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Bypassing Senate, President Appoints a Top Justice Official

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Associated Press
September 2, 2005

WASHINGTON -- President Bush has used a constitutional provision to bypass the Senate and fill a top Justice Department slot with an official whose nomination stalled over tactics at the Guantanamo Bay, Cuba, naval facility.

Bush used a "recess appointment" Wednesday to name Alice S. Fisher to lead the agency's criminal division. Senator Carl Levin, Democrat of Michigan, had blocked the nomination because he wants to talk to an agent who named Fisher in an e-mail about allegedly abusive interrogations at the US military prison camp at Guantanamo.

The agent wrote that in weekly meetings with Justice Department officials, "we often discussed [Defense Department] techniques and how they were not effective or producing [intelligence] that was reliable." In the next sentence, the agent said Fisher, then the number two official in the criminal division, was among Justice officials who attended the meetings.

Fisher has said she does not recall participating in the discussions, and Justice officials have said the agent did not intend to say she had. Attorney General Alberto Gonzales declined to let senators question the agent, saying it would violate longstanding policy.

John Nowacki, a spokesman for the Justice Department, said the administration thought it was essential to have Fisher in place given the criminal division's role in the war on terrorism and national security cases.

"We hope and expect the full Senate will confirm Ms. Fisher's nomination in the future," he said.

A single senator can block a nomination, but the Constitution gives the president authority to fill positions when Congress is in recess without waiting for Senate confirmation. The official then can serve until the end of that session of Congress, which in this case is January 2007.

Levin's office did not comment late yesterday on the appointment.

Fisher previously was a partner with the Washington office of Latham & Watkins LLP.