberal organizations to determine their political party and hire them on that basis. However, you yourself have been reported as having said to a convention of the American Constitution Society (ACS), prior to taking office, “we are going to be looking for people who share our values” and a “substantial number of those people” would probably be “members of the ACS.” Assistant Attorney General Perez took this a step further, saying, “I am going to be calling each and every one of you to recruit you, because we’ve got 102 new positions in our budget”

Questions:

- (a) Beginning January 1, 2009, has the Civil Rights Division hired a single person affiliated with institutions that might be considered conservative? If so, please identify the number of individuals and the name of the institution each was affiliated with.
- (b) Beginning January 1, 2009, how many individuals affiliated with institutions widely considered as liberal or progressive has the Civil Rights Division hired?
- (c) Beginning January 1, 2009, how many individuals affiliated specifically with ACS has the Civil Rights Division hired?
- (d) Beginning January 1, 2009, how many individuals who made contributions to the election campaign of President Obama has the Civil Rights Division hired?
- (e) If politicized hiring has not been occurring, how does the Department account for the fact that *every single one* of the new attorneys hired in the Civil Rights Division in the first two years of this Administration has had liberal or progressive credentials?
- (f) According to the *New York Times*, 60 percent of the Civil Rights Division's hires in the first two years of this Administration had ideological credentials, more than double the proportion in the Bush Administration, during which the *New York Times* indicated the number was under 25 percent. Are the *New York Times*' numbers accurate? If not, please provide accurate numbers.
- (g) How do these numbers not indicate the presence of a double standard given the criticism leveled at the Bush administration's Civil Rights Division?
- (h) What steps are currently being taken by the Department to attract an ideologically diverse applicant pool to the Civil Rights Division?

12. Conference Expenditures

The Department's inspector recently issued a report on the tremendous increase in expenditures for conferences that has occurred at the Department on your watch, from \$47.8 million in 2008 to \$91.5 million in taxpayer dollars in 2010, the most recent available year. This is nearly a doubling of conference expenditures in the past two years. This level of growth is astonishing given our nation's current fiscal crisis and the \$14 trillion national debt.

Questions:

- (a) Why have conference expenditures at the Department doubled in the last two years?

- (b) How can you explain this increase in conference expenditures given the tremendous budget crisis the government is now facing?
- (c) How much money did the Department spend on conferences in FY2011?
- (d) How much money does the Department anticipate spending on conferences for FY2012?
- (e) What are you doing to reduce these expenditures?
- (f) In FY 2008 Department of Justice conference expenditures were nearly \$48 million. It appears the FBI alone spent nearly \$47 million on conferences in FY2010. Why has the FBI increased conference expenditures to a level equal to that of the entire Department in FY 2008?

13. Lawsuits Against States with Pro-Enforcement Laws

Your department has filed suit against the states of Arizona, Alabama and South Carolina for their immigration enforcement laws. It's reported that your department is considering challenges against Utah, Indiana and Georgia. Meanwhile, some cities and local jurisdictions are enacting policies and practices that expressly prohibit law enforcement from cooperating with the federal government when it comes to undocumented immigrants. Cook County, Illinois, for example, is ignoring ICE requests to hold individuals, letting criminals back into society and posing a threat to public safety.

Questions:

- (a) Would you agree that Cook County's policy to ignore federal immigration detainers is a threat to national security?
- (b) What steps has your Department taken to encourage Cook County to reverse its ordinance? If none – will you get involved?
- (c) Would you instruct your Department to withhold funding for localities, like Cook County, who defy immigration law and willfully not cooperate with the federal government when it comes to immigration enforcement?

14. Costs of Litigation Against States

According to a Quinnipiac poll released yesterday, 61 percent of American's support Arizona's immigration law that your Department is asking the courts to nullify, and 59 percent of Americans want an Arizona-style law in their own state. I believe those numbers are an

indictment of this administration's refusal to enforce our immigration laws. Nevertheless, on October 31st, the Justice Department announced that it plans to sue the State of South Carolina to enjoin its immigration law.

Questions:

- (a) How much has the Department spent in litigating against the State of Arizona?
- (b) How much has the Department spent in litigating against the State of Alabama?
- (c) How much has the Department spent in litigating against the State of South Carolina?

15. Ensuring Schools Educate Undocumented Students

Very recently, the Civil Rights Division sent a letter to Alabama school districts about their obligation to give equal access to public education to children who are here illegally. The letter to Alabama Superintendents requested names of all students, including those who had unexplained absences and those who were "English Language Learners."

Questions:

- (a) Is your Department targeting Alabama because they have a stricter state law that deals with illegal immigrants? Were there reports of wrongdoing?
- (b) What does your Department plan to do with the names and the data provided by the Alabama schools, if they choose to comply with your request?
- (c) Will you commit to making sure school districts that don't comply with your request are not punished or singled out?

16. Memo Issued by Office of Legal Counsel Regarding Anwar al-Awlaqi

Eliminating a terrorist threat certainly helps to ensure the safety of the American people. Engaging those threats on the battlefield is a byproduct of our continued war on terrorism. However, I want to confirm that when we encounter an American terrorist overseas, we have the legal authority to conduct operations that specifically target American citizens even when they are engaged in terrorist activity. I understand there is an obvious balance between fighting the war on terrorism and protecting the Constitutional rights of American citizens. Therefore, I want to understand the legal rationale behind the Department of Justice's opinion that essentially authorized the U.S. military to target an American citizen.

I recently wrote to you regarding Anwar al-Awlaqi, an American born citizen, a senior leader, recruiter, and motivator with the Islamist militant group al-Qaeda. I asked for a copy of the secret memorandum issued by Department's Office of Legal Counsel (OLC) that allegedly authorized the operation which resulted in the death of Anwar al-Awlaqi. I also offered to make appropriate arrangements if the memo was classified.

Questions:

- (a) Will you commit today to providing me and this committee a copy of the OLC Memo that addressed the operation targeting Anwar al-Awlaqi? If not, why not?

17. Transfer of a Terrorist into the U.S.

Ali Mussa DaqDuq is an enemy combatant captured overseas. He has played a prominent role in terrorist activities against the United States as a senior Hezbollah commander. Suffice it to say, bringing him to the United States to stand before an Article III court defies common sense. This individual does not deserve the rights afforded to American citizens. The American people do not want you bringing in terrorists, who will then potentially be released into American society if they're not convicted. And you of course cannot guarantee a guilty verdict or lifetime sentence. Thus, if ever someone deserved to be tried before a military commission, it would be this terrorist. Furthermore, delaying this decision could result in DaqDuq's release to Iraq which could have grave consequences as he could simply walk free and resume his terrorist activities against the United States.

On May 16, 2011, I – along with 5 other Senators - wrote to you and expressed my concerns with bringing DaqDuq to the United States. The response sent back by your office was essentially a non-answer. The letter merely stated that you “remain committed to using all available tools to fight terrorism, including prosecution in military commissions or Article III courts, as appropriate.”

Questions:

- (a) The fact is, if you won't consider Guantanamo Bay, then you're really not considering all available tools, are you?
- (b) Do you believe enemy combatants captured overseas should be afforded the same rights as American citizens? If so, do you believe that extends to granting them asylum if they're found not guilty in an Article III court proceeding?

18. FBI Whistleblowers

As you are well aware, I am a long-standing advocate for whistleblower rights. Whistleblowers point out fraud, waste, and abuse when no one else will, and they do so while risking their professional careers. Retaliation against whistleblowers should never be tolerated.

Agent Jane Turner was a career FBI agent with an outstanding record for conducting investigations involving missing and exploited children. She filed a whistleblower complaint with the Department's Office of the Inspector General (OIG), in 2002 when she discovered that FBI agents removed items from Ground Zero following the terrorist attacks of 9/11.

Robert Kobus is a 30 year non-agent employee of the FBI who disclosed time and attendance fraud by FBI agents. The OIG also conducted an investigation into his allegations and substantiated that he was retaliated against for protected whistleblowing. The FBI management not only demoted Mr. Kobus to a non-supervisory position, but they even moved him to a cubicle on the vacant 24th floor of the FBI's office building.

Agent Turner and Mr. Kobus have cumulatively seen their investigations take 13 years to complete. Unfortunately, a final judgment has not been issued for either case. These excessive delays indicate that the process of adjudicating whistleblower claims at the Department of Justice is broken.

Questions:

- (a) In your opinion, what is an appropriate amount of time to conduct a whistleblower complaint investigation?
- (b) Would you agree that 9 years is an excessive amount of time to conduct such an investigation? What about 4 years?
- (c) Is 9 years an excessive amount of time to determine if a whistleblower has suffered reprisal as a result of their allegations? What about 4 years?
- (d) Could you explain why it has taken 9 years to resolve Agent Turner's whistleblower complaint?
- (e) Can you explain why Mr. Kobus' case has now languished in bureaucratic red tape for approximately 4 years?
- (f) Will you commit to reviewing the aforementioned matters and ensure that the Office of Attorney Recruitment and Management (OARM) and the Deputy Attorney General conduct their respective reviews of whistleblower complaints in a more transparent and expeditious manner?

19. Office of Legal Policy

The last time that you appeared before the Committee, I asked you questions concerning the operation of the Office of Legal Policy (OLP). I do not consider your answers to my previous questions to be responsive. I hope that you will be more responsive on this occasion.

Questions:

- (a) Despite a Department-wide freeze, OLP sought an exemption, and it received your permission to hire an additional four attorneys. These staffing levels are not appropriate in light of underutilized attorneys under the prior authorization levels.
 - iii. Please provide a copy of the materials that OLP submitted to the Justice Management Division (JMD) in support of its exemption request.
 - iv. Please provide a copy of materials surrounding JMD's review and approval of OLP's request.
 - v. Please provide a copy of materials surrounding the Office of the Attorney General's review and approval of OLP's request.
- (b) The Assistant Attorney General for OLP, Mr. Schroeder, while a nominee for that position, insisted on the appointment of a particular appointee, who to the knowledge of the career employees, produced no work. He did not come to work two days per week at a time when OLP had no policy concerning telecommuting. In the entire month of December, 2009, this employee did not spend a single day at his OLP office. The OLP career attorneys allowed him to do so if he complied with various requirements that documented the work he produced. He did not do so. After one year of producing no work at OLP, this employee left the Department of Justice for a position in private life, whereupon AAG Schroeder sought to provide this individual with a consulting contract.
 - i. Has anyone at the Department of Justice undertaken any investigation into these facts?
 - ii. If so, what were the findings of the investigation?
 - iii. Was any follow up undertaken? If so, what actions were recommended and carried out?
 - iv. Do you believe that an OIG or OPR investigation is warranted into these facts?

20. Travel Card Use in the Department

Questions:

- (a) Does the Department have any written policies on the issuance and/or use of travel cards? If so, please provide copies of such written policies.
- (b) What is the criteria used in issuing Department travel cards to employees?
- (c) Please provide a breakdown by Division of the number of Department travel cards currently possessed by Main Justice employees (i.e. not including agency components).
- (d) What is the Department's official disciplinary policy for individuals found to have misused government travel cards?
- (e) If a copy of this disciplinary policy regularly provided to Department employees? Please provide a copy of such policy as issued to Department employees.
- (f) Does the Department generally control merchant codes to prevent travel cards from being used at certain categories of merchants?
- (g) Does the Department deactivate travel cards when employees are not on official travel?

21. Civil Rights of Institutionalized Persons

The Attorney General is obligated to provide written notice under the Civil Rights of Institutionalized Persons Act before proceeding with litigation to enforce the law's provisions.

Questions:

- (a) Please provide a copy of all letters that you have written to state or local officials concerning conditions at jails, prisons, other correctional facilities, or pretrial detention facilities pursuant to your obligation under 42 U.S.C. 1997B(a) since January 20, 2009, and continuing through the date that your response to this question is provided to me.

10. Olympic Games Security

The Olympic Games will soon take place in London. As usual, the United States will participate, by sending athletes. We all recognize an event of this magnitude will draw spectators as well. Media reports indicate that the United States is concerned that inadequate security is being provided at these Games. In fact, reports indicate that the U.S. is "preparing to send up to 1,000 of its agents, including 500 from the FBI, to provide protection for America's contestants and diplomats." At the same time, reports include statements from British officials

and anti-terrorism officials raising concerns that the U.S. is meddling, being overly demanding, and adding unnecessary friction and pressure on the London Organizing Committee.

- (a) Have you spoken with anyone about the possibility of sending federal agents to the London Olympic Games? If so, please state how recently, with whom, and the content of the conversations.
- (b) Is the U.S. sending federal agents for security purposes to the London Olympic Games? If so, please provide the details, such as how many, from what agencies, their expected work schedule, how long they will be needed before and after the games in that country, etc.
- (c) Please define the “security” that agents would be providing.
- (d) Please describe the circumstances surrounding the event that requires, or would require, the U.S. to send federal agents to provide protection at the London Olympic Games?
- (e) Please provide an estimate of the cost associated with sending 500 federal agents to London to provide security, including salaries, per diem costs, travel expenses, new gear or equipment, etc.
- (f) If money is spent to send federal agents to provide security at the London Olympic Games, then which budget will absorb the cost? How much is this cost in relation to the agencies overall budget?
- (g) Has the U.S. ever sent federal agents for security purposes to an Olympic Games in the past? If so, please describe the situation, which Games it was, how many agents were sent, and the total cost.
- (h) If federal agents are sent to provide protection at an Olympic Games, do you believe this sets a precedent that must be followed for future Olympic Games? What about other international sporting competitions, such as the Pan American Games?

22. Muslim Chaplains

Questions:

- (a) At the present time, what entity is responsible for accrediting Muslim chaplains that serve in the Bureau of Prisons?

11. Foreign Corrupt Practices Act Guidance

Assistant Attorney General Lanny Breuer recently announced in a public speech that the Department is preparing, “detailed new guidance on the [Foreign Corrupt Practice Act’s] criminal and civil enforcement provisions” to be released next year. At a hearing on the FCPA back in November 2010, many Senators expressed their concerns with the Department’s enforcement of the statute. Specifically, members raised concerns with the fact that the law includes broad language that is not well defined, and that a lack of clear guidance from the Department in the form of advisory opinions has created an air of uncertainty in how U.S. corporations do business abroad. I welcome this call for new guidance to help ensure that businesses that want to do the right thing, know what the right thing is in the eyes of the Justice Department.

- (a) When will the guidance be published?
- (b) What form will the guidance take and what steps will be taken to ensure that it is implemented nationally and uniformly? Will the guidance be incorporated into in the U.S. Attorneys’ Manual?
- (c) Does the Department intend to solicit the views of interested outside parties as it prepares the guidance, particularly the regulated business community? If so, how?
- (d) Who at the Department will be primarily responsible for drafting the guidance?
- (e) What will be the Securities and Exchange Commission’s (SEC) role in formulating the guidance? Will the SEC be bound by the guidance? Will the Department enter into a Memorandum of Understanding with the SEC regarding the guidance?
- (f) AAG Breuer’s remarks indicate that the guidance address the FCPA’s “enforcement provisions.” Will the guidance offer only the Department’s interpretation of the Act’s enforcement provisions or will the guidance set forth the Department’s enforcement policies?
 - i. Will the guidance include the Department’s interpretations of ambiguous statutory terms such as “foreign official” and “government instrumentality”?
 - ii. Will the guidance clarify when a company may be held liable for the actions of an independent subsidiary?
 - iii. Will the guidance clarify the extent to which one company may be held liable the pre-acquisition or pre-merger conduct of another?
 - iv. Will the guidance include an enforcement safe harbor for gifts and hospitality of a de minimis value provided to foreign officials?

- (g) Other Department guidelines, including the Corporate Charging Guidelines, indicate that they may not be relied up on by defendants and do not limit the Department's litigation prerogatives. Will the same be true of the forthcoming FCPA guidance, or will defendants be able to rely upon this guidance in litigation?

23. Christine Varney

On July 6, 2011, representatives of Cravath, Swaine & Moore LLP confirmed that Assistant Attorney General for Antitrust Christine Varney would be joining their firm, which only has offices in New York City and London. Just three months later, on October 4, 2011, the Department submitted to Congress a plan for reorganization of the Antitrust Division. The plan would close various field offices and increase the amount of antitrust work in the New York City field office.

Questions:

- (a) When did the Department begin formulating plans to reorganize the Antitrust Division?
- (b) Were these changes to the structure of the Antitrust Division being considered while Ms. Varney was negotiating an employment contract with Cravath, Swaine & Moore LLP?