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UNITED STATES DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MAY 10, 2007

Serial No. 110–58

Printed for the use of the Committee on the Judiciary

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UNITED STATES DEPARTMENT OF JUSTICE

THURSDAY, MAY 10, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., in Room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Sánchez, Cohen, Johnson, Sherman, Weiner, Schiff, Davis, Wasserman Schultz, Ellison, Baldwin, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot, Lungren, Cannon, Keller, Issa, Pence, Forbes, King, Feeney, Franks, Gohmert, and Jordan.

Staff present: Perry Apelbaum, Staff Director and Chief Counsel; Joseph Gibson, Minority Chief Counsel; Elliot Mincberg, Chief Oversight Counsel; and Renata Strause, Staff Assistant.

Mr. CONYERS. Good morning. The Committee will come to order. Welcome, everyone.

Mr. Attorney General, I want to thank you for appearing before us today. It is my hope that the Members will focus their questions today on the United States attorney investigation and related matters, and that in the near future you will come back so that we may exercise our oversight responsibility, considering the many important issues that involve the Department of Justice.

I know I speak for every Member of this panel when I say that we all want the Department of Justice to succeed in its mission as the premier law enforcement agency in the nation, and perhaps in the world.

The laws under your jurisdiction, from civil rights, voting rights, to crime, to antitrust, to bankruptcy and the environment, are among the most important charters of our society and are critical to our well-being as a nation and as a democracy.

At the same time, I am sure we agree, you and I, that any hint or indication that the department may not be acting fairly and impartially in enforcing the nation's laws, or in choosing the nation's law enforcers, has ramifications far beyond the department itself, and casts doubt upon every action or inaction your office and your employees take.

So, when we learn that several U.S. attorneys were added to the termination list only after they decided to pursue criminal investigations involving Republican officials, or after complaints that they were not pursuing investigations against Democrats, we must

insist that we understand exactly how this came into existence and how the list itself of those discharged came into existence.

When we learn that most of the U.S. attorneys forced to resign were among the highest rated and most able in the nation, that they were told that they were being displaced to create a bigger Republican farm team while others were retained because they were "loyal Bushies," it creates the impression that the department has placed partisan interests above the public interest.

When a respected former career attorney at the Civil Rights Division testifies that he has been directed to alter performance evaluations based on political considerations, when I receive an anonymous letter, apparently from Department of Justice employees, complaining that candidates for career positions have been subjected to political litmus tests, and when the Attorney General has secretly delegated his authority to hire and fire non-civil service employees, this calls into question the department's commitment to fair and impartial justice.

When the White House gives us a take-it-or-leave-it offer for a one-time, off-the-record interview, without transcripts, which I have referred to as "meet us at the pub for fish and chips so we can talk," which no self-respected investigator would accept, makes open-ended claims of executive privilege, and loses or destroys millions of e-mails relevant to our investigation, one asks whether the Administration is trying to cover up two simple truths: who created the list and why.

And when we learned this morning, page one, *Washington Post*, that another U.S. attorney in Missouri was forced out, contrary to repeated assurances that the eight U.S. attorneys whose circumstances we have been examining for the past few months were the entire list, it makes us wonder when we will get the entire truthful report about this matter.

Now, to those who might say that it is time to move on and end our investigation, allow me to remind you of a couple things. The matters that have come to light to date are quite serious.

Sitting prosecutors have faced political pressure to bring or not bring cases. Numerous misstatements by senior officials regarding the firings have been made to Congress. The reputations of good and honest public servants have been besmirched. Former U.S. attorneys have been pressed not to cooperate with our investigation. And the Presidential Records Act and Hatch Act may have been violated.

But most important of all, however, the department's most precious asset, its reputation for integrity and independence, has been called into question. Until we get to the bottom of how this list was created and why, those doubts will persist.

I am pleased now to turn to the Ranking Member of the House Judiciary Committee, my friend, the gentlemen from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

And welcome, Mr. Attorney General.

We expect much of this hearing to focus on the U.S. attorneys controversy. We have investigated this situation for 2 months. We have nearly 10,000 pages of interview transcripts and documents. The public, the media and Committee staff have all scoured them.

We have held three hearings, featuring 18 witnesses. We have had four subpoena markups, and have subpoenaed 12 individuals and many associated documents.

We have held 10 interviews, spanning more than 50 hours. We will soon hear from Monica Goodling, whose testimony we have taken the extraordinary step of immunizing. And, of course, we all have access to the testimony generated in the Senate.

As we have gone forward, the list of accusations has mushroomed. But the evidence of genuine wrongdoing has not.

Mr. Attorney General, this investigation may find that you and your staff did only what you were accused of at the start: the unremarkable and perfectly legal act of considering ordinary politics in the appointment and oversight of political appointees.

It amounts to the criminalization of politics, particularly the partisan criminalizing of the politics of this Administration.

Mr. Attorney General, you and your staff have stated time and again that what you tried to undertake was a good government review of political appointees to identify where new appointees might do better.

You acknowledged that the White House was involved. Of course it was. The political appointees were theirs. So were the political priorities that the department was asked to focus on, such as gun crime and human trafficking.

By emphasizing that politics affected your motivations, your political opponents have tried to paint your exercise as something out of bounds.

I do not want to belittle this controversy. Some serious questions remain unanswered. But we shouldn't kid ourselves. In an L.A. Times poll last month, 63 percent of Americans believed that Congress is pursuing this matter to gain partisan advantage.

Today is our first opportunity to see you since the tragedy of Virginia Tech. Two months ago, we marked the third anniversary of the terrorist attack in Spain. Today, a terrorist could cross our porous borders in California, Arizona, New Mexico or Texas carrying deadly weapons.

Six months from now, on the anniversary of September 11th, I hope we don't find ourselves asking why we spent our time today asking you more questions about your hiring decisions.

What we need to do is wrap up the U.S. attorneys controversy. With one exception, we have concluded interviews of all the major department players in the controversy. We have you here to answer our questions today. All that is necessary with respect to the Department of Justice after today is to hear from Monica Goodling, and we will do that soon.

For nearly 2 months the White House has offered to let us interview its employees and review its documents. We need to take that offer now. If we had accepted it, our questions might have been answered long ago.

Mr. Attorney General, we trust that you will answer our questions to the best of your ability, and we look forward to your answers.

But we should not conduct an endless, piscine expedition. If there are no fish in this lake, we should reel in our lines of questions, dock our empty boat and turn to more pressing issues.

Mr. Chairman, I will yield back the balance of my time.

Mr. CONYERS. Thank you very much, Lamar Smith.

We will accept all other Members' opening statements to be included in the record at this point.

Welcome again, Attorney General Gonzales.

You have held this position since February 2005, and before that was White House counsel. You enlisted in the Air Force right out of high school, attending the Air Force Academy, finishing your undergraduate studies at Rice and earning your law degree at Harvard. You spent a decade in private practice at the Houston law firm of Vinson & Elkins, and then in 1994 to serve as Governor-elect George Bush's general counsel, then secretary of state and later Texas Supreme Court justice, before coming to Washington in 2001.

Mr. Attorney General, we generally allow our witnesses 5 minutes to summarize or augment their written statement. And yours is included in the record. But because you are here today under unusual circumstances, we would like to give you flexibility to speak longer than that, if you care to.

And so we hope that you could address this morning's revelation at least one other former U.S. attorney belongs on the list that was forced out, and why we are hearing about the matter today from *The Washington Post*.

Again, on behalf of everybody on this Committee, we welcome you and invite you to proceed in your own way.

Mr. SMITH. Point of order, Mr. Chairman. Point of order, Mr. Chairman.

Mr. CONYERS. What is happening? Why?

Mr. SMITH. Mr. Chairman, with respect to the rules governing the decorum of a hearing, I have brought to the attention of the Chairman the presence of a banner on the person of an individual placed in a position such that that person's banner would be revealed every time cameras are on the witness.

This is not a star chamber. This is supposed to be a hearing. And I would make my point of order that that is an illegal protest in these hearings, and ask that the individual be removed before the Attorney General begins his testimony.

Mr. CONYERS. I don't think there is anything wrong with that.

And I invite the person who is identified to please excuse herself from these proceedings. This is not a political rally. And with the right attire, you are perfectly welcome to re-enter this chamber.

And don't make any statements please. Thank you.

Oh, come on now. We have done this too long. We have spent far too much time trying to resolve this.

Thanks a lot.

And I want everyone to know in the audience, please, no signs, no demonstrations, no exercise, for a few hours, of your first amendment rights when we are having this important hearing.

Mr. SMITH. I thank the Chair.

Mr. CONYERS. Thank you.

I apologize, Mr. Attorney General, and we invite you to proceed.

TESTIMONY OF THE HONORABLE ALBERTO GONZALES, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. GONZALES. Thank you, Mr. Chairman. I will take less than the 5 minutes, but I am grateful for the offer.

Chairman Conyers, Ranking Member Smith and Members of the Committee, I have provided the Committee with a rather lengthy written statement detailing some of the department's work under my leadership to protect our nation, our children and our civil rights. I am proud of our past accomplishments in these and other areas, and I look forward to future achievements.

I am here, however, to answer your questions to the best of my ability and recollection, not to repeat what I have provided in writing.

Before we begin, I want to make three brief points about the resignations of the eight United States attorneys. These points are basically the same ones that I made before the Senate Judiciary Committee last month. My feelings and recollections about this matter have not changed since that time.

First, as I have said repeatedly, each of those United States attorneys are fine lawyers and dedicated public servants. I have publicly apologized to them and to their families for allowing this matter to become an unfortunate and undignified public spectacle, for which I accept full responsibility.

Second, as I have said before, I should have been more precise when discussing this matter. I understand why some of my statements generated confusion, and I have subsequently tried to clarify my words.

That said, I believe what matters most is that I have always sought the truth in every aspect of my professional and personal life. This matter has been no exception.

I have never sought to mislead or deceive the Congress or the American people. To the contrary, I have been extremely forthcoming with information, and I am here today to continue to do my part to ensure that all facts about this matter are brought to light.

Finally, recognizing my limited involvement in the process—a mistake that I freely acknowledge—I have soberly questioned my prior decisions. I have reviewed the documents available to the Congress.

But please keep in mind that in deference to the integrity of the ongoing investigations, there is some information that I have not seen that you have seen.

I have also asked the Deputy Attorney General if I should reconsider my decisions.

What I have concluded is that although the process was not as rigorous or as structured as it should have been, and while reasonable people might decide things differently, my decision to ask for the resignations of these U.S. attorneys was not based on improper reasons, and, therefore, the decisions should stand.

I think we agree on what would be improper. It would be improper to remove a U.S. attorney to interfere with or influence a particular prosecution for partisan political gain. I did not do that. I would never do that.

Let me conclude by saying that I have learned important lessons from this experience which will guide me in my important respon-

sibilities. In recent weeks, I have met or spoken with all of our U.S. attorneys to hear their concerns. These discussions have been open and, quite frankly, very frank. Good ideas were generated and are being implemented.

I look forward to working with these men and women to pursue the great goals of our department.

I also look forward to working—continuing to work with the department's career professionals, investigators, analysts, prosecutors, lawyers and administrative staff, who perform nearly all of the department's work and deserve the most credit for our accomplishments.

I want to continue working with this Committee as well. We have made great strides in protecting our country from terrorism, defending our neighborhoods against the scourge of gangs and drugs, shielding our children from predators and preserving the public integrity of our public institutions. I do not intend to allow recent events to deter us from our mission.

Thank you, Mr. Chairman.

[Prepared statement of Attorney General Gonzales follows:]

PREPARED STATEMENT OF THE HONORABLE ALBERTO R. GONZALES

Department of Justice

STATEMENT

OF

ALBERTO R. GONZALES
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

"OVERSIGHT OF THE DEPARTMENT OF JUSTICE"

PRESENTED ON

MAY 10, 2007

STATEMENT OF
ALBERTO R. GONZALES
ATTORNEY GENERAL

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING
OVERSIGHT OF THE DEPARTMENT OF JUSTICE

MAY 10, 2007

Good morning Chairman Conyers, Ranking Member Smith, and Members of the Committee.

Thank you for the opportunity to appear here today to discuss some of the important work currently underway at the Department of Justice. I would like to share some of the Department's recent accomplishments and outline the priorities of the Department in the coming months. I also would like to address any concerns the Committee may have regarding the Department's varied responsibilities. I welcome the chance to enhance the dialogue between our two Branches of government.

Resignations of U.S. Attorneys

First, I will address the issue of the resignations of eight of 93 U.S. Attorneys. I know this is an issue of concern to the Committee, and I want you to know that I share your commitment to bringing all of the facts to light on this matter. I hope we can make great progress on that goal today.

I also want the Committee and those U.S. Attorneys to know how much I appreciate their public service. Each is a fine lawyer and dedicated professional who gave many years of service to the Department. I apologize to them and to their families for allowing this matter to become an unfortunate and undignified public spectacle, and I am sorry for my missteps that have helped to fuel the controversy.

The Justice Department has tried to be forthcoming with the Congress and the American people about the process that led to the resignations. The Department has provided thousands of pages of internal and deliberative documents to the Congress. I consistently and voluntarily have made Justice Department officials available for interviews and hearings on this subject.

I have taken these important steps to provide information for two critical reasons: (1) I have nothing to hide, and (2) I am committed to assuring the Congress and the American public that nothing improper occurred here. The sooner that all the facts are known, the sooner we can all devote our exclusive attention to our important work –

work that includes protecting the American people from the dangers of terrorism, violent crime, illegal drugs, and sexual predators. I know that the Committee must be eager to focus on those issues of great importance to the American people as well.

At this point, we can all agree that U.S. Attorneys serve at the pleasure of the President. We further should agree on a definition of what an "improper" reason for the removal of a U.S. Attorney would be. As former Acting Solicitor General and Assistant Attorney General Walter Dellinger has stated, an improper reason would be: "The replacement of one or more U.S. attorneys in order to impede or speed along particular criminal investigations for illegitimate reasons."[1]

I agree with that. Stated differently, the Department of Justice makes decisions based on the evidence, not whether the target is a Republican or a Democrat.

For the benefit of the Committee as well as for the American people, I would like to be abundantly clear about the decision to request the resignations of eight (of the 93) United States Attorneys – each of whom had served his or her full four-year term of office:

I know that I did not, and would not, ask for a resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain.

I also have no basis to believe that anyone involved in this process sought the removal of a U.S. Attorney for an improper reason.

These facts have been made clear through the testimony of Justice Department officials who have appeared before the Congress, as well as by the thousands of pages of internal documents that the Department of Justice has released. Based upon the record as I know it, it is unfair and unfounded for anyone to conclude that any U.S. Attorney was removed for an improper reason. Our record in bringing aggressive prosecutions without fear or favor and irrespective of political affiliations – a record I am very proud of – is beyond reproach.

While reasonable people may dispute whether or not the actual reasons for these decisions were sufficient to justify a particular resignation, again, there is no factual basis to support the allegation, as many have made, that these resignations were motivated by improper reasons. As this Committee knows, however, to provide more certainty, I have asked the Justice Department's Office of Professional Responsibility (OPR) to investigate this matter. Working with the Department's Office of Inspector General (OIG), these non-partisan professionals will complete their own independent investigation so that the Congress and the American people can be 100 percent assured of the facts.

The Committee should also know that, to ensure the independence and integrity of these investigations, and the investigations of congressional committees, I have not

[1] "What Congress Gets to Know," by Walter Dellinger and Christopher H. Schroeder, *Slate*, Monday, March 26, 2007.

spoken with nor reviewed the confidential transcripts of any of the Department of Justice employees interviewed by congressional staff. I state this because, as a result, I may be somewhat limited when it comes to providing you with all of the facts that you may desire. I hope you understand that, to me, it was absolutely essential that the investigative work proceeds in a manner free of any complications by my efforts to prepare for this testimony.

While I firmly believe that these dismissals were appropriate, I have equal conviction that the process by which these U.S. Attorneys were asked to resign could have – and should have – been handled differently.

I made mistakes in not ensuring that these U.S. Attorneys received more dignified treatment. Others within the Department of Justice also made mistakes. As far as I know, these were honest mistakes of perception and judgment and not intentional acts of misconduct. The American public needs to know of the good faith and dedication of those who serve them at the Department of Justice.

As I have stated before, I want to be as crisp and clear as I can be with the Committee about the facts of my involvement in this matter as I recall them.

The Coordination Process

Shortly after the 2004 election and soon after I became Attorney General, my then-deputy-chief-of-staff Kyle Sampson told me that then-Counsel to the President Harriet Miers had inquired about replacing all 93 U.S. Attorneys. Mr. Sampson and I both agreed that replacing all 93 U.S. Attorneys would be disruptive and unwise. However, I believed it would be appropriate and a good management decision to evaluate the U.S. Attorneys and determine the districts where a change may be beneficial to the Department.

I delegated the task of coordinating a review to Mr. Sampson in early 2005. Mr. Sampson is a good man and was a dedicated public servant. I believed that he was the right person (1) to collect insight and opinions, including his own, from Department officials with the most knowledge of U.S. Attorneys and (2) to provide, based on that collective judgment, a consensus recommendation of the Department's senior leadership on districts that could benefit from a change.

I recall telling Mr. Sampson that I wanted him to consult with appropriate Justice Department senior officials who would have the most relevant knowledge and information about the performance of the U.S. Attorneys. It was to be a group of officials, including the Deputy Attorney General, who were much more knowledgeable than I about the performance of each U.S. Attorney. I also told him to make sure that the White House was kept informed since the U.S. Attorneys are presidential appointees.

Mr. Sampson periodically updated me on the review. As I recall, his updates were brief, relatively few in number, and focused primarily on the review process itself.

During those updates, to my knowledge, I did not make decisions about who should or should not be asked to resign.

Near the end of the process, as I have said many times, Kyle Sampson presented me with the final recommendations, which I approved. I did so because I understood that the recommendations represented the consensus of senior Justice Department officials most knowledgeable about the performance of all 93 U.S. Attorneys. I also remember that, at some point in time, Mr. Sampson explained to me the plan to inform the U.S. Attorneys of my decision.

***

I believed the process that Mr. Sampson was coordinating would produce the best result by including those senior Justice Department officials with the most knowledge about this matter. As in other areas of the Department's work – whether creating a plan to combat terrorism or targeting dangerous drugs like methamphetamine – my goal was to improve the performance of the Justice Department. And as in other areas of the Department's work, I expected a process to be established that would lead to recommendations based on the collective judgment and opinions of those with the most knowledge within the Department.

In hindsight, I would have handled this differently. As a manager, I am aware that decisions involving personnel are some of the most difficult and challenging decisions one can make. United States Attorneys serve at the pleasure of the President, but looking back, it is clear to me that I should have done more personally to ensure that the review process was more rigorous, and that each U.S. Attorney was informed of this decision in a more personal and respectful way.

I also want to address suggestions that I intentionally made false statements about my involvement in this process. These suggestions have been personally very painful to me. I have always sought the truth. I never sought to mislead or deceive the Congress or the American people about my role in this matter. I do acknowledge however that at times I have been less than precise with my words when discussing the resignations.

For example, I misspoke at a press conference on March 13th when I said that I "was not involved in any discussions about what was going on." That statement was too broad. At that same press conference, I made clear that I was aware of the process; I said that "I knew my chief of staff was involved in the process of determining who were the weak performers. Where were the districts around the country where we could do better for the people in that district, and that's what I knew." Of course, I knew about the process because of, at a minimum, these discussions with Mr. Sampson. Thus, my statement about "discussions" was imprecise and overbroad, but it certainly was not in anyway an attempt to mislead the American people.

I certainly understand why these statements generated confusion, and I regret that. I have tried to clarify my words in later interviews with the media, and will be happy to answer any further questions the Committee may have today about those statements.

It is said that actions speak louder than words. And my actions in this matter do indeed show that I have endeavored to be forthcoming with the Congress and the American people.

I am dedicated to correcting both the management missteps and the ensuing public confusion that now surrounds what should have been a benign situation. For example:

In recent weeks I have met personally with more than 70 U.S. Attorneys around the country to hear their concerns and discuss ways to improve communication and coordination between their offices and Main Justice.

These discussions have been frank, and good ideas are coming out, including ways to improve communication between the Department and their offices so that every United States Attorney can know whether their performance is at the level expected by the Attorney General and the Deputy Attorney General. Additionally, I have asked the members of the Attorney General's Advisory Committee of United States Attorneys to present to me recommendations on formal and informal steps that we can take to improve communication.

During these meetings I am also sharing with the U.S. Attorney community several key messages that I wish to also share with the Committee:

First, the process of selecting U.S. Attorneys to be asked to resign, while not improper, should have been more rigorous and should have been completed in a much shorter period of time.

Second, every U.S. Attorney who was asked to resign served honorably, and they and their families made sacrifices in the name of public service. The Justice Department owes them more respect than they were shown. In some cases, Department leaders should have worked with them to make improvements where they were needed. In all cases, I should have communicated the concerns more effectively, and I should have informed them of my decisions in a more dignified manner. This process could have been handled much better and for that I want to apologize publicly.

And third, I am also telling our 93 U.S. Attorneys that I look forward to working with them to pursue the great goals of our Department in the weeks and months to come. I have told them that I expected all of them to continue to do their jobs in the way they deem best and without any improper interference from anyone. Likewise, in those offices where U.S. Attorneys have recently departed, I emphasized the need to continue to aggressively investigate and prosecute all matters – sensitive or otherwise – currently being handled by those offices.

I wish to extend that sentiment to the Committee as well. During the past two years, we have made great strides in securing our country from terrorism, protecting our neighborhoods from gangs and drugs, shielding our children from predators and pedophiles, and protecting the public trust by prosecuting public corruption. Recent events must not deter us from our mission. I ask the Committee to join me in that commitment and that re-dedication.

We must ensure that all the facts surrounding the situation are brought to full light. It is my sincere hope that today's hearing brings us closer to a clearing of the air on the eight resignations.

That is why I intend to stay here as long as it takes to answer all of the questions the Committee may have about my involvement in this matter. I want this Committee to be satisfied, to be fully reassured, that nothing improper was done. I want the American people to be reassured of the same.

National Security

As you well know, since the terror attacks of September 11, 2001, the Department's top priority has been to protect the Nation from the threat of terrorism. We are proud of our efforts to secure the Nation and are reaping the benefits of the momentous changes to the counterterrorism and counterintelligence programs we instituted during the last year with your support.

National Security Division

First, I want to discuss the important role that the new National Security Division (NSD) has played in the months since it was established. NSD's mission is to synchronize the Department's national security efforts, including counterterrorism and counterespionage prosecutions and national security investigations, policy, and oversight. When we first created NSD, I directed the new Assistant Attorney General for National Security, Ken Wainstein, to build upon the oversight capacity within the Division to ensure that the Department's national security investigations are conducted efficiently and in an appropriate manner, with due regard for the civil rights and liberties of all Americans. The Department's Office of Intelligence Policy and Review, now a part of the NSD, has long played an important oversight role. As I will discuss shortly, we have recently enhanced that oversight capacity, as the Department begins a new effort to closely examine the use of National Security Letters and other national security authorities by the Federal Bureau of Investigation (FBI).

I also want to note that the agents at the FBI, working closely with our prosecutors in the National Security Division and in United States Attorney's Offices across the Nation, have been working tirelessly to pursue terrorists and their supporters and to bring them to justice. In just the past few months, we have announced noteworthy arrests and prosecutions such as those of Hassan Abujihaad, a former United States Navy

seaman accused of providing information on United States naval battle group movements to terrorist supporters, and Daniel Maldonado, accused of fighting alongside extremist Islamic fighters in Somalia. We also have announced guilty pleas from individuals such as Tarik Shah, a former marital arts instructor from the Bronx who pleaded guilty to conspiring to support al Qaeda. Further, following a joint U.S. Immigration and Customs Enforcement (ICE) and Department of Commerce investigation, corporations such as Chiquita Brands, which made sizeable illegal payments to a terrorist organization, have learned that they are not immune from criminal prosecution. In addition, we have made significant strides in protecting classified information and preventing sensitive technology from being sent overseas. For example, following a joint ICE and Defense Criminal Investigative Service investigation, ITT Corporation recently pleaded guilty to violating the Arms Export Control Act and agreed to pay a $100 million in criminal fines and other penalties.

In order to continue to move forward on these efforts in FY 2008, we are requesting $6.6 million to fund critical NSD enhancements, including additional funding for crisis management preparation and policy development, and legal analysis and coordination. In addition, the FY 2008 budget includes resources to expand the FBI's national security initiatives, including $217 million to advance the FBI's counterterrorism and intelligence collection and analysis programs and to upgrade its information sharing tools that improve homeland security cohesion and efficiency. The FY 2008 budget provides approximately $12 million for the Drug Enforcement Administration's Office of National Security Intelligence (ONSI). ONSI was designated in February 2006 as a member of the Intelligence Community, in recognition of the contributions that the DEA makes to national and homeland security. ONSI facilitates full and appropriate intelligence coordination and information sharing with other members of the Intelligence Community and with homeland security elements to enhance our Nation's efforts to reduce the supply of drugs, protect our national security, and combat global terrorism.

In addition to continuing to fund these important efforts, I believe it is also important that we continue to work together to modernize our national security laws. In particular, it is crucial that we work to update the Foreign Intelligence Surveillance Act (FISA). Sweeping and unanticipated advances in telecommunications technology since 1978 have upset the delicate balance that the Congress originally struck when it enacted FISA. As a result, FISA now imposes a regime of court approval on a wide range intelligence activities that do not substantially implicate the privacy interests of Americans. This unintended expansion of FISA's scope has hampered our intelligence capabilities, and has resulted in the diversion of scarce Judicial and Executive Branch resources that could be better spent safeguarding the liberties of U.S. persons. I look forward to working with the Congress to modernize FISA to confront the very different technologies and threats of the 21st Century.

National Security Letters

I also want to take some time today to let you know that we are addressing an issue of great concern to me. Over a year ago, the Congress reaffirmed the importance of

critical law enforcement and intelligence tools – such as National Security Letters (NSLs) –when it passed the USA PATRIOT Improvement and Reauthorization Act. While NSLs have enhanced America's ability to detect and avert terrorist attacks, there have been instances in which their use has been unacceptable. I appreciate the Inspector General's important work identifying these shortcomings. Failure to properly use a critical authority such as NSLs can erode public support for vital antiterrorism measures. I want to assure you and the American people that I am dedicated to remedying these deficiencies and again pledge my commitment to protecting Americans from terrorist attacks while protecting the liberties that define us. To this end, I have ordered broad and significant efforts within the Department of Justice, including the FBI, to fully address the issues raised by the Inspector General's report.

First, I have ordered the National Security Division (NSD) and the Department's Chief Privacy and Civil Liberties Officer to work closely with the FBI to take corrective actions, including implementing all of the recommendations made by the Inspector General, and to report directly to me on a regular basis and advise whether any additional actions need to be taken. I also have asked the Inspector General to report back to me in June on the FBI's implementation of his recommendations.

Second, as you may know, the FBI Director recently ordered a one-time, retrospective audit of the use of NSLs in all 56 FBI field offices nationwide. The FBI is currently collecting information from those audits, and we will brief Congress on our findings. In addition to this one-time audit, at my direction, our new National Security Division has began conducting regular National Security Investigation reviews at FBI field offices, working in conjunction with the FBI. These regular reviews represent a substantial new level and type of oversight of national security investigations by career Justice Department lawyers with years of intelligence and law enforcement experience. This enhanced oversight capability will allow NSD to evaluate FBI national security investigations and help ensure their compliance with applicable legal requirements and guidelines.

Third, with respect to the use of so-called "exigent letters," as you may know, the FBI has issued a Bureau-wide directive prohibiting the use of the type of letters described in the Inspector General's report, and the FBI Director has ordered the FBI Inspection Division to conduct an expedited review of the Headquarters unit that issued these letters, in order to assess management responsibility. Following discussions between the Office of the Inspector General (OIG) and the FBI, the OIG and the FBI decided to conduct a joint investigation, led by the OIG, into the FBI's use of exigent letters by the Headquarters unit and other divisions. The joint review will examine whether there has been any violation of criminal law, administrative misconduct, or improper performance of official duties with regard to the use of these exigent letters. In addition, the Associate Deputy Attorney General and the Justice Department's Office of Professional Responsibility were asked by the Attorney General to examine the role FBI attorneys played in the use of exigent letters.

Fourth, I have directed the National Security Division to begin reviewing all FBI referrals of IOB violations in order to identify recurring problems and to assess the FBI's response to such violations. This review will focus on whether the IOB referrals suggest that a change in policy, training, or oversight mechanisms is required. I have instructed NSD to report to me semiannually on such referrals and to inform the Department's Chief Privacy and Civil Liberties Officer of any referral that raises serious civil liberties or privacy issues.

Fifth, I am also troubled by the NSL tracking and database issues discovered by the IG and the concerns these issues have raised with respect to our congressional reporting on the use of this important tool. The FBI is already taking a number of steps improve the accuracy of the reporting of NSL statistics to Congress. Last year, the FBI began developing a new NSL tracking database and plans to deploy the system in four field offices later this year. Until this new system is fully deployed, FBI field offices will conduct hand counts of NSLs and are working to correct its databases in order to get a more accurate count of NSLs issued to date. Once this process is complete, the Department will provide updated copies of recent reports to Congress.

Sixth, I have asked NSD to consult with the FBI as it reviews and makes any necessary revisions to existing FBI guidance regarding NSLs. Some specific guidance has already been issued, and in the near future, the FBI will re-issue comprehensive guidance throughout the Bureau concerning the proper use of NSLs. This comprehensive guidance has been briefed both to the Congress and to privacy and civil liberties groups. I have also instructed to Department's Executive Office for United States Attorneys to review its existing training materials and guidance regarding terrorism investigations and prosecutions in order to ensure that NSLs are properly described in such materials. In addition, the FBI has initiated the development of a new training course on the use of NSLs. Once this course has been fully developed, the FBI will issue a directive mandating training for all Special Agents-in-Charge, Assistant Special Agents-in-Charge, Chief Division Counsel, and all appropriate FBI agents and analysts. While this course is being developed, the FBI's Office of General Counsel has instructed its attorneys that any time they are in a field office, no matter the reason for their visit, they must schedule mandatory NSL training.

Finally, at the joint direction of the Director of National Intelligence and myself, the Office of the DNI and the Department of Justice's Privacy and Civil Liberties Office have convened a working group to examine how NSL-derived information is used and retained by the FBI.

These steps, along with others that the Department of Justice is taking, embody a recognition that we must constantly work to ensure that we protect the precious liberties and rights that are vital to our way of life while making full use of these important tools in fighting the War on Terror. We all recognize that we cannot afford to make progress in the War on Terror at the cost of eroding our bedrock civil liberties. Our Nation is, and always will be, dedicated to liberty for all, a value that we cannot and will not sacrifice, even in the name of winning this war. I will not accept failures in this regard. I look

forward to working closely with the members of this Committee to address these important issues.

Protection of Children

As you know, protecting children against sexual predators is a key priority of my tenure. I am proud of the Department's efforts to combat these terrible crimes against children, and I appreciate the work of this Committee in safeguarding our children's innocence, including its support for the Adam Walsh Act, which included statutory authorization for the Department's Project Safe Childhood. The Department has moved forward aggressively to implement key reforms of the Adam Walsh Act.

The Adam Walsh Act

The Adam Walsh Act adopted a comprehensive new set of national standards for sex offender registration and notification and directed the Department to issue guidelines and regulations to interpret and implement these requirements. As an initial matter, I issued an interim regulation on February 28, 2007, clarifying that the strengthened Adam Walsh Act registration requirements apply to all sex offenders, including those convicted prior to the enactment of the Act. The Adam Walsh Act created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART Office") in the Department's Office of Justice Programs, to administer these requirements. Last winter President Bush appointed Laura L. Rogers, a career prosecutor from California, to head the SMART Office. She is developing detailed guidelines to assist the States, territories, and Indian tribes in incorporating the Adam Walsh Act standards in their sex offender registration and notification programs. Extensive input has been obtained from interested government officials and others for this purpose, and publication of the guidelines for public comment will be forthcoming in the next few months.

In addition to strengthening the substantive standards for sex offender registration and notification, the Adam Walsh Act provides for increased Federal assistance to States and other jurisdictions in enforcing registration requirements and protecting the public from sex offenders. The Act directs the Department to use the resources of Federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who fail to register as required. As an initial step in this initiative, the Marshals Service, working with its State and local law enforcement partners, apprehended 1,659 sex offenders as part of the FALCON III fugitive roundup in October. The Marshals Service has developed plans to strengthen its national coordination and leadership function in sex offender apprehension under the Adam Walsh Act. The President's budget request for FY 2008 includes substantial funding for this purpose, proposing $7.8 million for the Marshals Service's aggressive pursuit of sexual predators under the Adam Walsh Act's provisions.

The Adam Walsh Act also created an enhanced direct avenue for Federal enforcement of sex offender registration requirements. Under new section 2250 of title

18, sex offenders who knowingly violate the Adam Walsh Act registration requirements under circumstances supporting Federal jurisdiction, such as failure to register following relocation from one State to another, can be imprisoned for up to 10 years. The Department's Criminal Division and the United States Attorneys' Offices have developed policy and guidance for prosecutions under the new Federal failure to register offense and are moving forward aggressively in bringing Federal prosecutions in appropriate cases. Since Section 2250 was enacted, Marshals Service investigations have resulted in the issuance of 84 arrest warrants for fugitives in violation of the law. Marshals and other law enforcement officials have been able to arrest 66 of those fugitives.

Beyond the measures I have described relating to sex offender tracking, notification, investigation, apprehension, and prosecution, the Adam Walsh Act enacted important reforms affecting the correctional treatment of sex offenders. For example, the Act adopted new provisions for civil commitment of persons found to be sexually dangerous and subject to Federal jurisdiction. This means that court-ordered civil commitment can now be sought for a sex offender in the custody of the Bureau of Prisons, where it can be shown that his condition would make it seriously difficult for him to refrain from further acts of molestation if released. Pursuant to the Adam Walsh Act commitment provisions, the Bureau of Prisons has 33 inmates certified as sexually dangerous persons (not limited to those incarcerated for sex offenses) and the responsible United States Attorneys' Offices are now engaged in litigation to secure the judicial commitment of these individuals as authorized by the Adam Walsh Act. The Bureau of Prisons is institutionalizing the screening and certification of inmates who satisfy the statutory criteria as sexually dangerous persons, and civil commitment of such persons for the protection of the public and for their care and treatment will be sought in all appropriate cases.

The Adam Walsh Act further authorizes the expansion of the Bureau of Prisons' sex offender management and treatment efforts. The President's budget request for FY 2008 includes $5 million for the Bureau of Prisons to add treatment programs at six locations. This supports the Bureau of Prisons' objective to design, implement, and evaluate a comprehensive sex offender management program across all prison security levels. This program will address the security issues raised by the presence of sex offenders in the Federal inmate population, and the need to reduce recidivism among such offenders following their release.

Project Safe Childhood

The Internet is one of the greatest technological advances of our time, but it also makes it alarmingly easy for sexual predators to find and contact children, as well as trade, collect, and even produce images of child sexual exploitation.

The problem is great, but we have stepped up to the challenge. Through Project Safe Childhood (PSC), which is the backbone of the Department's efforts to combat child exploitation, we have begun to marshal our collective resources and raise online exploitation and abuse of children as a matter of public concern. We have sought to do

this both through enhanced coordination of our law enforcement efforts, especially with the Internet Crimes Against Children task forces and our other State and local partners, and through cooperation with our non-governmental partners like the National Center for Missing and Exploited Children (NCMEC) to do effective outreach to parents and children about how to stay safe online. We also took the lead in the international community, sponsoring a resolution on effective crime prevention and criminal justice responses to combat sexual exploitation of children. Adopted by the United Nations Commission on Criminal Justice and Crime Prevention, the resolution urges effective criminalization, prosecution and punishment of all aspects of child sexual exploitation.

Since I testified last, the Department has undertaken two important steps to reduce the incidence of child sexual exploitation and abuse facilitated by the Internet, and these steps have begun to show results for our enhanced law enforcement efforts.

First, the U.S. Department of Justice together with NCMEC and the Ad Council announced a new phase of their Online Sexual Exploitation public service advertising campaign, "*Think Before You Post,*" designed to educate teenage girls about the potential dangers of posting and sharing personal information online.

Popular social networking sites such as MySpace, Facebook, and Sconex make it easier for children and teens to post and share personal information, pictures, and videos, which may make them more vulnerable to online predators. Girls are particularly at risk of online sexual exploitation—a recent study by University of New Hampshire researchers for NCMEC found that, of the approximately one in seven youths who received a sexual solicitation or approach over the Internet, 70 percent were girls.

The *Think Before You Post* campaign sends a strong reminder to children and their parents to be cautious when posting personal information online because, "[a]nything you post, anyone can see: family, friends, and even not-so-friendly people." The public service announcements were distributed to media outlets throughout the country, and can also be viewed at the Department's website www.usdoj.gov.

Second, coordination of our law enforcement efforts through our 93 U.S. Attorneys was advanced by the recent launch of the PSC Team Training program, involving teams from five judicial districts, which I kicked off at NCMEC's headquarters in February. The training program will create a platform from which Federal, State, and local law enforcement agencies and non-governmental organizations can effectively work together across State and even national borders. The next training session will be held in Miami in May, bringing together teams from five additional districts. We hope to reach every district by the end of 2008 through a series of regional training sessions.

The Department's enhanced law enforcement efforts have begun to show results. In the first quarter of the fiscal year, the Internet Crimes Against Children task forces increased the number of arrests for online child exploitation and abuse to 527, an increase of 22 percent over the same period in FY 2006. Likewise, the U.S. Attorneys have

increased the number of cases filed. In the first five months of FY 2007, 761 cases have been filed. If this pace continues, it will result in as many as 1,826 cases for the fiscal year, a 13 percent increase over FY 2006. Moreover, we are working on the investigative side to support continuing progress in this area. In the first quarter of FY 2007, the FBI opened 555 investigations of online child exploitation cases, both child pornography and cyber-enticement, as compared to 438 investigations opened in the first quarter for FY 2006. Through these investigations and prosecutions our goal is to stop those who prey on our children, and also to deliver a general message of deterrence: when you target kids, we will target you.

We have the power to change the battlefield, and the victory of safe childhoods will be our legacy. I look forward to continued work with this Committee on this issue that I care deeply about.

Violent Crime

Due in large part to the hard work of law enforcement, the Nation's crime rates remain near historic lows. The Administration has funded numerous initiatives to give Federal, State, and local prosecutors and law enforcement the tools needed to reduce violent crime, particularly gang- and firearm-related crime. Federal prosecutors continue to focus resources on the most serious violent offenders, taking them off the streets and putting them behind bars where they cannot re-offend.

Initiative for Safer Communities

Where localized increases in crime are being experienced, the Department is responding appropriately, working with our State and local partners to identify the problem and develop meaningful strategies to reduce and deter that crime. To that end, Department officials met with local law enforcement and community leaders from 18 jurisdictions across the country to investigate the factors contributing to the increase or decrease in violent crime in those jurisdictions. No one cause was reported as causing local spikes in crime; the problems varied by city and region.

To address these regional and localized crime challenges, the President's FY 2008 budget requests $200 million for the Violent Crime Partnership Initiative. The initiative will assist in responding to high rates of violent crime, including gang, drug, and gun violence, by forming and developing effective multi-jurisdictional law enforcement partnerships between Federal, State, local, and tribal law enforcement agencies. Through these multi-jurisdictional partnerships, we will disrupt criminal gang, firearm, and drug activities, particularly those with a multi-jurisdictional dimension.

Project Safe Neighborhoods

The Initiative for Safer Communities is a supplement to the existing Department-led programs aimed at reducing violent crime, such as the Project Safe Neighborhoods (PSN) initiative. PSN programs, led by the United States Attorney in each Federal judicial district, link Federal, State, and local law enforcement officials, prosecutors, and community leaders to implement a multi-faceted strategy to deter and punish firearms offenders. In the past six years, as a result of PSN, the number of Federal firearms prosecutions is more than double the number of prosecutions brought during the six years before PSN's implementation.

With the support of the Congress, the Department has dedicated more than $1.5 billion to this important program. Those funds have provided necessary training, hired agents and prosecutors, and supported State and local partners working to combat gun crime. For 2008, the President's budget requests more than $400 million for PSN, including a $2.2 million enhancement to the Bureau of Alcohol, Tobacco, Firearms and Explosives to support increased anti-gang and firearms enforcement efforts, as well as a $6.3 million enhancement to establish firearms trafficking teams devoted to pursuing trafficking investigations along the Southwest Border and in areas of the country identified as concentrated firearms trafficking corridors.

Gangs

The Department is also applying the PSN model of collaboration to address the danger that violent gangs pose to our neighborhoods. The Department has developed a comprehensive strategy to combat gang violence that involves the coordination of enforcement and prevention resources to target the gangs who terrorize our communities. The Department's Anti-Gang Coordination Committee continues to organize the Department's wide-ranging efforts to combat the scourge of gangs, and the Anti-Gang Coordinators in each United States Attorney's Office continue to provide leadership and focus to our anti-gang efforts at the district level.

Last year, the Department expanded the successful Project Safe Neighborhoods initiative to include new and enhanced anti-gang efforts, and launched the Comprehensive Anti-Gang Initiative, which focused anti-gang resources on prevention, enforcement, and offender reentry efforts in six sites throughout the country: Los Angeles, Tampa, Cleveland, Dallas/Ft. Worth, Milwaukee, and the "222 Corridor," which stretches from Easton to Lancaster in Pennsylvania. Just this past month, the Department expanded this program to four additional sites: Indianapolis, Rochester, Raleigh/Durham, and Oklahoma City.

The Department also created a new national Gang Targeting, Enforcement, and Coordination Center (GangTECC) this past year. GangTECC brings together all of the operational components of the Department, as well as other agencies within the Federal government to coordinate overlapping investigations and to ensure that tactical and strategic intelligence is shared among law enforcement agencies. GangTECC works

hand-in-hand with the new National Gang Intelligence Center, and the Criminal Division's Gang Squad. The President's FY 2008 budget requests resources to further support these anti-gang efforts.

While we have made significant enhancements to our anti-gang efforts at the national level, the Department understands that the lion's share of the work happens at the local and district level. On the prevention side, in accordance with my directive, each U.S. Attorney has convened or scheduled a Gang Prevention Summit in his or her district to explore additional opportunities in the area of gang prevention. And on the enforcement side, to support the increased focus on anti-gang prosecutions at the Federal level, the President's FY 2008 budget requests an enhancement of $4.1 million for additional anti-gang Federal prosecutors.

Finally, as you know, the Department has worked closely with this Committee as well as the Senate Judiciary Committee to develop legislation to enhance the tools available to Federal law enforcement in its ongoing efforts to disrupt and dismantle gangs.

Drug Enforcement

The Department continues to devote substantial investigative and prosecutorial resources to addressing the problem of drug trafficking. In FY 2006, drug cases represented more than 25 percent of all cases filed by our U.S. Attorneys and 35 percent of Federal defendants.

The vast majority of illegal drugs sold in the United States are supplied by drug trafficking organizations (DTOs). The Department continues to believe that utilizing intelligence to target the highest priority DTOs and those entities and individuals linked to the DTOs, using the Drug Enforcement Administration (DEA) and the Organized Crime and Drug Enforcement Task Force program, is the most effective approach to fighting the global drug trade and its attendant threats. It is within this strategic framework that the Department generally organizes its efforts to reduce the supply of illegal drugs. These efforts combine the expertise of multiple Federal agencies with international, State, and local partners to mount a comprehensive attack on major drug organizations and the financial infrastructures that support them. This approach has been successful. Just this past fall, the most significant drug traffickers ever to face justice in the United States – Miguel and Alberto Rodriguez-Orejuela – pleaded guilty in a Federal court in Miami to a charge of conspiracy to import cocaine into the United States.

The Department recognizes that the Southwest Border remains a critical front in our Nation's defense against both illegal drug trafficking and terrorism. Because a significant amount of drugs that enters the U.S. is trafficked by DTOs based in Mexico, the Department has been working closely with the Government of Mexico, including in joint cooperative efforts by law enforcement. In addition, the Department is continuing discussions with the Government of Mexico regarding extraditions of major drug traffickers.

In addition to its continued efforts on drug trafficking organizations, over the past several years the Department has placed a special emphasis on reducing the demand for, and supply of, methamphetamine and controlled substance prescription drugs.

In support of the Administration's plan to combat methamphetamine, the Department established the Anti-Methamphetamine Coordination Committee to oversee the ongoing implementation of initiatives and to ensure the most effective coordination of its anti-methamphetamine efforts. The Department is enhancing the anti-methamphetamine trafficking and intelligence capabilities of law enforcement; assisting tribal, State, and local authorities with training, cleanup, and enforcement initiatives; and providing grants to State drug court programs that assist methamphetamine abusers. On the international front, the Department is working to cut off the illicit supply of precursor chemicals by working with our international partners.

The United States Government has established a strong partnership with Mexico to combat methamphetamine. In May 2005, the Attorney General of Mexico and I announced several anti-methamphetamine initiatives designed to address improved enforcement, increased law enforcement training, improved information sharing, and increased public awareness. Most of those initiatives are now underway and our goals are being met.

This past year, the Congress enacted important legislation, the Combat Methamphetamine Epidemic Act, which regulates the sale of the legal ingredients used to make methamphetamine; strengthens criminal penalties; authorizes resources for State and local governments; enhances international enforcement of methamphetamine trafficking; and enhances the regulation of methamphetamine by-products, among other things. The Department is committed to enforcing rigorously these new provisions of the law in order to address the domestic production of methamphetamine. As State laws regulating methamphetamine precursors went into effect, along with the new Federal law, we have seen a decline in domestic methamphetamine labs.

The Department remains concerned about the non-medical use of controlled substance prescription drugs, which continues to be the fastest rising category of drug abuse in recent years. At the same time, the Department recognizes that it is critical that individuals who are prescribed controlled substance prescription drugs for a legitimate medical purpose have access to these important drugs. Rogue pharmacies operating through the Internet increasingly have become a source for the illegal supply of controlled substances. This issue is a priority for the Department, and we are aggressively applying the full range of enforcement tools available to us to address this increasing problem. The Department looks forward to working with the Congress on additional enforcement tools that may be appropriate.

Civil Rights

I am pleased to report that the past year has been full of outstanding accomplishments in the Civil Rights Division, where we obtained record levels of enforcement. This year, the Division celebrates its 50th Anniversary. Since its inception in 1957, the Division has achieved a great deal, and we have much of which to be proud. Following are some of the Division's more notable recent accomplishments, beginning with two recent initiatives and the creation of a new unit within the Criminal Section.

New Initiatives

- On February 20, 2007, I announced *The First Freedom Project* and released a *Report on Enforcement of Laws Protecting Religious Freedom* to highlight and build upon the Division's role in enforcing the longstanding Federal laws that prohibit discrimination based on religion.

- In January 2007, I announced the Federal indictment charging James Seale for his role in the abduction and murders of two African-American teenagers, Henry Dee and Charles Moore, in Mississippi in 1964. This case is being prosecuted by the Civil Rights Division and the local U.S. Attorney's Office. Shortly thereafter, I announced an FBI initiative to identify other unresolved civil rights era murders for possible prosecution to the extent permitted by the available evidence and the limits of Federal law – an effort in which the Civil Rights Division will play a key role.

- On January 31, 2007, I announced the creation of the new Human Trafficking Prosecution Unit within the Criminal Section of the Civil Rights Division. This new Unit is staffed by the Section's most seasoned human trafficking prosecutors, who will work with our partners in Federal and State law enforcement and non-government organizations to investigate and prosecute the most significant human trafficking crimes, such as multi-jurisdictional sex trafficking cases.

Enforcement

In addition to these recent advances, the Division has done much to further the enforcement of our Federal civil rights laws. In FY 2006:

- the Criminal Section set new records in several areas by charging and convicting a record number of defendants – obtaining an overall conviction rate of 98 percent, the highest such figure in the history of the Criminal Section;

- the Criminal Section obtained a record number of convictions in the prosecution of human trafficking crimes, deplorable offenses of fear, force, and violence that disproportionately affect women and minority immigrants;

- the Employment Litigation Section filed as many lawsuits challenging a pattern or practice of discrimination as during the last three years of the previous Administration combined;

- the Housing and Civil Enforcement Section filed more cases alleging discrimination based on sex than in any year in its history;

- the Housing and Civil Enforcement Section conducted significantly more tests to ensure compliance with the Fair Housing Act, pursuant to Operation Home Sweet Home, and we are working to achieve an all-time high number of such tests this year; and

- the Disability Rights Section obtained the highest success rate to date in mediating complaints brought under the Americans with Disabilities Act – 82 percent.

In April 2006, the Civil Rights Division secured the second largest damage award ever obtained by the Justice Department in a Fair Housing Act case against a former landlord in the Dayton, Ohio, area for discriminating against African Americans and families with children.

From 2001 to 2006, we have ensured the integrity of law enforcement by more than tripling the number of agreements reached with police departments and convicting 50 percent more law enforcement officials for willful misconduct, such as the use of excessive force, as compared to the previous six years.

From 2001 to 2006, the Disability Rights Section reached more than 80 percent of the agreements obtained with State and local governments under Project Civic Access, a program that has made cities across the country more accessible and made lives better for more than 3 million Americans with disabilities.

Protecting Voting Rights

Last year, I strongly supported the Voting Rights Act Reauthorization and Amendments Act of 2006, appropriately named for three heroines of the Civil Rights movement, Fannie Lou Hamer, Rosa Parks, and Coretta Scott King. This legislation renewed for another 25 years certain provisions of the Act that had been set to expire, including Section 5, under which all voting changes in certain jurisdictions must be "precleared" prior to implementation, sections relating to Federal observers and examiners, and Sections 4 and 203, relating to ballot access for non-English speaking citizens.

The Voting Rights Act has proven to be one of the most successful pieces of civil rights legislation ever enacted. However, as long as all citizens do not have equal access to the polls, our work is not finished. As President Bush said, "In four decades since the Voting Rights Act was first passed, we've made progress toward equality, yet the work for a more perfect union is never ending."

At the White House signing ceremony for the 2006 reauthorization Act, President Bush said, "My administration will vigorously enforce the provisions of this law, and we will defend it in court." The Department of Justice is committed to carrying out the President's promise. In fact, the Civil Rights Division is currently vigorously defending the Act against a constitutional challenge in Federal court here in the District of Columbia.

A major component of the Division's work to protect voting rights is its election monitoring program. Our election monitoring efforts are among the most effective means of ensuring that Federal voting rights are respected on election day.

In 2006, we sent more than 1,500 Federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year. During the general election on November 7, 2006, the Division deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. In total, more than 800 Federal personnel monitored the polls in 69 political subdivisions in 22 States.

In addition to our presence at the polls, Department personnel here in Washington stood ready with numerous phone lines to handle calls from citizens with election complaints, as well as to monitor an Internet-based mechanism for reporting problems. We had personnel at the call center who were fluent in Spanish and had the Division's language interpretation service to provide translators in other languages. The Department received more than 200 complaints through its phone and Internet-based system on election day. Many of these complaints were resolved on election day, and we are continuing to follow up on the rest.

Our commitment to protecting the right to vote is further demonstrated by our recent enforcement efforts. In 2006, the Voting Section filed 18 new lawsuits, which is more than twice the average number of lawsuits filed annually in the preceding 30 years. Moreover, during 2006, the Division filed the largest number of cases under the Uniformed and Overseas Citizens Absentee Voting Act, which ensures that overseas citizens and members of the military are able to participate in Federal elections. Finally, in 2006, the Voting Section processed the largest number of Section 5 submissions in its history, made two objections to submissions pursuant to Section 5, and filed its first Section 5 enforcement action since 1998.

Last year, we furthered our record of accomplishment during this Administration. During this Administration, the Civil Rights Division has litigated more cases on behalf of minority language voters than in all other years combined since 1975. Specifically, we have successfully litigated approximately 60 percent of all language minority cases in the history of the Voting Rights Act. Moreover, during this Administration, we have brought seven of the nine cases ever filed under Section 208 in the history of the Act, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

The work of the Civil Rights Division in recent years reflects the need for continued vigilance in the prosecution and enforcement of our Nation's civil rights laws. I am committed to building upon our accomplishments and continuing to create a record that reflects the profound significance of this right for all Americans.

In addition to its responsibility to protect access to the ballot box, the Department is responsible for combating Federal election crimes, such as election fraud and campaign financing offenses. In 2002, the Department launched the Ballot Access and Voting Integrity Initiative, and the investigation and prosecution of these crimes is a priority. With the assistance of the FBI, we have investigated over 300 election crime matters since the start of the Initiative, charged more than 180 individuals with election fraud or campaign financing offenses, and obtained over 130 convictions. As of May 2007, over 150 election crime investigations were pending throughout the country.

Every election crime prosecution and voting rights settlement puts would-be wrong-doers on notice: We will not tolerate attempts to corrupt the electoral process or the infringement of voting rights, period.

Border Security

Immigration offenses now constitute the largest category of prosecutions the Department initiates each year. Nearly one third of the 60,000 new cases per year are for immigration offenses.

Nevertheless, because immigration enforcement is such a high priority for the Department, I am committed to doing more. In the latter half of 2006, the Department sent 30 additional prosecutors to the southwest border districts to help them handle a greater number of immigration cases, as well as border narcotics cases. Since 2000, the overall number of Assistant U.S. Attorneys working in the southwest border districts has increased by about 29 percent. Increasing the number of prosecutors permits those districts to take in more cases of all types. Despite these increases, however, our prosecutors on the border still handle some of the largest caseloads in the Nation. To further augment our resources, the President has proposed in his 2008 budget $7.4 million for a Border and Immigration Prosecution Initiative to hire 55 additional prosecutors to handle more immigration cases. In addition, the budget requests $7.5 million to hire 40 Deputy U.S. Marshals to manage the increased workload as a result of increased immigration enforcement along the Southwest Border. This funding is needed so that we can continue to increase prosecutions and convictions to further deter illegal border crossings and achieve control over the border.

In addition to enhancing enforcement resources, I am eager to work with this Committee on creating workable comprehensive immigration reform legislation. Such reform, as described by the President, would relieve pressure on our borders by creating a temporary worker program to fill jobs that Americans do not want, would enhance tools for employers to verify that they are hiring only citizens and other authorized workers, and would increase penalties for the employment of unauthorized workers and for other

immigration offenses. I look forward to working with the Committee on comprehensive immigration reform in the coming weeks and months.

Intellectual Property Enforcement

Intellectual property ("IP") is a core component of U.S. economic health. IP theft undermines U.S. economic security and stifles the creative output central to U.S. economic vitality. The Department has made combating IP theft a priority.

The Department of Justice is dedicating more resources than ever before to the protection of U.S. intellectual property rights, with a special emphasis on prosecuting health and safety cases. Last June, the Department's Task Force on Intellectual Property announced that it had implemented all 31 of its recommendations to improve IP protection and enforcement in the United States and abroad, as described in detail in the *Progress Report of the Department of Justice's Task Force on Intellectual Property* (June 2006). In the past two years, we have significantly expanded the Computer Hacking and Intellectual Property (CHIP) network of Federal prosecutors dedicated to the prosecution of high-tech and IP crime. The total number of CHIP prosecutors has increased to 230 (with at least one in each U.S. Attorney's Office), and the number of specialized CHIP Units has nearly doubled to 25 cities nationwide.

The Task Force's unprecedented efforts to improve criminal IP enforcement have yielded, among other successes, substantial increases in Federal investigations and prosecutions of IP violations. For instance, the number of defendants prosecuted for IP offenses rose 98 percent from 2004 to 2005, and the number convicted of IP offenses increased more than 50 percent from 2005 to 2006 (from 124 to 187). Of those convicted, the number receiving substantial sentences (25 months or more) increased even more sharply – from 17 to 39, an increase of 130 percent. Last year also saw substantial increases in the FBI's tally of the number of defendants arrested (from 104 to 144, up 40 percent) and charged (from 145 to 191, up 30 percent) in criminal IP cases.

On April 20, 2007, as a result of the first-ever extradition of an individual charged with online copyright infringement, the Department obtained the felony copyright conviction of the leader of one of the oldest and most notorious Internet software piracy groups. The group is estimated to have caused the illegal distribution of more than $50 million worth of pirated software, movies, and music.

Recognizing that the effective protection of IP rights depends on strong international as well as domestic criminal enforcement regimes, the Department has placed special emphasis on improving its international outreach and capacity-building efforts. For instance, in 2006, the Department established the first-ever IP Law Enforcement Coordinator for Asia in Bangkok, Thailand. This IPLEC position is dedicated to advancing the Department's regional IP goals through training, outreach, and the coordination of investigations and operations against IP crime throughout the region. A second IPLEC for Eastern Europe has been established, and we will be sending a prosecutor to Sofia, Bulgaria, to fill that position this summer. Moreover, in

2006 alone, Criminal Division prosecutors provided training and technical assistance on IP enforcement to more than 3,300 foreign prosecutors, investigators, and judges from 107 countries.

Identity Theft

Identity theft has become one of the greatest concerns for the American consumer, and every year extracts a great toll. It results in lost confidence in online commerce and in the reliability of entities that collect and maintain personal data. And its costs exceed billions of dollars and millions of hours of recovery time for consumers, businesses, and the government.

The Department plays dual roles in combating identity theft: first, as the prosecuting agency that seeks to bring identity thieves to justice; and second, as one of the two agencies leading the President's Identity Theft Task Force, which I serve as Chair.

Just recently, I had the privilege, along with FTC Chairman Deborah Platt Majoras, of transmitting to the President a comprehensive Strategic Plan to combat identity theft, developed by the Identity Theft Task Force. The Strategic Plan is the result of an unprecedented federal effort to identify the best way forward to attack this pernicious crime, and represents a milestone in America's efforts to fight back against identity theft – a blueprint for a coordinated, across-the-board effort to better protect America's families and communities from the pernicious threat of identity theft.

The 31 major recommendations in the Task Force Strategic Plan target the entire life cycle of identity theft, from the acquisition of sensitive consumer data, to its misuse, to the investigation and prosecution of the criminals, to recovery of the victims -- and provide guidance for all sectors of the economy. This integrated approach reflects a belief that the problem of identity theft can be best handled only when all stakeholders are focused on the same goals.

Some of the most significant recommendations made by the Task Force are:

1) federal agencies should reduce the unnecessary use of Social Security numbers, the most valuable commodity for an identity thief;
2) national standards should be established to require private sector entities to safeguard the personal data they compile and maintain and to provide notice to consumers when a breach occurs that poses a significant risk of identity theft;
3) federal agencies should implement a broad, sustained awareness campaign to educate consumers, the private sector, and the public sector on methods to deter, detect, and defend against identity theft; and
4) a National Identity Theft Center should be created to allow law enforcement agencies to coordinate their efforts and information

more efficiently, and investigate and prosecute identity thieves more effectively.

Because this Strategic Plan is meant to be comprehensive – attacking identity theft at each of its stages – it is impossible to label one or two of its recommendations as the "most important" or the magic bullet to eradicating identity theft. From the Department's point of view, however, I am extraordinarily pleased that so many of the Task Force's recommendations will truly assist law enforcement agents and prosecutors in their daily efforts to investigate, prosecute, and punish identity thieves.

State, Local, and Tribal Assistance

In addition to our own law enforcement efforts, the Department supports State, local, and tribal law enforcement. The Department's FY 2008 budget contains more than $1.2 billion in discretionary grant assistance to State, local, and tribal governments, and non-profit organizations, including funding for the creation of four new competitive grant programs: the Violent Crime Reduction Partnership; the Byrne Public Safety and Protection Program; the Child Safety and Juvenile Justice Program; and Violence Against Women Grants.

Violent Crime Reduction Partnership

The President's FY 2008 budget requests $200 million for the Violent Crime Reduction Partnership Initiative, which is one of the ways we are responding to the recent increase in violent crime. The funding will be used to help communities address high rates of violent crime by forming and developing effective multi-jurisdictional law enforcement partnerships between local, State, tribal, and Federal law enforcement agencies. Through these multi-jurisdictional partnerships, we will disrupt criminal gang, firearm, and drug activities, particularly those with a multi-jurisdictional dimension. Additionally, the Department will target this funding to respond to local crime surges it detects through its ongoing research.

Byrne Public Safety and Protection Program

In addition, the President's budget proposal includes $350 million for a simplified and streamlined grant program that would combine the funding streams of several programs into the new Byrne Public Safety and Protection Program. This initiative consolidates some of the Department's most successful State and local law enforcement assistance programs into a single, flexible, competitive discretionary grant program. This new approach will help State, local, and tribal governments develop programs appropriate to the particular needs of their jurisdictions. Through the competitive grant process, we will continue to assist communities in addressing a number of high-priority concerns, such as (1) reducing violent crime at the local levels through the Project Safe Neighborhood initiative; (2) addressing the criminal justice issues surrounding substance abuse through drug courts, residential treatment for prison inmates, prescription drug monitoring programs, methamphetamine enforcement and lab cleanup, and cannabis

eradication efforts; (3) promoting and enhancing law enforcement information sharing efforts through improved and more accurate criminal history records; (4) improving the capacity of State and local law enforcement and justice system personnel to make use of forensic evidence and reducing DNA evidence and analysis backlogs; (5) addressing domestic trafficking in persons; (6) improving and expanding prisoner re-entry initiatives; and (7) improving services to victims of crime to facilitate their participation in the legal process. In addition to State, local, and tribal governments, non-government entities will also be eligible for funding under this program.

Child Safety and Juvenile Justice Program

To further our commitment to protecting our Nation's most vulnerable citizens, our budget includes $280 million for the new Child Safety and Juvenile Justice Program. The Child Safety and Juvenile Justice Program initiative consolidates existing juvenile justice and exploited children programs, such as Internet Crimes Against Children, into a single, flexible grant program. Through a competitive discretionary grant process, the Department will assist State and local governments in addressing multiple child and juvenile justice needs, such as, reducing incidents of child exploitation and abuse, including those facilitated by the use of computers and the Internet, improving juvenile justice outcomes, and addressing school safety needs. One of the most notable parts of this program is the AMBER Alert project, a proven success that has helped rescue hundreds of children nationwide. With 50 statewide AMBER plans now in place, we are meeting President Bush's goal of a National AMBER Alert network. I am committed to ensuring that we have a strong and seamless network in place to protect our children.

Violence Against Women Grants

The FY 2008 budget includes $370 million for one new, flexible, competitive grant program that would consolidate all Violence Against Women Act programs, creating a new structure that can address the multiple needs of victims of domestic violence, dating violence, sexual assault, and stalking. This grant program will help communities forge effective partnerships among Federal, State, local, and tribal governments and between the criminal justice system and victim advocates, and provide much-needed services to victims. The funding will continue to enable communities to address a range of issues in responding to violence against women, including the unique barriers faced by rural communities; the importance of training police, prosecutors, and court personnel; the critical need of victims for legal assistance, transitional housing, and other comprehensive services; the special needs of elderly victims and those with disabilities; and the high rate of violence against women in Indian country.

These four new grant programs will enable the Department to more effectively target Federal assistance to areas with the greatest need and allow for adjustments in funding priorities in response to changes and emerging trends in crime and justice issues.

Responsiveness to Congressional Requests

Finally, Mr. Chairman, I would like to discuss with you the Department's efforts to improve its responsiveness to the Congress, especially questions for the record. You will no doubt recall that responses to the Committee's questions for the record from my previous hearing more than six months earlier were transmitted to the Committee just hours before I testified before you in January. That performance was not acceptable to me, as I know it was not acceptable to the Committee.

In 2005, Department witnesses testified at 94 congressional hearings. In 2006, that number rose to 111. So far this year, Department witnesses have testified at 30 congressional hearings, and we fully expect this brisk pace to continue in the coming months.

Even as the number of hearings involving Department witnesses has increased, the number of questions for the record submitted to the Department following those hearings has increased at a more dramatic pace. In 2004, the Department provided responses to nearly 500 questions submitted for the record following congressional hearings. In 2005, the Department provided responses to approximately 1,200 such questions. Last year, the total was nearly 1,400.

So far this year, the Department has already provided the Congress with responses to more than 1,200 questions for the record, with a large majority of those responses coming to this Committee. Several hundred additional responses have also already been submitted for interagency clearance prior to submission to the Congress. Most of the responses submitted this year are in response to questions received at hearings held in 2006, but a large number are from hearings held this year, including responses to a large majority of the 430 questions submitted to me following my appearance before the Committee hearing in January. So far this year, the Department has received nearly 1,000 new questions for the record, with roughly three-quarters of them submitted by this Committee.

I appreciate the importance of oversight and the need for the Department to be responsive to the Congress. I believe the Department has taken steps to respond to questions for the record in a more timely manner, and I intend to see to it that we continue to do so.

Conclusion

Thank you for your dedication to all of the issues I have just outlined. I look forward to working with you in the coming months on these topics and the Department's other missions and priorities.

Mr. CONYERS. Thank you, Mr. Attorney General.

Let me begin the questions.

I want to ask how the U.S. attorney termination list came to be, who suggested putting most of these U.S. attorneys on the list, and why.

Now, that is the question that overhangs everything we are doing here. If we can answer that, I think outside of the reticence of the White House to cooperate, we would make incredible gains in trying to put this matter to rest, as the gentleman from Texas, Mr. Smith, has suggested we do as soon as possible.

Tell me about it.

Mr. GONZALES. Mr. Chairman, I accept full responsibility for the notion of doing an evaluation of the performance of United States attorneys.

I think as a matter of good government, we have an obligation as heads of the department to ensure that public servants are in fact doing their job.

And therefore, I directed Mr. Sampson—my then deputy chief of staff, and most recently my former chief of staff—to coordinate and organize a review of the performance of United States attorneys around the country.

I expected that Mr. Sampson would consult with the senior leadership of the department, that he would consult with individuals who would know about the performance of the United States attorneys much more than I.

Mr. CONYERS. But, Mr. Attorney General, you are the one who is here at the hearing.

Mr. GONZALES. Yes.

Mr. CONYERS. You are the one that we talk to as the Judiciary Committee regularly communicates with the head of the Department of Justice. I approve and congratulate you on all those hearings, and investigation.

But just tell me how the U.S. attorney termination list came to be and who suggested putting most of these U.S. attorneys on the list and why. Now, that should take about three sentences, but take more. But tell me something.

Mr. GONZALES. Mr. Chairman, it is my understanding that what Mr. Sampson engaged in was a process of consulting with the senior leadership in the department about the performance of specific individuals, and that toward the end of that process, in the fall of 2006, what was presented to me was a recommendation that I understood to be the consensus recommendation of the senior leadership of the department.

Mr. CONYERS. Okay. In other words, you don't know. And I am not putting words in your mouth, but you haven't answered the question.

I know the procedure, but look, we have got 30-something Members of Congress, much of your staff, you have prepared for this, you have been asked something like this question before now——

Mr. GONZALES. Mr. Chairman, if I may respond to that, as I have indicated, I have not gone back and spoken directly with Mr. Sampson and others who are involved in this process, in order to protect the integrity of this investigation and the investigation of

the Office of Professional Responsibility and the Office of Inspector General.

I am a fact witness, they are fact witnesses and in order to preserve the integrity of those investigations, I have not asked these specific questions. What I am here today——

Mr. CONYERS. Okay, so that is why you are not going to answer the question, because you want to protect the integrity of the investigation.

Look, let me ask you a specific example. Mr. Iglesias——

Mr. GONZALES. Iglesias.

Mr. CONYERS [continuing]. In New Mexico, who was not put on the termination list until October or November of 2006, we learned in last Friday's interview with your counsel, Matthew Friedrich, at the request of the White House and Monica Goodling, he met with two prominent New Mexico lawyers who complained about Mr. Iglesias's handling of a vote fraud case.

He met them again in November. And they told him they didn't want him—Mr. Iglesias—to be the U.S. attorney. And then they said they were working toward that, and they had communicated about that directly with Senator Domenici and Karl Rove.

Aware of that, are you?

Mr. GONZALES. I am certainly aware of it now.

And if I may, Mr. Chairman, if you are going to rely upon some testimony that others have provided—again, I haven't spoken to others about their testimony—could I see what in fact the testimony has been provided to? Because I haven't seen it. So——

Mr. CONYERS. Just take this recitation that I have just given you, sir.

We are perfectly willing to let you see anything you want. We are cooperating. But cooperate with us.

Mr. GONZALES. I am trying, Mr. Chairman.

Mr. CONYERS. Okay. So is this correct?

Mr. GONZALES. I have no reason to believe it is not correct, Mr. Chairman.

Mr. CONYERS. Okay. You were aware of that, then.

Mr. GONZALES. You mean, at the time that I made my decision?

Mr. CONYERS. Yes.

Mr. GONZALES. At the time I accepted the recommendation—Mr. Chairman, I don't recall whether or not I was aware of that.

But I will tell you this: I was certainly aware of the fact that the senior senator had lost confidence in Mr. Iglesias beginning in the fall of 2005, and that we had had several phone conversations where he had expressed serious concerns or reservations about the performance of the person that he recommended for that position.

Mr. CONYERS. Yes. And they had communicated directly with Karl Rove and Senator Domenici. You were aware of that?

Mr. GONZALES. Mr. Chairman——

Mr. CONYERS. No. You are not under oath, and you said you always tell the truth.

Mr. GONZALES. My answers would be the same, Mr. Chairman. I want to be sure that I give the Committee the most accurate and most complete answer that——

Mr. CONYERS. Yes. So, what are you saying?

Mr. GONZALES. Well, what I know is——

Mr. CONYERS. You need more information and you want to see the reviews?

Mr. GONZALES. Of course I would like to see exactly what he said. But I was aware of the fact——

Mr. CONYERS. All right.

Mr. GONZALES. At the time I made my decision, I was aware of the fact, of course, that Senator Domenici, of course, had called me several times. Mr. Rove, in a conversation that he had with me, raised concerns about voter fraud prosecutions in three jurisdictions in the country, including New Mexico. My recollection is that occurred sometime in the fall of 2006.

I don't have any specific recollection that when I made my decision I was aware of the specific conversations that Mr. Friedrich, I believe, may have testified to.

Mr. CONYERS. Thank you.

Mr. Lamar Smith, please?

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Attorney General, let me go to what I consider to be the heart of the matter and ask you a series of questions.

The first is this: Did you seek the resignation of any U.S. attorney to retaliate for, interfere with, or gain a partisan advantage in any case or investigation, whether about public corruption or any other type of offense?

Mr. GONZALES. I wouldn't do that, Congressman Smith. I would not retaliate for partisan political reasons. That is not something that I believe is acceptable, and would not tolerate.

Mr. SMITH. Did the White House ever ask you to seek the resignation of any U.S. attorney in order to retaliate for, interfere with, or gain a partisan advantage in any case or investigation, whether about public corruption or any other offense?

Mr. GONZALES. Not that I recall, Congressman. I don't believe that the White House ever did.

Mr. SMITH. Have you ever intended to mislead or misinform Congress through any of your statements or testimony about the U.S. attorneys matter?

Mr. GONZALES. Of course not.

Now, I realize I have been inartful in some of my statements to the press; overly broad, perhaps, in my zeal to come out and defend the department. I have said things that I shouldn't have without first going back and reviewing thousands of pages of documents.

But in everything that I have done here, the principles that I have tried to support are truthfulness and being forthcoming, and accountability. And that is why we have provided thousands of pages of very internal, deliberative documents, why we have made DOJ officials available for interviews and for testimonies: because I want to reassure the American public and this Committee that nothing improper happened here.

Mr. SMITH. Mr. Attorney General, let me go to my last question. And feel free to expound on your answer.

Do you believe the U.S. attorneys controversy has caused any unmerited damage to the Department of Justice and its ability to effectively pursue its mission of law enforcement? And if so, how?

Mr. GONZALES. Well, clearly, I mean, it has been an unfortunate episode. And obviously, it is something that I have to deal with as head of the department.

I always worry about morale. I think every Cabinet official every day should wake up thinking about, "Okay, is the morale of the department where it should be? Am I doing everything I can to be the most effective leader of the department?"

And so, of course, that is something that I worry about. I have indicated, I have spoken to all United States attorneys about this issue. I have told them, "Be focused on your job. I don't expect a single investigation, a single prosecution to be sped up or slowed down by what is happening here," and we will focus on making sure that Congress is provided the information that it needs to reassure itself that nothing improper happened here.

But at the end of the day, what the American people are focused on, I think—they want to know that the Department of Justice is doing its part to make sure that our country is safe from terrorism, is doing our part to make sure that our neighborhoods are safe from violent crime and doing our part to make sure that our kids are safe from predators and pedophiles.

Mr. SMITH. Thank you, Mr. Attorney General.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much.

The Chair recognizes the Chairwoman of the Commercial and Administrative Law Subcommittee, Linda Sánchez.

Ms. SÁNCHEZ. I thank the Chairman.

Good morning, Mr. Gonzales.

Mr. Gonzales, you have consistently maintained that only eight U.S. attorneys were forced out of their positions. Yet today's *Washington Post* states that there was a ninth, Todd Graves.

Are there any more U.S. attorneys that we should know about that were forced out?

Mr. GONZALES. Congresswoman, it is always been my understanding that this focus has been on the eight United States attorneys that were asked to resign last December 7th and June 14th, including Bud Cummins.

Ms. SÁNCHEZ. Mr. Attorney General, with all due respect, in page two of your testimony that you have previously given, you stated that there were only eight that were forced out.

Mr. GONZALES. As part of this process—as part of this review process that I asked Mr. Sampson to conduct and which resulted in the culmination in December of 2006, these were the individuals that this process identified as where changes would be appropriate.

Now, clearly, throughout my tenure as Attorney General and throughout the tenure of my predecessors and other Attorney Generals, U.S. attorneys have left the department for a variety of reasons. So that happens.

Ms. SÁNCHEZ. Let's stop there. Are you familiar with the former U.S. attorney in Los Angeles, Debra Wong Yang?

Mr. GONZALES. Yes.

Ms. SÁNCHEZ. And are you aware the she resigned her position in October of 2006 and took a position with a private law firm?

Mr. GONZALES. Yes, I am.

Ms. SÁNCHEZ. Do you have information as to whether Ms. Yang's resignation was entirely voluntary?

Mr. GONZALES. From what I know, Ms. Yang's resignation was entirely voluntary. She did a wonderful job and——

Ms. SÁNCHEZ. Now, are you aware that when Ms. Yang went to this firm, she received what has been reported as a $1.5 million bonus for joining the private law firm?

Mr. GONZALES. I don't know what she received. But whatever it was, it was a bargain for the firm because she is an outstanding lawyer.

Ms. SÁNCHEZ. Are you aware of any reason why she would have been given such an extraordinary bonus payment to hire an individual like her?

Mr. GONZALES. I suspect that given her outstanding qualifications, the fact that she is a woman, an Asian-American, would make her particularly attractive to a private firm.

Ms. SÁNCHEZ. So you think a $1.5 million signing bonus is typical for a situation like that?

Mr. GONZALES. Again, that is a decision for that firm to make.

Ms. SÁNCHEZ. Okay. Are you aware—and this has been reported in the press—that when she was hired by the firm, Ms. Yang was conducting an active investigation into Republican Congressman Jerry Lewis and his financial dealings with a particular lobbying firm? Were you aware of that?

Mr. GONZALES. I may have been aware of that. Sitting here today, I can't say that I was aware of that. But that is very likely.

We have public corruption investigations and prosecutions that are occurring every day all over the country, Congresswoman. So it would not be unusual that such——

Ms. SÁNCHEZ. Well, let me tell you what concerns me. What concerns me are the reports of the same firm that hired Ms. Yang away from her post as a U.S. attorney, with a large bonus payment, also, coincidentally, happens to be the firm that represents Mr. Lewis in this matter. Does that coincidence trouble you at all?

Mr. GONZALES. Not at all, because, again, what we have to remember is that for—the American people need to understand this—is that these investigations are not run primarily by the United States attorneys. They are handled by assistant United States attorneys, career prosecutors. And so these——

Ms. SÁNCHEZ. She had no role in the investigation of Mr. Lewis?

Mr. GONZALES [continuing]. These investigations, these prosecutions continue, as they should. This great institution is built to withstand departures of U.S. attorneys and attorneys general.

Ms. SÁNCHEZ. So you don't think it is inappropriate for a U.S. attorney to accept a lucrative job offer from a law firm representing the target of one of their active investigations in a position that she held just prior to going to that law firm? You don't think that that is inappropriate?

Mr. GONZALES. Again——

Ms. SÁNCHEZ. You don't think that there is perhaps at least an appearance of a conflict of interest——

Mr. GONZALES. Congresswoman Sánchez, I am presuming, knowing Deb Yang the way that I do and the people in that firm, that

she would be recused from anything related to that matter as a member of that firm.

And, again, what is important for the American people to understand is, despite her departure, that case will continue, as it should.

Ms. SÁNCHEZ. So you are not concerned even with the appearance of conflicts of interest. It doesn't trouble you at all——

Mr. GONZALES. I am always concerned about the appearance of a conflict——

Ms. SÁNCHEZ [continuing]. Especially at a point when the Justice Department is under scrutiny, the morale is probably the lowest that it has been in decades, and people are questioning the integrity of the DOJ to act in an evenhanded and fair manner.

Mr. GONZALES. Of course, as head of the department, I am always concerned about the appearance and the perception. Of course I am.

But, again, this is more of a perception for the law firm as opposed to the Department of Justice because, as far as I know, we had nothing to do with placing Ms. Yang in that law firm. And as far as I know, nothing about that investigation has been impacted or affected in any way by virtue of her going to work in that firm.

Ms. SÁNCHEZ. What about this: Are you aware that 1 month before Ms. Yang resigned her post White House Counsel Harriet Miers had asked Kyle Sampson if Ms. Yang planned to keep her post or, as in Mr. Sampson's words to our investigators, "whether a vacancy could be created there in Los Angeles"? Were you aware of that?

Mr. GONZALES. I think I may be aware of that, based on my review. I can't remember now whether or not that is reflected in the document.

Let me just say this, a couple things about that.

Ms. Yang, when I said she left voluntarily, I think she left involuntarily, in that she had to leave for financial reasons. I think if she could have, she would have stayed. But I think she had to leave for financial reasons.

Mr. CONYERS. Former Chairman Jim Sensenbrenner of Wisconsin?

Ms. SÁNCHEZ. Mr. Chairman, if I could just beg your indulgence for 10 more seconds to ask unanimous consent that an article by *The New York Times* regarding the Yang matter be placed into the record.

Mr. CONYERS. Without objection, so ordered.

[The article follows:]

ARTICLE PUBLISHED IN *THE NEW YORK TIMES*, MAY 4, 2007, SUBMITTED BY THE HONORABLE LINDA T. SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND MEMBER, COMMITTEE ON THE JUDICIARY

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The U.S. Attorney, the G.O.P. Congressman and the Timely Job Offer

BYLINE: By ADAM COHEN

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There is yet another United States attorney whose abrupt departure from office is raising questions: Debra Wong Yang of Los Angeles. Ms. Yang was not fired, as eight other prosecutors were, but she resigned under circumstances that raise serious questions, starting with whether she was pushed out to disrupt her investigation of one of the most powerful Republicans in Congress.

If the United States attorney scandal has made one thing clear, it is that the riskiest job in the Bush administration is being a prosecutor investigating a Republican member of Congress. Carol Lam, the United States attorney in San Diego, was fired after she put Randy Cunningham, known as Duke, in prison. Paul Charlton, in Arizona, was dismissed while he was investigating Rick Renzi. Dan Bogden, in Nevada, was fired while he was reportedly investigating Jim Gibbons, a congressman who was elected governor last year.

Ms. Yang was investigating Jerry Lewis, who was chairman of the powerful House Appropriations Committee. Ms. Lam and most of the other purged prosecutors were fired on Dec. 7. Ms. Yang, in a fortuitously timed exit, resigned in mid-October.

Ms. Yang says she left for personal reasons, but there is growing evidence that the White House was intent on removing her. Kyle Sampson, the Justice Department staff member in charge of the firings, told investigators last month in still-secret testimony that Harriet Miers, the White House counsel at the time, had asked him more than once about Ms. Yang. He testified, according to Congressional sources, that as late as mid-September, Ms. Miers wanted to know whether Ms. Yang could be made to resign. Mr. Sampson reportedly recalled that Ms. Miers was focused on just two United States attorneys: Ms. Yang and Bud Cummins, the Arkansas prosecutor who was later fired to make room for Tim Griffin, a Republican political operative and Karl Rove protege.

It is hard to see what put Ms. Yang on the White House list other than her investigation of Mr. Lewis, which threatened to pull in well-connected lobbyists, military contractors and Republican contributors. Ms. Yang, by all accounts, had a strong record. Alberto Gonzales hailed her as "one of the most respected U.S. attorneys in the country."

The new job that Ms. Yang landed raised more red flags. Press reports say she got a $1.5 million signing bonus to become a partner in Gibson, Dunn & Crutcher, a firm with strong Republican

ties. She was hired to be co-leader of the Crisis Management Practice Group with Theodore Olson, who was President Bush's solicitor general and his Supreme Court lawyer in Bush v. Gore. Gibson, Dunn was defending Mr. Lewis in Ms. Yang's investigation.

Several issues bear investigating. First, did Ms. Yang know or suspect that she might lose her job, and jump ship to avoid being fired? That is not hard to believe because Ms. Miers and Mr. Sampson were exchanging e-mail about dismissing her in mid-September, and she announced her departure in October. Ms. Yang served on the Attorney General's Advisory Committee, which Mr. Gonzales has called "a small group of U.S. attorneys that I consult on policy matters." That may have put her in a position to be tipped off in advance.

A second possibility is that Gibson, Dunn dangled a rich financial package before Ms. Yang to get her out, and to disrupt the investigation of Mr. Lewis. Ms. Yang, who says she left her job purely for personal reasons, may not have known she was being lured away by people with close ties to Mr. Lewis and the White House, who were hoping to replace her with a more partisan prosecutor.

Another possibility is that the timing of her departure was coincidental. That would make her lucky indeed: after more than 15 years of working for government, she decided to take a private sector job precisely when the White House counsel was apparently trying to fire her.

It is impossible to know how much of a setback Ms. Yang's departure was to the investigation of Mr. Lewis. It could be that it slowed down after she left. It could also be that it is going forward just as it would have had she stayed. If it has not been affected, that could be because the close attention Congress and the press are paying to United States attorneys has prevented the White House from installing a "loyal Bushie," in Mr. Sampson's famous phrase.

United States attorneys serve, as the White House likes to point out, at the pleasure of the president. But if Ms. Yang, or any of the others, was pushed out to prevent justice from being done in a pending criminal matter, it would be a serious misuse of executive authority. It could also be obstruction of justice.

Congress is conducting closed-door interviews with Justice Department officials. That is important, but hardly enough. It is looking more and more as if the United States attorney dismissals were managed out of the White House. The way to put to rest the questions about Ms. Yang's suspicious departure, and the firings of the other prosecutors, is to require that Ms. Miers, Mr. Rove and other White House officials tell what they know, in public and under oath.

Mr. LUNGREN. Reserving the right to object.

Mr. CONYERS. For what purpose would you object to putting that in the record?

Mr. LUNGREN. Because we have identified a fellow Member of Congress as a specific target of investigation, it has been put on the record, and I think we ought to be very careful about that before we start besmirching Members' names around.

Mr. CONYERS. We are not besmirching. This is public information, Mr. Lungren, and I am going to allow it, and recognize the former Chairman of the Committee.

Mr. LUNGREN. I do object, Mr. Chairman.

Ms. SÁNCHEZ. I thank the Chairman.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I have a couple of questions about public corruption investigations as well.

In January of 2006, the former legislative director to Representative William Jefferson of Louisiana, Brett Pfeffer, pleaded guilty to aiding and abetting the bribery of a public official and conspiracy. In May of 2006, Vernon Jackson pled guilty in Federal court to bribing Representative Jefferson with more than $400,000 of payments. It has been on the public record that during a execution of a search warrant in Representative Jefferson's house, there was $90,000 of cold cash that was found in Representative Jefferson's freezer.

And all of that was a year ago. My constituents are asking me when something is going to happen, whether an indictment is going to be returned or whether the Justice Department is going to make an announcement that there is insufficient evidence to prosecute Representative Jefferson.

When can the public expect some news one way or the other on this issue?

Mr. GONZALES. Congressman, you know I cannot talk about that.

Mr. SENSENBRENNER. Well, everybody is talking about it except you.

And, you know, this is kind of embarrassing, because this Committee—and it was on my watch when all of this happened—is asked questions about what kind of oversight are we doing over the Department of Justice.

And the two guilty pleas were last year. The raid on Mr. Jefferson's house was, I believe, earlier than that. And then there was the raid on his office that posed a whole host of legal problems that are currently on appeal and will be argued next week before the United States Court of Appeals for the D.C. Circuit.

I am just interested in finding out when this matter is going to be brought to conclusion, because we authorize and appropriate a heck of a lot of money to run your department and people are wondering what the dickens is going on.

Mr. GONZALES. I have every confidence that the prosecutors in this case, as the prosecutors in all these cases, they follow the evidence. And at the appropriate time, they will take the appropriate action, Congressman.

That is all that I can say with respect to this particular case.

Mr. SENSENBRENNER. Would you believe that the legal issues that were raised both by Mr. Jefferson and by the counsel to the clerk of the House of Representatives on the raid on Jefferson's of-

fice in this very building has ended up slowing a decision on whether or not to indict Mr. Jefferson?

Mr. GONZALES. Congressman, I am not going to comment on that. I don't think it would be appropriate. At the appropriate time, I hope that I can have more to say about this matter.

Mr. SENSENBRENNER. Well, I would hope that the appropriate time would be pretty soon. Because the people's confidence in your department has been further eroded, separate and apart from the U.S. attorney controversy, because of the delay in dealing with this matter.

There is a man who has already been convicted of bribing the representative. My learning about the crime of bribery in law school says that in order to obtain a conviction there has to be a briber and the bribee.

The briber has been convicted. The alleged bribee has not even been indicted. And I think that there is a disconnect involved in this in the eyes of the public.

And we all suffer as a result of that, as Members of Congress, that something is going on that hasn't been resolved.

I have made my point. I hope that you will tell your prosecutors to wrap this thing up and to let the public know as soon as they possibly can. And I hope that that is really soon.

And I yield the——

Mr. LUNGREN. Would the gentleman yield?

Mr. SENSENBRENNER. And I yield the balance of my time to the gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

We have been having a bit of a discussion over here. And I would just like to ask—and probably yield back to the gentleman so that he can yield to Mr. Lungren.

But I don't recall that Mr. Lewis has been identified as a target in an investigation. And I would like to ask the gentlelady if she is aware that he has been identified as a target.

Mr. SENSENBRENNER. I yield to the gentlewoman from California, Ms. Sánchez.

Ms. SÁNCHEZ. I believe if you look at *The New York Times* article that was posted, that it states, "Ms. Yang was investigating Jerry Lewis, who was Chairman of the powerful House Appropriations Committee."

Mr. SENSENBRENNER. I further yield to the gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Sensenbrenner. But I would appreciate it if you would yield to the gentleman from California——

Mr. SENSENBRENNER. I yield to the gentleman from California, Mr. Lungren.

Mr. LUNGREN. As anybody knows, there is a huge difference between an investigation and a target.

When I was attorney general of the State of California, we had investigations of literally hundreds of public officials. When someone brings an accusation, you have to look at it. That is a very different thing than being a target.

We take extreme caution to make sure you do not besmirch the reputations of people, because that is unfair. And that is the point I was trying to make.

We in this Congress 20 years ago besmirched the reputation——

Mr. SENSENBRENNER. Reclaiming my time before it is expired, I would just point out that in the Jefferson case, there have been people who have been convicted of misconduct involving Mr. Jefferson. With *The New York Times* article, there has not been an identification that Representative Lewis is even a target.

Mr. CONYERS. Just a moment. I will let Attorney General Gonzales respond.

Mr. GONZALES. Mr. Chairman, so that there is no misunderstanding, the department has not confirmed, is not confirming that Mr. Lewis is a target.

Ms. SÁNCHEZ. Mr. Chairman, could I beg your indulgence for 30 seconds?

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent I be given an additional 30 seconds to yield to her.

Mr. CONYERS. Without objection, so ordered.

Mr. SENSENBRENNER. I yield.

Ms. SÁNCHEZ. I appreciate you yielding.

Just to set the record straight, the question that I put to the Attorney General was Ms. Yang was conducting an active investigation. I didn't say "target." I said "conducting an investigation." My words seem to get twisted in this Committee and more import given to basic questions and sinister——

Mr. CANNON. Point of personal privilege, Mr. Chairman.

Ms. SÁNCHEZ [continuing]. Attributed to them.

And, with that, I will yield back to the gentleman from Wisconsin.

Mr. CANNON. Point of personal privilege, Mr. Chairman. I stated correctly the word used by the gentlelady from California.

Mr. CONYERS. The Chair recognizes the Subcommittee Chairman on the Constitution, Jerry Nadler.

Mr. CANNON. Mr. Chairman, I make a point of order and ask that the gentlelady's words be taken down.

Mr. CONYERS. Come on, now. Let the——

Mr. CANNON. I am happy with an apology, but the gentlelady used the word "target," and that is exceedingly inappropriate under the circumstances.

Mr. CONYERS. Mr. Cannon, the record is being taken. This will all come out now. I have no intention of delaying the appearance of the Attorney General of the United States while we take down the words of someone.

Mr. CANNON. The Chairman knows it is exceedingly hard to be gracious in this Committee, and apologizing would be appropriate, but otherwise I insist that the gentlelady's words be taken down as a point of order.

Ms. SÁNCHEZ. If the gentleman will yield, I don't recall—and I have the questions in front of me—using the word "target." Had I used it, I certainly apologize for using that word. My understanding is my questions dealt with——

Mr. CONYERS. Will the gentlelady agree to withdraw any reference to "target" from the record if it is there?

Ms. SÁNCHEZ. I would. I would, Mr. Chairman. If it will expedite this hearing, I will.

Mr. CONYERS. Thank you.

Mr. CANNON. Thank you, Mr. Chairman. I withdraw my point of order.

Mr. CONYERS. Thank you very much.

Mr. Nadler?

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Attorney General, when did Monica Goodling start in her role as special counsel to you and the White House liaison?

Mr. GONZALES. Congressman, I am not sure the exact date, but I would be happy——

Mr. NADLER. Roughly?

Mr. GONZALES. I am not sure. I would have to get back to you.

Mr. NADLER. Can you give me the year?

Mr. GONZALES. You know, I don't whether or not it was in the fall of 2005—sometime in 2005.

Mr. NADLER. Roughly, you know, okay.

Now, to your knowledge, was Ms. Goodling involved in the hiring decisions of career assistant U.S. attorneys at any point?

Mr. GONZALES. I am certainly aware, now, of allegations that—well, she used to be the deputy, of course, in the Executive Office of the United States Attorneys. And so there she would have some role with respect to the hiring of career assistant United States——

Mr. NADLER. As special counsel and White House liaison, when she had that position, was she involved?

Mr. GONZALES. I think she did have some role in that position.

Mr. NADLER. Isn't that process reserved for U.S. attorneys, and in some cases for the Executive Office of the United States Attorneys?

Mr. GONZALES. Is what——

Mr. NADLER. The selection process for assistant USAs.

Mr. GONZALES. Typically, that is something that is conducted within the office of the specific United States attorneys' offices. There would be, however, if you are talking about a situation where you had an interim United States attorney, there are——

Mr. NADLER. Well, we weren't talking about interim attorneys. We were talking about generally.

Now, allegations have been might that Ms. Goodling considered the political affiliations of career AUSA applicants. Would you agree that, if that is true, that practice would violate not only Department of Justice policy but also Federal law?

Mr. GONZALES. In fact, those are very, very serious allegations. And if that happened, it shouldn't have happened.

Mr. NADLER. Now, Mr. Attorney General, when this Committee asked Ms. Goodling to testify in front of us, she claimed her fifth amendment right, which says you can't be forced to—what is the word—incriminate yourself with respect to a crime.

Can you tell this Committee, from your stewardship of the department, what crimes there were that it might have been reasonable for her to think that her testimony might incriminate her or anybody else in?

Mr. GONZALES. Well, I can't do that, Congressman.

Obviously, it has always been my expectation and hope that Justice Department employees or former Justice Department employees would come forward and cooperate in connection with this investigation. I offered up everyone.

Mr. NADLER. But you are not aware of any—when someone who is the Deputy Attorney General, or special counsel to the Attorney General, says that her testimony about the U.S. attorneys matter might implicate her in a crime, you are not aware of any crimes that she might have been referring to?

Mr. GONZALES. I offered her up——

Mr. NADLER. Or speaking of, I should say.

Mr. GONZALES [continuing]. To come testify.

Mr. NADLER. What?

Mr. GONZALES. As an initial matter of course, I offered up people on my staff——

Mr. NADLER. You are not aware of that.

Now, you have testified that you ask yourself every day whether you can be effective as the head of the Department of Justice. Did you consider that, by many accounts, the morale at the Department of Justice and throughout the U.S. attorney community is at its lowest level since just after Watergate?

Mr. GONZALES. Did I consider that—I don't know what is the source of that statement.

Mr. NADLER. Well, let me give you a different statement, then. The recent ABC-*Washington Post* poll reports that 67 percent of the American people believe that the firings of U.S. attorneys were for political reasons, not for performance-based reasons. And, indeed, former Deputy Attorney General Comey said that the people who were fired had the highest performance, that they weren't for performance-based reasons.

If the American people don't believe you about this matter, how can they have confidence in other things you claim or that public corruption cases brought by your department are not similarly based on political considerations?

Mr. GONZALES. I think the American people are most concerned about the things that I alluded to earlier, Congressman. And that is, is our country safe from terrorism? Are we making our neighborhoods safe? Are we protecting our kids?

I will work as hard as I can, working with this Committee and working with DOJ employees, to reassure the American people that this department is focused on doing its job.

Mr. NADLER. But you have a situation where most people believe that you didn't tell the truth about the U.S. attorneys. And if that is the case—they may be concerned about terrorism and ought to be, obviously, but it is a separate issue.

If most people believe that the United States Attorney General has not told the truth about why these U.S. attorneys were fired, how can they have confidence in your job?

Mr. GONZALES. I don't believe that is an accurate statement. And what I am trying to do in appearances like this is to set the record straight.

Mr. NADLER. Well, 67 percent of the American people, according to the ABC-*Washington Post* poll, believe that the firings of the U.S. attorneys were for political reasons and not for performance-based reasons, which is exactly the opposite of what you have testified to.

Mr. GONZALES. I don't know when that poll was taken.

But, again, we have been very, very forthcoming, Congressman, in terms of our testimony——

Mr. NADLER. Well, all right. That is a matter of opinion.

But let me ask you this: If it is true, as you have testified, that you had very little personal involvement in the decision to fire the eight U.S. attorneys, you delegated that, you weren't really familiar with the reasons and the specifics—and that is what you said—and did not know the reasons some of them were on the list, how can we believe that you were involved in a hands-on manner in running the department in numerous other important issues?

Mr. GONZALES. Look at the record of the department. Look at the record of the department.

Mr. NADLER. No, that doesn't answer the question. If you have stated to this Committee and to other Committees that in the matter of firing eight U.S. attorneys which you signed off on, you signed off on it without really knowing why or what their performance was, how can we believe that you really know what is going on in the department?

Mr. GONZALES. I think I was justified as head of the department to rely upon the people whose judgment that I valued, people who would know a lot more about the performance of United States attorneys. I think as head of the department I was justified in doing so.

Now, in hindsight, I have already said, I would have used a process that was more vigorous. There is no question about that. But, again, Congressman, I would say, look at the record of the department in a wide variety of areas and——

Mr. NADLER. Well, let's look at the record of the department in a different area: national security letters. Why is the government issuing NSLs to conduct fishing expeditions or, as the I.G. put it, to access NSL information about parties two or three steps removed from their subjects without determining if these contacts are real suspicious connections?

Mr. GONZALES. Well, of course, the I.G. also said that national security letters are indispensable—indispensable.

Mr. NADLER. That is not the question. Excuse me. National security letters properly used may be indispensable. But they were abused. That was the I.G——

Mr. GONZALES. There is no question about that.

Mr. NADLER. So why is the department issuing NSLs to conduct—I will just repeat the question—to conduct fishing expeditions, as the I.G. put it——

Mr. CONYERS. The gentleman's time has expired.

Mr. NADLER. May I have 1 additional minute?

Mr. CONYERS. Finish the question.

Mr. NADLER. Thanks.

To access NSL information about parties two or three times removed from their subjects without determining if these contacts are real suspicious connections?

Let me add to that, why is there no policy or practice of destroying information collected thusly, wrongly collected on innocent Americans?

Mr. GONZALES. There is a long answer I need to give with respect to NSLs. I am not sure whether or not now is the time to do it.

But the I.G. identified some very serious issues with respect to the FBI's use of national security letters. No question they are an indispensable tool, but they have got to be used in a responsible manner, and we failed to do that. We did. We failed to do that.

And the American people need to understand that we are taking steps to ensure that that doesn't happen again. The standard is whether or not is it relevant to a national security investigation.

Mr. NADLER. Are you taking steps to destroy information on people who are not involved in terrorism?

Mr. GONZALES. Yes. If it is not relevant to a national security investigation, yes, we are taking steps.

Mr. NADLER. Well, the testimony was that those records were not being destroyed.

Mr. CONYERS. The Chair recognizes the gentleman from North Carolina, Howard Coble.

Mr. COBLE. Thank you, Mr. Chairman.

And, General, good to have you on the Hill. I am going to pursue a different line of questioning. If time permits, I am going to come back to the U.S. attorney situation.

General, I am particularly interesting in the activities of the Computer Crime and Intellectual Properties Section, known as CCIP, at the Department of Justice.

Intellectual property theft is an enormous theft, as you and we all know. Are you confident, General, that the Justice Department has the necessary tools to investigate and prosecute high-level intellectual property cases that could severely interrupt or eliminate international criminal networks who are using intellectual property piracy to fund their organizations, A?

And B, I am told that there may be an insufficient number of FBI special agents at the department who, to successfully work these complicated cases.

And finally, C, General, how can we more successfully prevent or prosecute counterfeiting and intellectual piracy crimes in the United States and around the world?

That is a three-part question I threw at you.

Mr. GONZALES. Let me start with the last one, in terms of what we can do to work against counterfeiting.

One is prosecution, and utilizing the tools that Congress has given us to go after counterfeiters.

This is not an issue that we can deal with solely through the United States. We have to have the cooperation of our friends and allies around the world. And so, when I travel around the world, intellectual-property theft is always an issue that I raise. Because we can't successfully deal with it here in this country.

The second way to deal with counterfeiting is education, to educate the public about the dangers of counterfeiting. For example, if you are talking about counterfeiting of drugs, that could be dangerous to the consumer. If you are talking about counterfeiting of an airplane part, that could be dangerous to people who fly on airplanes. And so education is a very important part of that.

Whether or not we have sufficient agents working on these complicated cases, I suspect if I were to ask the director he would say we always need more resources. You always need more agents, because these are very, very complicated cases.

The whole area of, you know, computer technology, the Internet, it is wonderful for consumers. It is wonderful for the American people. But the changes in technology are such that in the hands of criminals, in the hands of terrorists, it presents unique challenges to those of us in the law enforcement community.

Criminals and terrorists will pay to advance technology. They see what we do. And so when we do something to defend against this kind of theft, defend against these kind of criminal activities, then they will go out and they will pay top dollar for the top innovators. And they get changes in technology, new encryption. And it makes it much more difficult for us to track them.

So this is a continuing struggle. It is a war on many fronts, whether you are talking about Internet pharmacies that are springing up that are illegitimate, whether or not you are talking about Internet crimes involving our children. This is a real war that is being waged over the Internet, being waged through technology.

And I do sometimes worry that we don't have the best minds on this, we don't have adequate resources. And I think that is something that I would love to talk to Congress about because I worry about this very much.

Mr. COBLE. Well, I, too, worry about it, General, and I am concerned. I hope that the American public is aware of the threat that is potentially posed by this problem. But in any event, I thank you for that.

Now let's come back to the U.S. attorney situation. Since the U.S. attorney situation arose, General, have you implemented any new processes or procedures governing or dictating the dismissal of U.S. attorneys to ensure that a similar situation will not occur in the future in either this or future Administrations?

Mr. GONZALES. I have certainly thought about what I would have done differently in terms of a more vigorous and a little bit more formal process.

But I want to emphasize something for the Committee, and this is very important. I think to a person, in terms of the U.S. attorneys that I have spoken with, they don't want a formal review process. They don't like it. They don't want it.

They do want to be told if there are issues with their performance, have somebody let them know ahead of time and give them an opportunity to correct it.

The other reason I would resist a formal process is because we all serve at the pleasure of the President. And if, in fact, we had a formal process and that formal process says Al Gonzales is doing well, or that this U.S. attorney is doing well, politically it may make it more difficult for the President to exercise his constitutional authority.

So we don't want a formal process per se, but I think something a little bit more structured, something a little bit more vigorous would have made sense.

And clearly I think one thing that we are going to do is at least once a year every United States attorney is going to sit down with either myself or the Deputy Attorney General and we are going to have a very candid conversation about issues and problems in their districts. If I have heard of complaints from someone that is a Member of Congress, it gives me an opportunity or the DAG, the

Deputy Attorney General, an opportunity to tell the U.S. attorney what we are hearing.

So I think that is something that needs to be in place. That has never been in place before.

The level of communication between main Justice and our United States attorneys, what I have discovered, is not very good. We can do better, and I think we are going to make it better.

Mr. COBLE. And I want to follow up, General, with the counterfeiting and piracy problem subsequently.

And, Mr. Chairman, I see my red light is illuminated. So I will sit down and shut up.

Mr. CONYERS. Well, you can submit the question to him to be answered later.

Mr. COBLE. I thank you.

Mr. CONYERS. The Subcommittee Chairman on Crime, Bobby Scott of Virginia?

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you, Mr. Gonzales, for being with us today. I wanted to pose a question and get a response in writing later from you.

Representative Wolf, Representative Maloney and I wrote you a letter a few months ago, recommending and requesting that you make better use of the tough measures in the Protect Act and the Adam Walsh Act to go after domestic traffickers in this country, rather than using measures only involving force, fraud and coercion. The bills we passed make it much easier to go after the notorious and brutal system of domestic prostitution. And we are going to ask you why you are not making better use of that information.

Last week, we also had a vote on potential discrimination in the Head Start program. You have not been able to discriminate in employment based on religion during the entirety of the 40 years of the Head Start program. An attempt was made to allow some to discriminate.

Can we count on your opposition to any effort to water down the discrimination prohibitions in the Head Start program?

Mr. GONZALES. Obviously, Congressman, that would be something that would be of concern to me. Whether or not I would oppose legislation, I have to look at it first. And the Administration speaks with one voice, but it is something I would look at very seriously.

Mr. SCOTT. Can you conceive of your support for a provision that would tell a prospective Head Start teacher that, "You can't get a job here because of your religion"?

Mr. GONZALES. Well, Congressman, I would like to look at that. But, again, that would be something that I would be concerned about.

Mr. SCOTT. One of the problems we have had in the Crime Subcommittee is the situation where people do not want to cooperate with the police. There is a culture of no snitching and not coming forth to participate as witnesses. Part of the problem is we have to have confidence that the criminal justice system is impartial.

Now, one of the questions that was asked, I think the gentleman from Texas asked, did the White House ask you to seek removal of a U.S. attorney for retaliation? Now, let me change that a little

bit. Did the White House ask you to seek the removal of any U.S. attorney?

Mr. GONZALES. Congressman, I have a recollection of Mr. Rove raising concerns about prosecutions of voter fraud cases in three districts. Of course, I have now been made aware of the fact that there was a conversation with the President that basically mentioned the same thing. This was in October of 2006.

There is a process within the White House Judicial Selection Committee process, where decisions are made with respect to the appointment of judges. That also involves the appointment of U.S. attorneys. It is conceivable that in those meetings, there was some discussion about someone leaving. But I don't have any specific recollection——

Mr. SCOTT. The question of people leaving—we had the CRS do an investigation. And they only found 10 cases of U.S. attorneys leaving, other than the usual practice of a new set coming in, only 10 in the last 25 years. And they found that each and every one of those is involved in a scandal or removed for cause.

Can you give us the name of anyone in the last 25 years that you know of that CRS couldn't find that was fired or asked to leave involuntarily, other than a scandal?

Mr. GONZALES. I am not familiar with the CRS report. I don't know how they conducted their review.

I will tell you that there are many instances where someone engages in certain kinds of conduct that are improper. There is a quiet conversation that occurs, and then that person decides, "I am going to leave voluntarily." And so, I don't know whether or not the CRS is capable of identifying those kinds of——

Mr. SCOTT. Okay. They couldn't find one that didn't leave other than for cause.

Now, in your testimony you indicated that it would be an improper reason for the removal of a U.S. attorney, and an improper reason would be the replacement of one or more U.S. attorneys in order to impede or speed along particular criminal investigations for illegitimate reasons.

You call that improper. Wouldn't that be illegal?

Mr. GONZALES. Yes, that would be interference——

Mr. SCOTT. Okay.

Mr. GONZALES [continuing]. Depending on the circumstances.

Mr. SCOTT. Now, in light of the fact that some people have been designated as loyal Bushies, we know that some of the U.S. attorneys got telephone calls from political figures and were fired. Are you aware of any that got political phone calls, with attempts to apply political pressure, that were not fired?

Mr. GONZALES. I would have to go back and look at that, Congressman.

Mr. SCOTT. The editorial that was put in the record indicates that Mrs. Yang had been designated—been called by you as one of the most respected U.S. attorneys in the country. The editorial says that Harriet Miers focused on only two U.S. attorneys for removal, her and one other.

Can you explain how Mrs. Yang's name got on that list of attorneys to be removed?

Mr. GONZALES. I don't recall that her name was on the list of attorneys to be removed. But let me just say——

Mr. SCOTT. Well, was she not targeted by Harriet Miers?

Mr. GONZALES. I recall knowing about Ms. Yang's concern about remaining in the position because of the financial situation. She would have to—it was my understanding——

Mr. SCOTT. Was she not on a target list of Harriet Miers?

Mr. GONZALES. I don't recall her being on a target list for Harriet Miers. I think that Ms. Miers may have known about Ms. Yang's concern about continuing to remain on the job for financial reasons. And therefore, that being a very important office, it would be understandable——

Mr. SCOTT. You dispute the editorial in *The New York Times*, May 4, 2007?

Mr. GONZALES. I haven't read the editorial, Congressman. What I am trying to tell you is that Ms. Miers may have known——

Mr. SCOTT. If you could respond in writing so that you can——

Mr. CONYERS. Time is expired.

Mr. SCOTT. Mr. Chairman, could I ask just that he respond in writing to the allegations made in the editorial? Thank you.

Mr. CONYERS. The gentleman from California, Elton Gallegly?

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Welcome, General Gonzales.

As Members of this Committee and as Members of Congress, we all have varied priorities, as I am sure you are well aware. But I would hope that no priority for any Member of this Committee or this Congress is greater than working to make this nation as safe as possible, as it relates to another terrorist attack.

Mr. Gonzales, *The Washington Post* reported just this morning that at least two members of an alleged terrorist cell in New Jersey were illegal aliens and had been stopped by the police repeatedly for traffic violations.

This is eerily similar to the case of Mohammed Atta, who was here illegally and was pulled over by the Florida State Police for a traffic violation. A mere month later, he flew an airplane into the World Trade Center.

What steps is the Department of Justice taking to ensure that illegal aliens who are stopped for traffic violations or other crimes are identified and deported?

Mr. GONZALES. Well, of course, those stops generally would occur by State and local officials.

Mr. GALLEGLY. Right.

Mr. GONZALES. And the question is whether or not that information is shared with the department and shared with the Department of Homeland Security. And I know there has been a concerted effort by the Department of Homeland Security to try and encourage State and locals to be of more assistance in dealing with illegal aliens here in this country.

And, obviously, some jurisdictions are prohibited by law from doing so. Some jurisdictions do not want to do so because they don't have the resources, because they believe it will hurt their relationships in the community. But some jurisdictions are stepping up and providing additional assistance.

And where in fact we can prosecute people, we do so. But I will be candid with you, Congressman: I mean, it is a question of resources in many cases because you are talking about thousands and hundreds of thousands of people. And unless you are talking about someone who is engaged in a very serious crime, sometimes the resources are such that we have to look at prosecuting other crimes first.

Mr. GALLEGLY. Well, I appreciate the answer, and I know that is an ongoing problem working with other jurisdictions. But, as you well know, history has a very, very strong history of repeating itself. That is the reason I asked that question.

On an issue that is more directly related to your office, this past Saturday—and I am not normally one that quotes *The Washington Post*, but it was a source of a page-one story that interested me greatly. It was regarding the issue of illegal immigrants who have ignored and evaded deportation orders.

These people, who are known as alien absconders, are not just people who came to the country illegally, but in many cases are those that have committed serious crimes in this country.

The article points out that, as of April of this year, there is a backlog of over 636,000 illegal alien absconders. This number has more than doubled since the year 2001.

What is the Department of Justice doing to identify, apprehend, and deport alien absconders and those that have flaunted the deportation orders by the United States courts? And are you satisfied with that as a priority?

Mr. GONZALES. I think that we are doing everything we can do.

But, quite frankly, again, because there are issues relating to resources—there are also issues relating to space, bed space in our prisons. And bed space that can be contracted out from State and local jurisdictions.

And so I am confident that we are doing everything that we can do. But, again, it is a question of seeing if we can find additional space to actually hold these people.

And, again, I think this would be one reason why I think the President is supportive of comprehensive immigration reform that is workable. Because we have to have a system, whatever we do by Congress. And the President has laid out principles that he supports.

But whatever it is, it has got to be one that is workable, where we don't have a situation that someone who has been determined to be unlawfully in this country nonetheless is released because we have no place to put them. And then they hide in our neighborhoods.

Mr. GALLEGLY. In the last 18 months of your term, what specific steps are you planing to take to improve the process of prosecuting those who violate immigration laws, particularly drug smugglers and human trafficking?

Mr. GONZALES. I think one of the things we are going to do is have a conversation with United States attorneys, get an assessment about what additional resources may be available to throw at these particular cases, have a conversation perhaps with Harley Lappin, the director of prisons, to see is there anything else that we can do for additional bed space. What can we do in terms of

contracting out? Have more conversations with the Department of Homeland Security. So these are things that we could look at.

But I think to really address this problem, it will probably require additional resources, and I think seriously requires a change in our immigration laws. We need to have a system that is comprehensive and one that is really workable.

Mr. CONYERS. Time is expired.

Mr. GALLEGLY. I see that the time has expired.

I would just like to respond to the statement that, with all due respect, Attorney General, I think that the laws aren't the primary problem. I think the will to enforce the laws as it relates to immigration plays a very big role.

And, Mr. Chairman, with your permission, because of the time situation, I would ask unanimous consent that we may be able to ask additional questions in writing and have them responded to and made a part of the record of the hearing.

Mr. CONYERS. Absolutely. That has been understood, and we will continue that procedure.

Mr. GALLEGLY. Thank you.

Mr. CONYERS. The Chair of the Immigration Subcommittee, Zoe Lofgren?

Ms. LOFGREN. Thank you, Mr. Chairman.

I do have some questions on the U.S. attorney situation. But before I ask that, I would just like the Attorney General not to answer today but to spend some time attending to the dreadful situation of the FBI name check.

As of May 4th of this month, USCIS had sent and had pending 300,000-plus names to the FBI; 155,000 of those name checks have been pending for more than 6 months. And we know, historically, that far less than 1 percent ever have any problem.

But this is a real problem for two points of view.

One, economically, if you have got somebody that needs to be cleared, this messes it up. And, as a matter of fact, I just got a call from a venture capitalist in Silicon Valley, this huge venture that could end up hiring hundreds of Americans, is just stalled because of a 3-year delay. They just can't get any answer at all out of the engineer and the inventor that they know about.

The other side is, for that less than 1 percent, we are not finding them, and that could be a threat.

So I don't want you to answer now, but I do hope that you will get back to this Committee, because it is an outrageous situation.

Now I would like to inquire about the situation of U.S. Attorney Todd Graves. Here we have been pursuing—I am on the Subcommittee of jurisdiction—we thought there was eight U.S. attorney situations. And now, according to press reports, there is a ninth U.S. attorney situation.

And I would like to know, the news media is reporting that Mr. Graves had been targeted for removal on Mr. Samson's list as early as January of 2006. And one reason suggested in the press is that in November of 2005 the U.S. attorney, Mr. Graves, refused to sign onto a lawsuit that was proposed by main Justice accusing the State of Missouri of improper conduct regarding its voter rolls.

Would you have recommended Mr. Graves for removal based on that exercise of his prosecutorial judgment?

Mr. GONZALES. I have no basis to believe that, in fact, that particular case has anything to do with Mr. Graves' departure. I have spoken with the head of the Civil Rights Division this morning about this; obviously just became aware of Mr. Graves' statements in today paper. I spoke with Wan Kim, head of the Civil Rights Division. He signed the complaint. He stands behind that particular case. He is not aware of any concerns that existed in that office.

Now, we haven't spoken to everyone in that office, but we are not aware of any concerns that existed in that office with respect to this particular case. The assistant U.S. attorney signed on the complaint as well. Mr. Graves' name is on the complaint.

The case involved whether or not the voter lists were accurate in Missouri, and the Democratic secretary of state issued a statement saying——

Ms. LOFGREN. Mr. Attorney General, are you aware that just last month this litigation was dismissed for lack of evidence? Doesn't that suggest that the judgment not to file might have been the right one?

Mr. GONZALES. Well, again, we are evaluating whether to appeal. But it is my understanding that the judge decided that the department should not have sued the secretary of state but should have sued the local jurisdictions. So that is the primary basis for the dismissal, as I understand it.

And, again, the Democratic secretary of state issued a statement saying basically, "You got us. Our roles are incomplete and inaccurate." And I think it is legitimate for the American people to expect that voting lists be reasonably accurate. That is what Congress required in its laws.

Ms. LOFGREN. I understand—and this is really based on press reports so I don't have any firsthand knowledge—that Mr. Schlozman had vote fraud experience but little prosecutorial experience, and that when Mr. Graves was left, that Mr. Schlozman was almost immediately appointed by you as his replacement.

I mean, just looking it at, doesn't it look like there was some plan in place to replace this Mr. Graves with Mr. Schlozman related to this prosecution? And isn't it true that the department's own criteria for bringing lawsuits would tend to indicate that lawsuits would not be brought just before an election?

Mr. GONZALES. The substance and timing of the—well, let me just say again that I spoke with the head of the Civil Rights Division this morning and he stands behind this litigation. He believes it was an appropriate use of the department's resources. And we will determine whether or not to——

Ms. LOFGREN. Well, I don't want to be rude, Mr. Gonzales, but the bells are ringing and I just have 1 more second to read very briefly the quotes in the Boston Globe that says, "'Schlozman was reshaping the Civil Rights Division,' said Joe Rich, who was chief of the Voting Rights Section until 2005. In an interview he said, 'Schlozman didn't know anything about voting law. All he knew was he wanted to make sure that Republicans were going to win.'"

And that was from the career guy who got pushed out from the department. I would like your comments on that in writing later.

I know my time has expired, Mr. Chairman.

Mr. CONYERS. Former attorney general of California, Daniel Lungren?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Attorney General, when I was attorney general of California, I only had 1,000 lawyers and 5,000 employees. How many do you have?

Mr. GONZALES. Approximately 110,000.

Mr. LUNGREN. And how many lawyers?

Mr. GONZALES. Oh, about, I think, 10,000 to 15,000.

Mr. LUNGREN. And how many U.S. attorneys?

Mr. GONZALES. We have 93 U.S. attorneys.

Mr. LUNGREN. Do you actually delegate?

Mr. GONZALES. Yes.

Mr. LUNGREN. Do you delegate authority at times?

Mr. GONZALES. Of course.

Mr. LUNGREN. I mean, that seems to be a surprise here, that you would delegate. I mean, I delegated occasionally when I was attorney general. And sometimes I found out that those to whom I delegated responsibilities didn't perform the way I thought they would, and tried to make some changes thereafter.

But really, we sometimes confuse here, it seems to me, the question of competence versus the question of criminality. And that is the concern that, of all Committees of the House, this ought to be of the highest priority.

Let me ask you this: In terms of U.S. attorneys, do you expect that they should reflect the emphases of the President of the United States?

And what I mean by that is, we have presidential elections every 4 years. A President comes in and says, "I want to make crime-fighting the number-one priority; I want to give assistance to the states with their drug-fighting; I want to assist the states in going after gangs."

Do you expect that your U.S. attorneys ought to at least pay some attention to the priorities of a President of the United States, that is, his Administration's policies?

Mr. GONZALES. Yes. In fact, we have a conversation with him when they come on board and we make it clear that the President is accountable to the American people for the policies and priorities which he campaigned on. And those can only be carried out by the Attorney General——

Mr. LUNGREN. But isn't that political?

Mr. GONZALES. Well, I think, with respect to policies and priorities, one could say it is political, but that would be okay. That would be okay to do——

Mr. LUNGREN. I think so, but some people find that shocking.

It has been said—and I know we are not supposed to counter editorials of *The New York Times* and other articles, but I am aware of at least one case, in a U.S. attorney in California, in a prior Administration, that left office. You won't find a record that that person left office because of lack of performance, but I happen to believe that is the case. We are acting around this place like U.S. attorneys are the product of the Immaculate Conception, and once they have been created that cannot be undone.

Now, let me ask you this about voter fraud: Do you believe that we ought to investigate voter fraud that might take place as the result of people who are dead still being on the rolls?

Mr. GONZALES. Congressman, it is the law. We have an obligation to investigate and prosecute voter fraud.

Where this notion that somehow voter fraud is a dirty word, I don't understand it. Because you are talking about people stealing votes, canceling out legitimate votes.

And so we have an obligation—as a minority, to me it is extremely important to make sure that votes count. And I think we have an obligation at the department to pursue voter fraud.

Mr. LUNGREN. I have been a little confused by some of the statements that have come out of the Justice Department and from you, quite frankly, Mr. Attorney General, about the propriety of reviewing the performance of U.S. attorneys who might be performing well as attorneys but not be bringing forward the emphases or the priorities of the Administration.

Do you think that is an appropriate thing to bring up in terms of a review, as opposed to whether or not they are good attorneys and they prosecute cases well; that is, the array of their resources with respect to the priorities of the Administration?

Mr. GONZALES. I do.

Mr. LUNGREN. And would that, could that be the grounds for making a determination as to whether a U.S. attorney stays?

Mr. GONZALES. It could be.

Mr. LUNGREN. Under the statute, does a U.S. attorney have a prescribed term?

Mr. GONZALES. The statute says 4 years. But, of course, the statute also says that they may be removed by the President.

Mr. LUNGREN. So it is a maximum of 4 years unless reappointed. Is that correct?

Mr. GONZALES. What is customary—I wouldn't say customary—what often happens is that U.S. attorneys simply hold over unless there is a decision made by the President to make some kind of change.

Mr. LUNGREN. So I am trying to——

Mr. GONZALES. What I would say is that this is a privilege. I have the privilege of serving as the Attorney General. If the President comes to me today and says, "I no longer have pleasure in you continuing to serve," that is the way it works.

Mr. LUNGREN. Did the President of the United States or anybody from the White House tell you to investigate or remove any U.S. attorney because they were launching a particular investigation against a Democrat or Republican for partisan reasons, or to back off of any such prosecution?

Mr. GONZALES. They never said it to me.

Mr. LUNGREN. Did you ever say that to anybody?

Mr. GONZALES. No.

Mr. LUNGREN. Anybody in your department say that that you know of?

Mr. GONZALES. Not that I am aware of.

Mr. LUNGREN. Thank you, Mr. Attorney General.

Mr. CONYERS. Mr. Attorney General, we are going to recess for the votes, of course. And we will resume immediately after the votes have taken place on the floor of the House.

Thank you very much.

[Recess.]

Mr. CONYERS. The Committee will come to order.

We thank you for your cooperation, Attorney General.

The Chair recognizes the gentlelady from Houston, TX, Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much.

Good afternoon, Mr. General.

And let me thank the Chairman and the Ranking Member. This is a vital hearing and question-and-answer process for protecting the integrity of the Constitution and the integrity of your office, which I assume you have come today to be as open as you could be in order to ensure that that happens.

Before I start the questioning on the matter at hand, let me share with you consternation and frustration that we have dealing with a question of the viability, the constitutionality of the prison system in the State of Texas.

It goes really to the overall question that this chart that I will hold up suggests, is that under your tenure, starting from 2005, every civil rights case has gone down. It means police abuse, racial violence, hate crimes, human trafficking under your clock and under your watch, it has been a steady decline of prosecutions by the Attorney General. That poses a crisis for America.

Let me just quickly ask for your assistance. You may not be able to answer this, but this is a crisis.

I hold up an article that indicates that in Houston, TX, we will double the number of deaths in the Harris County jail—11 right now, 117 over 10 years—and a sheriff who is completely absent from the sensitivity of the constitutional rights of the inmates.

Let me just quickly say to you that here is an example. Calvin Mack, a homeless and hardened drug addict, continued to bleed, continued to die. If you will, the person in the jail said, "What do you want me to do, get a Band-Aid?" a deputy quipped when he was asked to come to the cell block. Four hours passed before the officer called for medical help. By then Mack was all but dead.

In the Texas Youth Commission, it says that a Texas Youth Commission officer was arrested for having sex with a female youth.

And so my question to you is, it is clear that we have a crisis in the prosecution of constitutional rights of the underserved, if you will. We know if you are in jail, you have committed some sort of an offense, but you deserve the question of the Constitution.

My question to you, one, I would like to have a meeting with all of your staff asking for an inspector generals' investigation of the Harris County Jail and the Texas Youth Commission. You have letters that I sent; you sent back saying, "We think you have concerns. Send us more information."

I am happy to be an investigator for the DOJ. It is not my job right now. I am happy to participate with giving you family members and others whose loved ones have died, but I believe this warrants an official Justice Department investigation to make good on

these low, low numbers of prosecuting civil rights, constitutional rights of any number of individuals.

Can I yield to you just for the answer? I have letters from your department. You can review them. Can we work together to ensure the safety and security of youth inmates in the TYC, and those in the Harris County Jail?

Mr. GONZALES. Yes.

Ms. JACKSON LEE. I would look forward to a more extensive answer and a meeting, and I will be happy to present family members and others.

And I, likewise, in your capacity, invite you to Houston, TX, so that we can have a larger assessment of this situation. People are dying and this is prevalent across America, and I would welcome the opportunity to discuss, at another round, the whole question of police abuse and other issues.

Let me just move forward more as we look at the issues at hand, and with all due respect, let me say to you—and I would like you to think about how telling they are——

Mr. CONYERS. You have got 48 seconds left.

Ms. JACKSON LEE [continuing]. Hitting back the Congress, and this whole thing of the Deputy Attorney General reacted quite a bit to the idea of anyone voluntarily testifying. And he seemed to threaten Bud Cummins, and said, "You will regret coming forward and testifying."

Mr. Attorney General, with all these political comments, how are you going to fix this troubling and devastating litany of duplicity in your department? What steps have you taken to address these problems?

I would appreciate, Mr. Attorney General, your answer.

The light is still on.

Mr. GONZALES. Obviously, there have been some very serious allegations made, Congresswoman. And one of the things that we are going to do with respect to these serious allegations is that we have made referrals to the Office of Professional Responsibility and to the Office of Inspector General.

These entities exist in order to respond to allegations, to do investigations to reassure the American public that in fact we take these kinds of allegations very, very seriously.

But I want to put everything in perspective for you. I think that there have been allegations made with respect to the conduct of three political appointees in the entirety of the Department of Justice. There are hundreds of political appointees, there are tens of thousands of career employees at the Department of Justice.

So I don't want the American people to believe that in fact politicalization is running rampant in the department, because that is just not true.

Obviously, I take these allegations very seriously. I don't want to minimize them. But to the extent that allegations are made that there is improper conduct, they are referred where they should be referred. We are doing an investigation to ensure that in fact, if anything improper happened here, we are going to get to the bottom of it. And there will be accountability.

Ms. JACKSON LEE. Thank you.

Mr. Chairman, I would like to put into the record the two articles that I referred to, which are the *Houston Chronicle*, dated April 5, 2007, and the *Chronicle* dated April 25, 2007.

And I would just simply say——

Mr. CONYERS. Without objection, so ordered.

[The articles follow:]

ARTICLE PUBLISHED IN THE *HOUSTON CHRONICLE*, APRIL 5, 2007, AND APRIL 8, 2007, SUBMITTED BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

The Houston Chronicle

April 5, 2007 Thursday
3 STAR EDITION

Police look for former TYC guard accused of having sex with youth

BYLINE: Associated Press

SECTION: B; Pg. 5

LENGTH: 114 words

DATELINE: AUSTIN

AUSTIN - Police were searching Wednesday for a former guard accused of having sex with a youth at a West Texas facility for juvenile offenders.

An arrest warrant was issued Wednesday for former Texas Youth Commission guard Shannon Griffin, 30, who was fired in December for allegedly having a sexual relationship with an incarcerated male juvenile at the Sheffield Boot camps in Sheffield, about 100 miles south of Midland, authorities said.

Griffin is charged with carrying on an improper relationship/sexual contact with a person in custody, a third-degree felony.

She worked as a correctional officer at a boot camp for males between June 2005 and Dec. 15, 2006 when she was terminated.

The Houston Chronicle

April 8, 2007 Sunday
4 STAR EDITION

County jail deaths on pace to double '06 total;
In one of 11 fatalities this year, family says inmate didn't get adequate care

BYLINE: STEVE MCVICKER, Staff

SECTION: A; Pg. 1

LENGTH: 1174 words

Through the first three months of the year, the number of Harris County Jail prisoners who have died in custody is on pace to double the total for all of 2006, according to sheriff's office records.

Eleven deaths occurred in the first quarter of this year, compared with the 22 recorded in 2006. Last year's total was the jail's highest since the same number was recorded in 2002.

In at least one of this year's cases, the prisoner's family thinks she did not receive adequate care.

"She kept trying to get medical treatment, trying to get them to help," said Gloria Humphries, whose sister, Kimberley Humphries, died Jan. 23 after suffering complications from an apparent staph infection.

The Houston Chronicle requested, by e-mail Thursday morning, a comment from Harris County Sheriff Tommy Thomas. A spokesman said Friday afternoon that Thomas was out of town and unavailable for comment until Monday.

However, in a recent letter to the Chronicle, which the paper published, Thomas wrote that "while we strive to prevent - and sincerely regret - every death in custody, the sad fact is that not every death is preventable. We believe that we provide exemplary health care. Nevertheless, we continually search for ways to improve the delivery of medical services within our facilities and to lessen the challenges inherent in such an environment."

The Chronicle reported in February that at least 101 prisoners died in county jail custody from 2001 through 2006 - an average of almost 17 per year. At the time of their deaths, at least 72 had not been convicted of the charges that led to their incarceration. Of the 11 who have died in custody this year, five were awaiting adjudication.

The number of deaths thus far this year has the attention of the state agency that oversees jails.

"I think they raise a concern to anyone, whether it be the Texas Commission on Jail Standards or local officials," said Adan Muñoz, the commission's executive director. "However, I would (qualify) that with, `What is the cause of death?' "

The county medical examiner's office has completed autopsies in three of this year's deaths, ruling that they resulted from natural causes. Similarly, none of the records reviewed concluded that jail employees contributed directly to the 101 deaths from 2001 through 2006.

However, the Chronicle found that in at least 13 cases, relatives or documents raised questions over whether the prisoners received needed medications.

Eleven of the deaths involved infections and illnesses suggesting sanitation problems. In 10 cases, county records suggested possible neglect by jail workers.

Crowding issues raised

In each of the past three years, the jail commission has found the county jail in noncompliance with Texas jail standards, primarily for conditions related to crowding. A state inspector concluded in 2005 that those conditions led to "safety" and "sanitation" issues.

The family of Kimberley Humphries thinks sanitation and inadequate medical care may have been factors in her January death.

Humphries, 41, was jailed Oct. 29 on a charge of driving while intoxicated. It was her third DWI arrest since 1993, and records show she also faced a drug charge in another county.

Humphries' jail medical records state that she had received two kidney transplants - at age 8 and again 11 or 16 years later, depending upon which entry in her jail medical log is correct. She also had contracted hepatitis B when she was 9, according to records.

The death report states that Humphries claimed to suffer from depression and alcoholism.

According to her sister and jail records, Humphries was in relatively good health when she was jailed, with low blood pressure and normal temperature. However, her file included a notation that she had complained about not receiving her renal medication.

Jail medical records show that Humphries complained of "chronic itching" Dec. 3. Eight days later, she was given a prescription for Benadryl.

A cellmate's alert

In late December, Gloria Humphries says, she got a call from one of her sister's cellmates.

"She said that Kimberley had a fever, wasn't feeling well, was sleeping a lot and was having trouble urinating," Gloria Humphries said.

Jail records support the cellmate's report. On Dec. 28, Humphries was sent to the jail's medical clinic, where it was noted that she had a lime-size boil under her right arm. The diagnosis was a cellulitis abscess.

She was given antibacterial and anti-swelling medication and sent back to her cell.

According to the Mayo Clinic's Web site, cellulitis "may affect the tissues underlying your skin and can spread to your lymph nodes and bloodstream. Left untreated, the spreading bacterial infection may rapidly turn into a life-threatening condition."

The day after receiving medication, Humphries complained that she had an upset stomach and had not urinated all day, records state. After receiving a different antibiotic and having a catheter inserted, she urinated several times later that day, records show.

"She called me and said that she was so weak," said Gloria Humphries. "I told her that there was no way they were going to let anything happen to her. I was just naive - very, very naive."

Humphries' condition worsened. Records state that, on Dec. 30, the pain and swelling had increased and that yellow pus was draining from under her right arm. She was taken to LBJ Hospital by ambulance that day because of what jail records list as a staph infection.

Rapid onset

According to Dr. Edward R. Rensimer, a Houston infectious-disease expert, staphylococcus aureus, or staph, is an extremely fast-acting infection.

"It manifests itself within hours," Rensimer said. "And once it's in the bloodstream, it's off to the races."

Humphries died after 24 days at LBJ Hospital. Jail records show the hospital attributed her death to respiratory failure.

Humphries' autopsy report has not been completed. However, notes by a medical examiner's investigator state that by the time Humphries was admitted to the hospital, she was septic and in renal failure.

Asked about the protocol for dealing with staph outbreaks, a sheriff's office official cited the department's infection-control manual. However, staph is not listed among the diseases or infections that the county is required to report to health officials, according to the manual.

In the case of most outbreaks, employees are instructed to contact the department's infection-control nurse. Without mentioning any specific infection, the document also says that any inmate who has an infection "must be placed in isolation in accordance with the Infection Control Isolation Policies and Procedures."

The manual also states that employees who come in contact with an inmate with an infection will be removed from further inmate contact "until the infection is resolved" and that personal medical precautions should be taken.

Records show that, between January 2001 and April 2005, 60 medical quarantines were enacted at the jail and at least two were related to staph infections. The causes of 11 others were not listed.

Ms. JACKSON LEE [continuing]. Is the Attorney General offers a wonderful mea culpa, but I would just say the perception is there.

I thank the——

Mr. CONYERS. The Chair recognizes the Ranking Subcommittee Member of Commercial and Administrative Law, Chris Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

I would like to submit for the record also a letter from Randy Mastro at Gibson, Dunn & Crutcher.

Mr. CONYERS. Without objection.

[The letter follows:]

LETTER FROM RANDY MASTRO, GIBSON, DUNN & CRUTCHER, SUBMITTED BY THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND MEMBER, COMMITTEE ON THE JUDICIARY

Dear Editors:

Regarding Adam Cohen's Editorial Observer column, "The U.S. Attorney, the Congressman and the Timely Job Offer" (05/04/07), his account of how former U.S. Attorney Debra Yang recently came to join our law firm bears no resemblance to reality. While Mr. Cohen has a right to his opinion, he has no right to ignore the facts. The facts are these: in early 2006, Ms. Yang, a single mother of three young children, decided, after 17 years of distinguished public service, that she needed to return to the private sector and so informed her superiors. The competition among the nation's premier law firms to recruit her was fierce. Other firms offered her more money, but she nevertheless decided to join us. And it was not because, as Mr. Cohen erroneously reported, our firm supposedly offered her a $1.5-million starting bonus - we did not.

Moreover, as a policy matter, during her job search, she recused herself from participating in any investigation on which any law firm recruiting her appeared, and as an ethics matter, she has not participated here at the firm on any pending investigation before her old office. Finally, as to Mr. Cohen's suggestion that our D.C. partner Ted Olson orchestrated Ms. Yang's move to the firm, that is also absurd. Our Southern California partners originally communicated with Ms. Yang, and Mr. Olson only joined that effort much later when the firm was actively recruiting her. Indeed, the only truth in Mr. Cohen's story, to our knowledge, was that Ms. Yang, "by all accounts, had a strong record" and was "one of the most respected U.S. attorneys in the country." In sum, we feel fortunate, indeed, to have Debra Yang here as our partner, she was a great U.S. Attorney widely respected by all, and she deserves better than the shoddy treatment she received in Mr. Cohen's column.

Very truly yours,

Randy M. Mastro

Gibson, Dunn &
Crutcher
200 Park Avenue
New York, N.Y.
10166-0193
W:(212) 351-3825
M:(212) 671-0029

Mr. CANNON. This is a letter that rebuts Mr. Cohen's editorial and points out that they did not offer Ms. Yang $1.5 million. And in addition to that, she recused herself while she was at the department, and she is not participating in those issues where she has gone. And they praise her as a great attorney.

General Gonzales, thanks for being here. I think you are very gracious to address these accusations as serious and not react to the suggestion that there may be duplicity, out of 110,000 employees. But I think you have been very direct here this morning.

You are familiar with Mr. Margolis at the Department of Justice, are you not?

Mr. GONZALES. Yes.

Mr. CANNON. And my understanding is he is the senior career employee at the department. Is that right?

Mr. GONZALES. I think he may not be the senior, but he is certainly one of the most senior.

Mr. CANNON. Probably one of the most outspoken. And he was actually interviewed, and I would like to read some of the comments that he made.

He was asked, "And then you testified that you said something to the effect of, 'but this does open the door to a more responsible'—and you used that word, that is, 'a more responsible'—to a focused process to identify weak performers and make some changes.' And you thought that was a good idea." And Mr. Margolis responded, "I thought it was a great idea, long overdue."

Now, I believe it was Mr. Scott who was talking about the CRS report on firings at the Department of Justice, which is retrospective, of course. And here you have got a senior person at the Department of Justice pointing out that he thought what you were doing here was a great idea.

A little more here: "To move onto another thing, you mentioned during your testimony earlier in the day, I believe, that you had indicated that you thought it was good of the department to embark on an exercise like this; that is, reviewing U.S. attorneys." Mr. Margolis: "Absolutely. And I should add, one of my sadnesses"—his word—"I have a lot of sadness about this, but it was a great idea. Our execution wasn't particularly good, but we didn't have much experience with it."

So this is a new idea, a new process here.

"But one of my great sadnesses is I fear that, down the road, people will shy away from doing this again because of the burning here."

In other words, he is condemning the politicization of this process.

"And so, when a U.S. attorney called me a couple of weeks ago to run an idea past me, he said, 'I want to take some action, but I want to run it past you and take your temperature, because I don't want to get fired.' I said to him, 'Buddy, you could urinate on the President's leg now, and it wouldn't work,'" suggesting that the department has, in fact, been affected.

And, again, Mr. Margolis is one of the very senior career guys who happens—I think you would agree he loves the department——

Mr. GONZALES. No question about that.

Mr. CANNON [continuing]. Cares about the institution——

Mr. GONZALES. Yes.

Mr. CANNON [continuing]. Cares about the integrity of the institution——

Mr. GONZALES. Yes.

Mr. CANNON [continuing]. And was called on to testify because they thought he would do what he suggested could be done without fear of being fired, I suppose.

"Were you involved in any way," he was asked, "about the decision to put Ms. Lam on the list?" He says, "So it didn't surprise me in that sense because when Mercer was PDAG, he used to tell me about problems he was having with here, vis-a-vis immigration and immigration and guns, I believe."

Then he goes on and he says, "Based upon my interaction with her and what other people, including Ms. Mercer, said, both then and now, and reading my—and I love Carol like a sister; an outstanding investigative lawyer, an outstanding trial lawyer, tough as nails, honest as the day is long, but had her own ideas about what the priorities of the department would be and was probably insubordinate on those things."

Nobody is claiming Mr. Margolis is political or politicizing this process. He is saying this is a process that was good, and he wants it to happen or continue.

Later he says, "She called me primarily to tell me that. I think she said, "I think I just got fired by Mike Battle."' But later he says, "And then she speculated to me that is was over immigration and guns." She then told what the problem was.

By the way, I think he said it was a very pleasant conversation.

So this is not about competency. Nobody is saying Ms. Lam wasn't competent. But she wasn't doing, and she understood she wasn't doing, what the President wanted. Do you think that is correct, Mr. Gonzales?

Mr. GONZALES. First of all, let me just say that Carol and these other United States attorneys, I mean, they are fine individuals, very, very, very fine lawyers——

Mr. CANNON. Thank you. I don't want to cut you off, but I do just want to put one more in. This is Mr. Margolis again: "I was asked about David Iglesias. Given everything I know today, he would have been number one on my list to go." "That is because he didn't call and report the phone calls?" "That is right." And he goes on to talk about that.

So we did have some problems with some of these guys, in the sense that they weren't exactly paradigms of competence, were they?

Mr. GONZALES. It was my idea that these individuals had been identified by the senior leadership in the department as having issues or concerns and that a chance would be legitimate and——

Mr. CANNON. While I still have the yellow light, I agree with you, but you have a huge department to run. I think Mr. Lungren talked about the number, 110,000 people. You have said at one point in time that you delegated responsibility, and you have been criticized for that.

And on the other hand, somebody pointed out you had five meetings with Mr. Sampson over a period of time—over, by the way, 24 months. That is one meeting every 5 months.

Do you think that was the appropriate level of oversight, given what you knew then as opposed to what you know now, looking back?

Mr. GONZALES. Well, of course, in hindsight, no. I think I would have done the process differently. I would have had a more structured process, a more vigorous process. Again, not a formal process, but something more structured, where I had more direct communication with Mr. Sampson, let him know exactly what I expected.

I would let him know what things that I think should properly be considered in evaluating the performance of U.S. attorneys, who I want him to consult with, who I wanted the recommendation to come from. I would have ensured that there would have been at least one face-to-face meeting with each of the United States attorneys, not just these eight but all 93, and have a discussion about their performance.

So there were some things that I think we could have done differently, should have done better. And going forward, there will be some changes to make sure that we operate the department in a way that everyone expects.

Mr. CANNON. But you learned from it, and it is a process you hope will continue, I take it. Or at least I hope it will continue.

Mr. Chairman, I realize my——

Mr. GONZALES. I think we have an obligation, quite frankly, as head of a department for the American people to ensure that public servants are doing their job.

Mr. CANNON. So do I.

Thank you, Mr. Chairman. I recognize my time is up, and I yield back.

Mr. CONYERS. The distinguished gentleman from North Carolina, Mel Watt?

Mr. WATT. Thank you, Mr. Chairman.

And, Mr. Attorney General, let me first apologize for not being here for your testimony. Unfortunately, I am chairing a Subcommittee in another Committee and had to be there for a hearing that we had scheduled before we found out you were going to testify. So accept my apologies, please.

In the prior hearings, Mr. Attorney General, I have been devoting some time to trying to figure out what happened with the firing of John McKay. And on April 19th you told the Senate that you had accepted the recommendation to fire Mr. McKay because he had shown bad judgment in pushing an information-sharing system and in speaking to the press about department resources.

Do you remember that testimony?

Mr. GONZALES. Yes. I hope, though, that I said the concern was not that it was pushing for the information-sharing system, but the manner in which he pushed it.

Mr. WATT. Okay. Well, that really doesn't have much relevance to the next set of things I want to ask you about. Whatever he was pushing or not pushing occurred in the summer of 2006.

The letter on the information system you discussed in the Senate was dated August 30, 2006, it turns out. And Mr. McKay's com-

ments to the press were reflected in an e-mail on September 22, 2006.

And, unfortunately, we now have evidence, documentation in fact, that Mr. McKay was already targeted for removal by Mr. Sampson in March of 2005, because the documents show that he was already on the list.

So are you aware of any legitimate reason that John McKay should have been forced out as a U.S. attorney in March of 2005, as opposed to the things you had talked about that occurred in 2006?

Mr. GONZALES. I would have to go back and look at that, Congressman.

Again, what I recall is that when I accepted the recommendations, I was not surprised to see Mr. McKay included, because I was aware of concerns in the way that he pushed this information-sharing project.

And I applaud his efforts. He was doing his job.

Mr. WATT. Okay, Mr. Attorney General, I understand what you are saying. You have got to go back and look.

But there has been some suggestion, unfortunately—our investigators asked Kyle Sampson, and he said that he remembered department officials being upset that Mr. McKay had pushed for action regarding the department's investigation of the murder of Thomas Wales. And there was some concern that he was being overly aggressive in pursuing the people who had murdered Thomas Wales.

And so a lot of people are viewing this as being admirable, not something that somebody should be fired for. Would you agree with that?

Mr. GONZALES. Certainly, it wasn't in my mind a reason why I accepted the recommendation. And I was not aware of these specific concerns within the department until very, very recently.

So if that was a reason why he was included as part of the recommended group, that is something you would have to ask others involved in this process because I have not had the opportunity to do that.

Mr. WATT. And if that was among the reasons, would you agree with Mr. McKay, who has characterized this as—I am going to quote exactly what he says: "The idea that I was pushing too hard to investigate the assassination of a Federal prosecutor is mind-numbing."

If it is true, it is just immoral. And if it is false, then the idea that the Department of Justice would use the death of Tom Wales to cover up what they did is just unconscionable.

Mr. GONZALES. I am not——

Mr. WATT. Would you agree that it would be immoral and unconscionable for you all to be firing somebody because they were investigating the death of one of their own staff people?

Mr. GONZALES. That is a crime, and we have an obligation to, of course, investigate it and prosecute those responsible for it. I am not aware that the department, however, is using that as a reason or excuse——

Mr. WATT. Well, you obviously haven't listened to the testimony of some of the people in the department then, because that was an excuse that was advanced initially.

And that is the problem here, Mr. Attorney General. There are so many different excuses advanced at different times, whenever it is convenient, that you have this appearance that there is something else there.

And in this case, Mr. McKay also failed to aggressively, or as aggressively, prosecute as some people thought he ought to prosecute, and pursue some voting fraud cases that were taking place after an election took place. And it might have had some impact on a Democrat versus a Republican being elected.

So if that concern that the public is concerned about, Mr. Attorney General, if that is at the bottom of this, that would be an improper motivation for a termination and would be illegal. Wouldn't you agree?

Mr. GONZALES. I agree that if, in fact, there was pressure put on Mr. McKay to investigate a case which didn't warrant an investigation—but obviously, there may be circumstances where an investigation may have been warranted. And so we would have to look at the circumstances of a particular case.

I don't recall that when I accepted the recommendation, Congressman, that that was a reason for it, is his efforts with respect to voter fraud.

But clearly, going back and looking at the documents and the correspondences, there was a great deal of concern about his efforts with respect to voter fraud. Because I received a number of letters from groups and outside parties——

Mr. WATT. So you didn't fire him for that reason, but somebody might have put him on the list for that reason? That is really what you are saying, Mr. Attorney General.

Mr. GONZALES. Again, Congressman, I am assuming that this Committee has spoken with everyone who provided input. And, of course, the person who was compiling the information, Mr. Sampson, would know better than I. Because I am a fact witness. I haven't talked to these other fact witnesses about what happened here.

Mr. WATT. I will yield back, Mr. Chairman.

Mr. CONYERS. Mr. Bob Goodlatte, the distinguished gentleman from Virginia?

Mr. GOODLATTE. Mr. Chairman, thank you very much.

General Gonzales, welcome. I know you may not particularly feel like this is a welcoming occasion, but I do want to remind everybody here that this is an oversight hearing that is periodically held by this Committee on the United States Department of Justice.

General Gonzales, you have the responsibility for thousands of employees in your department. You have responsibility for the enforcement of thousands of Federal laws related to criminal activity that occur in this country.

And I would like to take the opportunity—while I know many here have focused on the issue of the termination of seven or eight, or whatever the number is, of those employees who were terminated because it was your opinion and those who report to you that they were not properly enforcing those laws and taking necessary

steps to do that, nonetheless there are many, many dedicated employees of the department who are attempting to do that.

So I would like to attempt to ask you about some of those other areas that are very important to my constituents.

We have, in this country, millions of jobs related to the creativity of our country. They are protected by our intellectual property laws. And we face the loss of many of those jobs, both here at home and overseas, due to people stealing other people's creative ideas.

And I wonder if you could update us on your efforts to enforce our nation's intellectual property laws against theft of people's ideas due to violation of patent and copyright and trademark laws that are protected in the United States Constitution.

Mr. GONZALES. Well, we have got special units within the FBI and within main Justice, involving prosecutors who focus on intellectual property issues.

We have an intellectual property task force that was set up under General Ashcroft. I have continued that. They came out with a series of recommendations. All of those recommendations have now been promulgated and set up.

We have embarked on an education campaign, reaching out to students, informing them of the importance of intellectual property, that it is something that, as Americans, we should work to strive to protect.

We have reached out to the various trade groups, movies and music industry, businesses, to talk about the importance of this.

I have spoken with State legislators about the importance of State laws to assist us, because there are limited resources that we have to enforce and prosecute piracy, but perhaps States can help us.

But this is an issue that goes beyond our borders. To be effective, we have to also have the support of our friends and allies overseas. And so we have had dialogues.

We have encouraged people to be participants in the Cybercrime Convention, which will allow for greater sharing of information that will help us with prosecutions.

So I think that we have got a good story to tell. But no question about it that there is a lot of money to be made in connection with intellectual property theft. And whenever you can make a lot of money, people want to engage in that kind of activity.

And so we really need to stay focused, and I look forward to working in Congress to engage in a dialogue about what additional laws, what additional tools would be helpful to help us in dealing with this issue.

Mr. GOODLATTE. Thank you, General Gonzales.

Another area that is of concern to a great many Americans is the fact that we have a serious problem in this country with illegal gambling. Last year it is estimated more than $6 billion went out of the country to untaxed, unregulated, illegal sites.

There are many, many ills that have been identified with gambling, particularly illegal gambling because of its lack of any kind of regulation: family problems, problems with gambling by minors, gambling addictions, organized crime, bankruptcy—the list is long.

And Internet gambling poses a very problem because it essentially puts a casino in everybody's home, much less down the street

or in a community where many communities have fought against and do not have that type of gambling operations in their community.

So I want to thank you for your leadership in combating illegal gambling operations, and particularly your aggressive prosecution of overseas Internet-based gambling operations that violate U.S. laws. That has not gone unnoticed, and I would like to applaud your efforts.

As you know, the Congress recently passed illegal Internet gambling legislation to prohibit the acceptance of payment for illegal Internet gambling bets, showing our commitment to combating these activities. It passed by an overwhelming, bipartisan vote, including Members on both sides of the aisle in this Committee.

And I want to know if we can count on your to continue these aggressive criminal prosecutions against illegal, online gambling operations.

Mr. GONZALES. Yes, Congressman. I want to thank the Congress for this additional tool.

Obviously we are in the process now—the Treasury Department working on regulations. They are consulting with the Department of Justice, and hopefully we can make some progress on that real soon.

Mr. GOODLATTE. The prosecution of some of these——

Mr. CONYERS. The time of——

Mr. GOODLATTE. I apologize, Mr. Chairman.

I thank the general.

Mr. CONYERS. Thank you.

The distinguished gentlelady from Los Angeles, California, Maxine Waters?

Ms. WATERS. Thank you very much, Mr. Chairman.

Mr. Attorney General, I would like to talk with you about gangs in this country and the greater Los Angeles area. But I won't do that today, because I think that your credibility is on the line.

And you have been questioned about the firing of the eight U.S. attorneys, and it appears to have been politically motivated, even though there has been some denial of that. I would like to ask you a few questions.

First of all, did you review the personnel files of these attorneys after the accusation of them being fired for a political reason? And did you see anything in their files that showed that they had been reprimanded, they had been advised, they had been charged with not handling their duties in a responsible way?

Mr. GONZALES. Congresswoman, I look forward to talking with you about gangs.

With respect to the U.S. attorney issue, what I did was relied upon the judgment of those who——

Ms. WATERS. Did you review the files after——

Mr. GONZALES. I did not review the personnel files——

Ms. WATERS. Have you reviewed them at all since all of this has taken place?

Mr. GONZALES. What I have done is I have gone back and spoken to the Deputy Attorney General——

Ms. WATERS. Have you reviewed the files?

Mr. GONZALES. I have not reviewed the files. I have gone back——

Ms. WATERS. So you don't know whether or not they had been advised, they had been warned, they had been reprimanded about their work at all?

Mr. GONZALES. I think the answer to that—I don't think that they have. In fact, I think——

Ms. WATERS. But you didn't review the files, so you didn't look in their files whether or not they had been advised, reprimanded, suspended or anything about their work? Is that right?

Mr. GONZALES. I did not review their files.

Ms. WATERS. You knew you were coming here today. You know we have been trying to get unredacted documents from you about what happened in your department. Did you bring them with you today?

Mr. GONZALES. No, ma'am. I brought——

Ms. WATERS. Are you resisting giving us the documents that we are asking of you that is related to the firing of these attorneys?

Mr. GONZALES. No, ma'am. I am not involved in making production decisions. And I am recused from——

Ms. WATERS. Would you advise the department to give us those documents?

Mr. GONZALES. I am recused from that, ma'am. I can't do that.

Ms. WATERS. Why are you recused from that?

Mr. GONZALES. Because I am a fact witness in this investigation. And in order to avoid any appearance of impropriety——

Ms. WATERS. Can you tell us whether or not you have an opinion that they should be given to us?

Mr. GONZALES. No, ma'am, I am not going to comment——

Ms. WATERS. All right. Thank you.

Did you meet with the President about this issue?

Mr. GONZALES. Which issue is this, ma'am?

Ms. WATERS. Did you and the President meet to discuss the accusations of the politically motivated firing of these eight U.S. attorneys?

Mr. GONZALES. Ma'am, I disagree with your characterization as politically motivated.

Ms. WATERS. I am not characterizing. I am asking you, have you met with the President of the United States to discuss what has been accused of politically motivated firing?

Mr. GONZALES. Again, I would not characterize it as politically motivated.

Ms. WATERS. Well, okay. Have you met with the President of the United States to discuss these firings?

Mr. GONZALES. I have a lot of discussions with the President of the United States——

Ms. WATERS. Did you discuss with the President of the United States the fact that your department was being requested to supply documents? Or did you advise the President?

Mr. GONZALES. I have not spoken to the President with respect to document production. Again, Congresswoman, I am recused from those decisions.

Ms. WATERS. Did the President say anything to you about the fact that documents had been requested of the White House and

asked your opinion about whether or not those documents should be given to this Committee?

Mr. GONZALES. No, ma'am, the President has not asked for my opinion as to whether or not the White House should turn over documents. And, again, I am recused with respect to production of DOJ documents and with respect to——

Ms. WATERS. Okay. So you are recused and you can't talk about whether or not you believe that this Committee should have unredacted copies of documents that we have been trying to get that are pertinent to these firings. You are recused from that. You have no opinion about whether or not the oversight Committee of Congress should have those documents.

You did not look at the files of the people who have been in the news for weeks now where you have been accused, your department, of politically motivated firings, you don't know whether they were good employees, they were bad employees, whether or not they had been reprimanded, suspended, advised or anything.

You know nothing, is that correct?

Mr. GONZALES. That is not correct.

Ms. WATERS. What do you know, Mr. Attorney General?

Mr. GONZALES. Well, generally about this whole matter, Congresswoman?

Ms. WATERS. What would you like to tell us? You are here today, and you know what we are focused on.

Mr. GONZALES. Yes.

Ms. WATERS. This is no secret.

I know that you have been in a number of hearings. I know that you don't remember a lot. You have not shared with us anything about the documents.

What can you tell us today that will help us to understand why eight U.S. attorneys were fired, an unusual pattern that CRS has reviewed and told us that there is a pattern here and it doesn't look good?

Your reputation is on the line, Mr. Attorney General. What do you have to say for yourself?

Mr. GONZALES. Congresswoman, what I have to say is that we have provided a lot of information to the Congress about this issue——

Ms. WATERS. I asked you specifically about unredacted copies that are pertinent to this investigation.

Mr. GONZALES. Again, Congressman, I am not involved in making decisions about the documents to be provided or not provided by the department——

Mr. CONYERS. Let's allow the Attorney General to finish his response to this question.

Mr. GONZALES. Yes.

With respect to redacted documents, it is my understanding—and again, I haven't been involved. But it is my understanding that the Congress has had access to the documents. They have been able to see what has been redacted, it is my understanding.

But, again, those are decisions that are not being made by me in order to preserve the integrity of this investigation, because I am a fact witness.

Ms. WATERS. No, you are more than a fact witness, Mr. Attorney General. The buck stops at the top.

Mr. GONZALES. And I accept responsibility——

Ms. WATERS. If you accept——

Mr. CONYERS. The gentlelady's time has expired.

Ms. WATERS. I will yield back the balance of my time. Thank you.

Mr. CONYERS. Thank you.

Steve King of Iowa?

Mr. KING. Thank you, Mr. Chairman.

I want to thank the Attorney General for being before this Committee and submitting yourself to this process. And I think it needs to be a dignified process, and I think we need to respect you and the answers that you give. I believe that you are giving openly and honest answers here before the Committee.

I would reflect back on some issues that were raised, particularly by the gentlelady from California, with regard to—and I am not going to characterize how she characterized it, because I don't want to repeat some of the language that went into this record and have it taken down, but the behaviors and the activities of the U.S. attorney's office in that area.

Then the issue is raised by the gentleman from Wisconsin, Mr. Sensenbrenner, about the investigation of a Member of Congress and how that might affect the activities on the part of your office.

And so I can't help but reflect upon a 500-page report that was delivered to the Department of Justice regarding another Member of Congress. And that investigation has been going on since December of 2005. And that issue is still pending any kind of resolution. And I believe that the Ethics Committee in this Congress is awaiting the results of the investigation.

But the question I would ask to you is, if the Chairman of the Justice Appropriations Committee happened to have had been under that kind of scrutiny, could that affect the kind of prosecution that takes place out of your Justice Department with regard to that particular Member of Congress?

Mr. GONZALES. I would like to say no, quite frankly, I think, because you have to understand that prosecutions, by and large, are handled, and the investigations and prosecutions are handled, by career officials. They go forward no matter what happens. We want them to do that.

I have told every United States attorney to, "Tell your people, I don't want anything affected, whatsoever, by anything going on Washington. I don't care who the target is—Republican, Democrat, someone on the Hill, someone at the White House. You follow the evidence; you do your job. That is what the American people expect, and that is what I expect and demand."

Mr. KING. And, Mr. Attorney General, you know, aside from the President of the United States, what could be more intimidating to the Department of Justice than to be involved in an investigation of the Chairman of an Appropriations Committee that had control directly of your budget? What could be more intimidating than that with regard to an investigation?

Mr. GONZALES. We have to put that aside. Again, if the evidence is there, we have an obligation to pursue it. And if it is not there, then we stop the investigation.

But, clearly, this comes with being a prosecutor. Sometimes it is going to put you in a very awkward, difficult situation. But the American people expect you to do your job, and that is what I expect of the prosecutors in the Department of Justice.

Mr. KING. Let me say then, Mr. Attorney General, that if that kind of circumstance, if the person that is in control of your budget has his activities being reviewed by your department—it is very well-published across this country and not well-known in this Hill—if that does not affect your investigation and your integrity has risen about that kind of intimidation, then how in the world can any of these other allegations be intimidating the investigation of the Justice Department?

Mr. GONZALES. Well, again, without commenting on a particular investigation, we have a job to do that the American people expect we are going to do it.

Mr. KING. And I would submit to this Committee that what I have stated here is entirely true: that there is nothing more intimidating than the scenario that I have laid out here, and this scenario happens to be fact. All the rest of these things that unfold are minor in comparison to this looming issue that is here.

And if this Justice Department can be considered to be conducting themselves above reproach with this investigation—and I don't have any reason to believe they are not, and I want to put that on the record—then the rest of these allegations are essentially baseless.

And I would also submit that in my experience into the 11th year of the legislation process that I have been involved in, there has been nothing that has seen more opposition from a partisan political standpoint than trying to provide integrity into the electoral process.

And those investigations that were going on in the southwestern part of this United States which were part of a decision, I believe, that was made by your department to dismiss a U.S. attorney down in that area, I think were met with political opposition on the other side.

And if we are going to investigate this, then I would be looking at some of the FBI officers that were doing the investigations in those kind of cases.

And I would ask if you would care to comment on that, Mr. Attorney General.

Mr. GONZALES. No, sir.

Mr. KING. I didn't think you would.

I want to conclude then by saying thank you for being here and thank you for this testimony. And I hope that we can raise the level of this decorum and respect your testimony in an appropriate fashion. I appreciate your service to America.

I yield back.

Mr. CONYERS. I thank the gentleman.

And we now turn to Mr. William Delahunt, the gentleman from Massachusetts, who is now recognized.

Mr. DELAHUNT. General Gonzales, we have heard about delegation and the size of the department. And I think we all understand that, and, obviously, the need to delegate powers and authorities. But there are some powers and authorities that you cannot delegate.

And you have been an ardent advocate for the Patriot Act.

Mr. GONZALES. Yes.

Mr. DELAHUNT. You support it, you have come here, and you have testified, correct?

Mr. GONZALES. That is correct, sir.

Mr. DELAHUNT. And you have the power to review information regarding organizations and an individual to determine whether they are terrorists. And you have the power to detain those individuals. Is that correct?

Mr. GONZALES. Depending on, of course, always relying upon the recommendations, the analysis and views of——

Mr. DELAHUNT. I understand that. But you can delegate that decision-making process to the Deputy Attorney General, but you can't delegate it to a U.S. attorney or anyone else. In the end, that is your decision to make, correct?

Mr. GONZALES. And, of course, I am head of the department, and in the end I am responsible for——

Mr. DELAHUNT. I understand.

Well, back in March of 2005 an individual by the name of Luis Posada Carriles entered this country illegally. He has had a long and rather dramatic history of violence and, in fact, has been convicted of acts of terrorism in other countries.

The most famous charge, of course—and this is referenced in a series of FBI documents that are now in the public domain—is that he was implicated in the midair bombing of a Cuban airliner, resulting in the deaths of some 73 civilians.

I am sure you are familiar with that.

Mr. GONZALES. I am familiar with the news stories, yes, sir.

Mr. DELAHUNT. Well, let me ask you this: Have you reviewed this particular case?

Mr. GONZALES. I am aware of this case.

Mr. DELAHUNT. And have you made, at any point in time, an assessment of whether this individual should be designated as a terrorist and detained?

Mr. GONZALES. What I can say, Congressman, is that, of course, I am concerned about what I know. And we have taken steps in the courts to try——

Mr. DELAHUNT. I understand you have taken steps in courts, but I would appreciate a direct answer.

Mr. GONZALES. What is the question?

Mr. DELAHUNT. Why have you not taken steps to designate Luis Posada Carriles as a terrorist, given the overwhelming information that exists in the public domain today?

Mr. GONZALES. Congressman, what I would like to do is go back and look at this case so I can give you an answer. I want to be totally accurate with you with respect to——

Mr. DELAHUNT. I understand. But this is your responsibility——

Mr. GONZALES. And I want to be careful about what I can say publicly. And so, again——

Mr. DELAHUNT. Well, I understand you have to careful. But at the same time, have you undertaken a review of this case, given the law authorizing you——

Mr. GONZALES. I am aware of the circumstances of this case. But I am also aware that there are still matters and actions ongoing within the department that have not been completed. And I don't want to say anything that would in any way jeopardize that.

Mr. DELAHUNT. Well, what we have now, given the decision that was rendered this past week, is we have Mr. Posada Carriles a free man in this country. You are familiar with that.

Mr. GONZALES. I am aware of the judge's decision. We obviously disagree. We are making estimates about what to do.

Mr. DELAHUNT. Well, let me reclaim my time, and let me read a finding of the court that I find particularly disturbing, and I would be interested in your response.

This is the judge, now. "In addition to engaging in fraud, deceit and trickery, this court finds that the government's tactics in this case are so grossly shocking and so outrageous, to violate the universal sense of justice. As a result, this court is left with no choice but to dismiss this indictment."

Now, in my previous life, I also was a prosecutor. I have never in my 22 years as a prosecutor read that kind of language coming from a court.

Mr. GONZALES. May I just say that I respectfully disagree with the judge? And because this is a matter that is still pending, I am not going to otherwise comment on her comments.

Mr. DELAHUNT. Right.

Well, let me go back again to the earlier question that I posed, that the designation by yourself of Luis Posada Carriles as a terrorist does not require, under the Patriot Act, an act which you have supported and this Administration has advocated for, does not require any judicial review.

Is that a fair statement?

Mr. GONZALES. I think that is a fair statement, Congressman. But, again, with respect to your specific question as to why hasn't this happened, I need more information. I would be happy to hopefully get back——

Mr. DELAHUNT. With all due respect, Mr. Attorney General, as my colleague from California said, the buck stops with you on this one.

Mr. GONZALES. I understand.

Mr. DELAHUNT. This is not susceptible to being delegated anywhere else. And I would hope you would take a hard look now.

Let me ask you this——

Mr. CONYERS. The time of the gentleman has expired, regretfully.

Darrell Issa, the gentleman from California, is recognized.

Mr. ISSA. Thank you, Mr. Chairman.

And, General Gonzales, it goes without saying, and I am sure you are well aware of it at this point, that I have been a critic of the former U.S. attorney in San Diego, Carol Lam, who was terminated.

And I was a critic not because she wasn't a fine prosecutor, as a matter of fact, not because she didn't take on big cases—she did that—but because of the exclusion of any reasonable prosecution of

coyotes, people who traffic illegally in human beings, people who very well would bring terrorists into our country.

And, in addition to that, I am very aware that she willfully failed to prosecute gun crimes in any number similar to the rest of the country or the rest of California.

Having said that—and I am going to ask you an off-the-cuff question—are you aware of who Antonio Lopez was in that district?

Mr. GONZALES. Is that his full name, Congressman?

Mr. ISSA. He has a middle name. I apologize.

Mr. GONZALES. Well, I mean, I don't——

Mr. ISSA. He trafficked 20 times and was arrested and not prosecuted by Carol Lam. On the 21st time, we sent to your predecessor a letter, signed by 19 Members of Congress——

Mr. GONZALES. I am now aware—I recall him, yes.

Mr. ISSA. And we did so as a form of political pressure to say, "We want this type of prosecution. We believe the President stands for this. And Attorney General Ashcroft failed to take action. Carol Lam failed to take action."

So, it is not without some special interest in this that I believe that the policies of this President were, in some cases, poorly executed by U.S. attorneys.

And I am here today not to support your management capabilities or how much you delegated—I think you have already apologized for not having a better management system in place. I think you have already apologized for the fact that U.S. attorneys may have, in many cases, not been through the normal process of review—"You are not doing this; you have to do better." I think we have all read e-mails that indicate that that may not have been done very well.

But I am going to ask you the basis question, which is, if you continue to serve for 20 more months at the pleasure of the President, which I believe you will, will you, in fact, not be gun-shy as a result of what happens here today?

And if you have a U.S. attorney who is not implementing the stated public policies of this President, will you take any and all measures necessary to make sure they are aware and they are supportive of the stated policies of this present Administration?

Mr. GONZALES. Contrary to being gun-shy, this process is somewhat liberating in terms of going forward.

No, believe me, I think it is clear to the American people what I expect of U.S. attorneys. The President is accountable to the American people, and his priorities and policies can only be implemented through people like myself and the United States attorneys.

What I need to do a better job of is making sure that I communicate with U.S. attorneys where I think that they are falling short. And if I have concerns about their performance or any thing else about what is going on in their district, we need to do a better job communicating those concerns to the United States attorneys.

Mr. ISSA. General Gonzales, I would ask that you follow up for the record with some of the steps you are going to take to provide better guidance to 93 U.S. attorneys. And I look forward to seeing those.

Let me follow up with, I think, the fair balance for some of the things I have heard here today.

You weren't here at the beginning of this Administration as the Attorney General, but you are aware of the termination of the previous U.S. attorneys at the beginning of this Administration. Do you recall the number that were terminated?

Mr. GONZALES. Well, eventually all of the United States attorneys were terminated.

And what was unusual about that is that normally they are staggered over a period of time. And as I recall, in connection with the previous Administration, they were actually more compressed. And so, the concern there is it is much more disruptive. It is a greater shock to the system when you do it all together at one time.

But having people removed over a staggered period of time is something that has occurred before.

Mr. ISSA. So under this Administration, 93 U.S. attorneys were replaced. Some quit on day one; some were asked to leave shortly thereafter; some were kept on for transition purposes.

And that was done in order to do the best job you could, in spite of the fact every one of them was a Democrat political appointee.

Mr. GONZALES. That is correct. And quite frankly, you know, at the beginning of an Administration, we weren't prepared to immediately nominate 93 new individuals. And so, it would take a period of time. I think it is a matter of good management and judgment. It would take some time before we were prepared to do that.

Mr. ISSA. And I applaud this Administration for doing it.

I might note that under President Clinton, 92 out of 93 were terminated immediately.

And just in the remaining time, how do you think that the earlier Administration's immediate termination of 92 out of 93 affected morale and capability of doing the job versus the technique that this Administration employed?

Mr. GONZALES. Well, I don't want to comment on that, other than to say that I think it is a better system to do it on a staggered term, quite frankly, again, because it is less of a shock to the system. We were not prepared to immediately, you know, to nominate 93 individuals. So that was the way we felt was the best way to——

Mr. ISSA. And I applaud this Administration for being less partisan at the beginning of its Administration, able to try to put justice ahead of partisan behavior.

Thank you, Mr. General.

And I yield back, Mr. Chairman.

Mr. CONYERS. Thank you, sir.

The Chair recognizes the distinguished gentleman from Virginia, Mr. Rick Boucher.

Mr. BOUCHER. Thank you very much, Mr. Chairman. I do not have questions this afternoon. But I would be pleased to yield the 5 minutes allotted to me to you, Mr. Chairman, if you have questions.

Mr. CONYERS. I thank the gentleman.

Attorney General Gonzales, let me follow up on a question that has occurred here. Since the date of the firings on December 7, 2006, have you discussed this matter with President Bush?

Mr. GONZALES. What I can say is we have had a few discussions, generally, where he has given me words of encouragement. But not as to substance.

Mr. CONYERS. So there has been some discussion, is that fair to say?

Mr. GONZALES. Yes, there has been some, but, again, primarily, Mr. Chairman, where the President has given me words of encouragement.

Mr. CONYERS. Now, you have already indicated that you talked to Mr. Karl Rove about the voter fraud matter in New Mexico in October of 2006.

Mr. GONZALES. Mr. Chairman, I am not sure that I said it was in October. I think it was in the fall of 2006.

Mr. CONYERS. All right. Do you have information on whether Karl Rove or any other White House staff member helped get Mr. Iglesias on the termination list, either through Ms. Goodling, who was liaison to the White House, or anyone else that might be White House-like-liaison?

Mr. GONZALES. I have no personal knowledge, Mr. Chairman. I don't recall now, thinking back, whether or not there is anything in the documents. I am not sure that I have any personal knowledge outside the documents.

Mr. CONYERS. If you review that, we will be sending you further inquiries about all the matters here. I wish you would take a close look at that.

Mr. GONZALES. Of course, Mr. Chairman.

Mr. CONYERS. All right.

Now, we have already learned that Karl Rove has been contacted by prominent New Mexico Republicans to try to remove Mr. Iglesias as the U.S. attorney because of concerns about the voter fraud matter.

Mr. Rove talked to you about the voter fraud matter in New Mexico in the fall. Right?

Mr. GONZALES. That is my recollection. Not just New Mexico, but also, as I recall, Philadelphia as well.

Mr. CONYERS. A couple other places. All right.

And Mr. Iglesias appears on the termination list in October or November——

Mr. GONZALES. I believe it was Election Day, November.

Mr. CONYERS. It was November. Thank you.

Well, now, if we start following these bread crumbs, it suggests that there could have been some connection between the discussions between yourself and Mr. Rove and Mr. Iglesias hitting the door, as an ex-employee.

Mr. GONZALES. Mr. Chairman, you have more bread crumbs than I do, quite frankly, because you have had the opportunity to speak directly to other fact witnesses at the Department of Justice. I was not surprised to see Mr. Iglesias recommended to me, based upon previous conversations that I had had with Senator Domenici.

Mr. CONYERS. Well, you may have yet more bread crumbs than I, sir, because you were the one that talked to Karl Rove. That is a pretty big bread crumb.

Mr. GONZALES. I have a lot of conversations with Mr. Rove, Mr. Chairman. I have no recollection that Mr. Rove ever recommended

that Mr. Iglesias be terminated. Again, what he was conveying to me were concerns that had been raised with him with respect to voter fraud prosecutions in these three jurisdictions.

Mr. CONYERS. Well, keep searching your memory on this, because this has taken on quite a bit of significance and importance, as you can understand.

Mr. GONZALES. I will continue searching my memory, Mr. Chairman.

Mr. CONYERS. Thank you.

Mr. Randy Forbes, please, of Virginia?

Mr. FORBES. Thank you, Mr. Chairman.

And, Mr. Attorney General, thank you for your patience in being here today. It is sometimes interesting to me, because I have seen hundreds and thousands of press releases going out, attacking you. We have had all kinds of hearings like this. We had a little demonstrations out there. And then Members of this Committee will get up and question you about why people might have some questions about your credibility and your ability to lead in the country, even after seeing all of that generated against you.

Second thing is, it was interesting to me earlier on, when Ms. Sánchez was asking questions, she made this statement. She says her words get turned around by this Committee. And if we would turn around the words of a Member of this Committee, heaven only knows what we might do with some of our witnesses.

And then it was interesting because within 5 minutes of her statement there was a big inconsistency as to what she said just 5 minutes before. And sometimes we are asking you to remember things that you might have said or conversations that you had months before.

But I was real interested with the line of questioning that my good friend from California asked, and I would just like to ask you this again. The total number of employees that you have under your——

Mr. GONZALES. Within the department about 110,000 people.

Mr. FORBES. How much?

Mr. GONZALES. One-hundred-and-ten-thousand.

Mr. FORBES. And of those, how many attorneys?

Mr. GONZALES. Ten-thousand to 15,000.

Mr. FORBES. Ten-thousand to 15,000.

And one of the things that we had recently, we had a hearing in New Orleans about some of the crime activity that was down there. We found out a staggering statistic: that the State attorney down there, that there was apparently only 7 percent of the individuals that were arrested ended up going to jail.

And if we found that statistic and we found that we had had a President who was elected to go after crime and anybody on this Committee contacted you and said, "We just think that 7 percent of the individuals arrested would not be satisfactory," would that be an appropriate thing for us to raise to you?

Mr. GONZALES. Oh, no question about it.

Mr. FORBES. And if you had such an attorney like that, would it be an appropriate thing for you to tell him if that didn't change, that he may be removed, even if he was a good attorney and a competent attorney?

Mr. GONZALES. Of course.

Mr. FORBES. And what we did also find out in that same hearing that we had down in New Orleans was that the people under charge, the U.S. attorney down there was actually having between 93.5 and 99 percent conviction rates. So they had done a good job.

But if you hadn't have taken those steps, we would have you before us and we would be asking you those questions why. So we want to compliment you for that job.

The other thing is, some of us are concerned about what we see with gangs across the country, and the rise in gangs. And if you sat down and made policy decisions that you wanted to have U.S. attorneys go after networks of gangs, as opposed to just waiting until individual gang crimes took place, would that be a fair thing for any Member of this Committee to raise to you and say, we think your U.S. attorneys need to be doing that?

Mr. GONZALES. I would be very interested in hearing your views about gangs. It is a serious issue in our country. And I think we ought to be, and we are, focused on it.

Mr. FORBES. And you are. And if your U.S. attorneys were not, would that be appropriate thing for you—even if they were competent attorneys and good attorneys. But if they weren't going after gangs in the direction that you felt appropriate, from an administrative point of view, would that be reason to make a change in that U.S. attorney's office?

Mr. GONZALES. If the U.S. attorney—now, of course, we would endeavor to find out, okay, what are the reasons why? We ought to have a conversation with that U.S. attorney. And if the reasons aren't legitimate, of course it would be appropriate.

Mr. FORBES. And if you didn't, we would bring you back for a hearing and we would be criticizing you for that.

One of the other big things that many of us have been concerned about is pornography and child pornography, and especially pornography on that Internet. If you had U.S. attorneys that weren't going after that in the manner that you felt appropriate, that some of us felt appropriate, and that wasn't getting prosecuted, would it be appropriate for us to raise those issues with you?

Mr. GONZALES. Well, I would be interested in hearing your views about that.

Mr. FORBES. And if we did, and you felt those U.S. attorneys, even if they were competent, were not prosecuting those obscenity cases in the manner that you felt they needed to be prosecuted, would that be reason for you to be able to remove those U.S. attorneys?

Mr. GONZALES. It would be. I would give the same answer. You know, in hindsight, looking back, I would like to try to find out the reasons why. And if there aren't good reasons, then I think——

Mr. FORBES. Even if they were a competent attorney, if they weren't moving in that direction.

The other big thing—and you have testified before us, correctly so, that our number-one espionage problem in this country was with China. And if we had U.S. attorneys that weren't prosecuting that in what we felt was an appropriate manner, would that be appropriate for us to raise that kind of issue with you?

Mr. GONZALES. I would always be interested in hearing about the concerns and views of Congress.

Mr. FORBES. And if they didn't modify that and they weren't going after those espionage cases, would that be a reason for you then to make a change with the U.S. attorney's office?

Mr. GONZALES. Yes.

Mr. FORBES. Now, the other concern that I have, quite honestly, is—you have been very patient in being here with us today. You have got a lot of your staff members there.

How are these investigations impacting your ability and the office's ability to go after some of these other concerns that we have, whether it is child pornography, gangs, China espionage? It is taking a lot of your time. How are you balancing those?

Mr. GONZALES. Well, I have to balance it. Because obviously, this has raised some issues, some concerns of Congress. I have an obligation to try to reassure Congress that nothing improper happened here.

But on the other hand, I also have an obligation to the American people. They expect me to continue to make sure this country is safe from terrorism, that our neighborhoods are safe and our kids are safe. And so, we have got to somehow make that work.

I am not going to say that this hasn't been somewhat of a distraction. But I think the department has remained focused on doing the job the American people expect.

Mr. FORBES. Thank you, Mr. Attorney General.

Mr. CONYERS. The Chair recognizes the distinguished Chairman of the Intellectual and Property Rights Committee, Howard Berman.

Mr. BERMAN. Well, thank you, Mr. Chairman.

Mr. Attorney General, I just thought I would make one brief comment and then yield my time to my colleague from California.

I only know one of the U.S. attorneys that was asked to resign, the gentleman from Washington, Mr. McKay. And I got to know him because he was an appointee of President Bush's father to the Legal Services Corporation.

I believe that when I hear what appeared to me to be the flimsiest of reasons given to justify the decision to ask him to resign, and put that in the context of the statements of the Deputy Attorney General under your predecessor or under you, Mr. Comey, regarding his performance in that job, I believe the Justice Department comments about this gentleman's qualities and his performance do a discredit to you, unless they are rebutted by you.

Because my firm belief, as confirmed by Deputy Attorney General Comey, is that this was an excellent public servant, one of the best you had, performing at a quality that every American should be proud of.

And with those comments, I yield to the gentlelady, Ms. Sánchez.

Ms. SÁNCHEZ. I thank the gentleman for yielding.

Mr. Gonzales, I would like to pick up on a new line of questioning here. We have had several people come and be interviewed by the Committee and also come to present their testimony in hearings.

And in his written responses to questions from the Subcommittee on Commercial and Administrative Law, Daniel Bogden mentioned

that he had a conversation with Deputy Attorney General Paul McNulty regarding his termination, in which Mr. McNulty told him that the decision had come from "higher up."

To whom would Mr. McNulty, as Deputy Attorney General, have been referring?

Mr. GONZALES. Well, the decision was clearly mine, Congresswoman. It was my decision. I am accountable, and I accept responsibility for these decisions.

Ms. SÁNCHEZ. Okay. And in his written responses to questions from the Subcommittee on Commercial and Administrative Law, Mr. Bogden noted that Mr. McNulty told him that he had "limited input" in the final decision process to terminate the U.S. attorneys.

Did you understand that the Deputy Attorney General had only "limited input"? Is that your understanding?

Mr. GONZALES. It was my understanding or belief that Mr. Sampson was consulting with the senior leadership, including and in particular, the Deputy Attorney General, because the Deputy Attorney General is the direct report for these U.S. attorneys, including Mr. Bogden.

But at the end of the day, no matter the level of consultation, what I know is that Mr. McNulty, the Deputy Attorney General, signed off on these names. And, in fact, on the day of Mr. Sampson's testimony, I went to the Deputy Attorney General, I said, "Do you still stand behind these recommendations?" And he told me, "Yes," and that, to me, is the most important thing.

Ms. SÁNCHEZ. Okay, well, if the Deputy Attorney General had only limited input—and that doesn't seem to trouble you—who, to your knowledge, had more than merely limited input in the final decision process?

Mr. GONZALES. Well, again——

Ms. SÁNCHEZ. I mean, was that on your shoulders? Was that you?

Mr. GONZALES. Again, Congresswoman, you probably have more information about that than I. What I——

Ms. SÁNCHEZ. I am asking for what you know.

Mr. GONZALES. Okay, what I understood—and I only know from—I haven't spoken with Mr. Sampson, I haven't spoken with others, except the conversation that I just relayed to you with respect to the Deputy Attorney General.

So I haven't spoken with others within the department and asked them, "Okay, did you consult on this? How do you feel about this, these other witnesses?" Because we are all fact witnesses, I didn't want to interfere in this investigation.

Ms. SÁNCHEZ. Okay, so you don't know who had more than merely limited input in the firing decisions?

Mr. GONZALES. It would be difficult for me to characterize the involvement——

Ms. SÁNCHEZ. All right, I will accept that answer.

In his written responses to a question from the Subcommittee on Commercial and Administrative Law, Mr. Bogden mentioned that Acting Associate Attorney General William Mercer explained to him that the Administration had a short, 2-year window of opportunity to place an individual into his U.S. attorney position in

order to enhance that individual's resume for either future political or Federal bench positions.

Do you believe that the Office of the U.S. Attorney is merely a vehicle through which to provide party loyalists with an opportunity to pad their resume and then use that as a launching pad for elective office or a judgeship?

Mr. GONZALES. As head of the department, I would say no, but there would be nothing improper in doing so. Again, these are——

Ms. SÁNCHEZ. Do you think it is a good practice? I mean——

Mr. GONZALES. As head of the department, I would say——

Ms. SÁNCHEZ [continuing]. Improper but——

Mr. GONZALES [continuing]. I would care about making sure that we have good people in these positions, people that could discharge their responsibilities.

And, again, for the American people to understand, you know, the success of the office does not live or die based upon the U.S. attorney. It depends on the career individuals that are there. Obviously, the U.S. attorney provides direction, helps with morale. But I just want to make sure people understand that if there is a change at the top, the work of the department continues.

Ms. SÁNCHEZ. But just for clarification, it wouldn't bother you if they used it as a vehicle with which to——

Mr. GONZALES. No, I didn't say that it wouldn't bother me. What I am saying is——

Ms. SÁNCHEZ. Would that trouble you, then?

Mr. GONZALES. Well, again, it would depend on the person coming in. I would want to make sure we have someone that could do a good job as a U.S. attorney. And so, yes, that would——

Mr. CONYERS. Time has expired. Please finish your comment.

Ms. SÁNCHEZ. I thank the gentleman.

And I yield back.

Mr. CONYERS. The Chair recognizes the distinguished gentleman from Indiana, Mike Pence.

Mr. PENCE. Thank you, Chairman.

And, General Gonzales, welcome to the Committee. I am very grateful for your service to the country.

Mr. GONZALES. Thank you.

Mr. PENCE. And I especially want to take this opportunity to congratulate you and the Justice Department on the interdiction of six suspects earlier this week, apprehended in connection with a planned terrorist attack on Fort Dix.

You have mentioned several times through your testimony about the primary focus of your position being protecting people of the United States. And I am grateful for that specific example.

I also want to thank you for the admissions and the candor and the humility that you have reflected today. It seems to me there is an overarching principle here, that the President has the authority to be served by whomever he pleases in his Administration and, frankly, that he is able—it isn't often repeated, so I will try and repeat it—he is able to dismiss officials for any reason or for no reason at all. But he is not at liberty, in fairness to all my colleagues, he is not at liberty to dismiss persons for wrong reasons.

And it seems to me, your testimony today reiterates the point that, while there were administrative errors that you have been

candid about, that at present, I, as a public servant, have not seen evidence of wrongdoing.

And I appreciate you making that distinction again in this public forum, repeatedly.

And I think it gets a little bit lost in the public debate here, the distinction between errors and wrongdoing. There may be consensus that errors were made, and a consensus that you share, but I have not seen evidence of wrongdoing or wrong motives in connection with these terminations.

But I appreciate the willingness of the department to cooperate so thoroughly in providing documents and facilitating witnesses before the Committee.

You made a comment in your opening statement that I found provocative, on another topic. You said that it was part of the mission of the Justice Department to "preserve the public integrity of our public institutions."

And I wanted to call to your attention a legislation that my colleague, Congressman Rick Boucher, and I, with the original cosponsorship of a number of distinguished colleagues, including the Chairman of this Committee, that I think supports that same objective, of pursuing and promoting public integrity and public institutions. It is called the Free Flow of Information Act. We have talked about it very briefly in the past. A "federal media shield" is how it is referred to euphemistically.

And while I believe it is among the principal objectives of the Justice Department to hold public people accountable and public institutions, I also believe that our founders intended that a free and independent press was actually the chief safeguard to public integrity. And, in fact, as a conservative, I believe that the only check on government power in real-time is a free and independent press.

And there has been a progeny of cases over the last 15 years and in successive Administrations, particularly in independent counsel investigations, it seems to me, where there has been a rising tide of instances where reporters have faced threat of subpoena in Federal cases and, of course, in some cases reporters have been jailed or threatened with jail time to reveal confidential sources.

The sponsors of this legislation, which I hasten to add also include a senior Member of this Committee, Mr. Howard Coble, we really believe that compelling reporters to testify and compelling reporters to reveal the identity of their confidential sources intrudes on the news gathering process but, more importantly, hurts the public interest.

I would say the Free Flow of Information Act, General, is not about protecting reporters, it is about protecting the public's right to know.

I just wanted to gain your assurance, without asking you to comment in any significant way at this hearing, that—we have moved this legislation through various incarnations over the last 2 years, we have added more qualifications for national security, for trade secrets, for imminent threat of bodily harm. I would just like to have your assurance and that of your capable staff that as this legislation, I think, moves through this Committee in the months ahead, that your department, and particularly the Criminal Divi-

sion, would work with us to find some way to put a stitch in this tear in the first amendment.

And I would welcome your comments but, again, would not ask for you to comment substantively on legislation that you may or may not have yet reviewed.

Mr. GONZALES. There is no Administration position on the legislation, as I recall.

We have in the past opposed similar legislation, Congressman. I haven't been convinced of the need for it, quite frankly. The department has only issued, I think, 19 media subpoenas for confidential sources since 1991. We have a very strong process in place that has been in place for 30 years with respect to how these get approved.

I ultimately have to approve such a subpoena, and so we have been concerned in the past about the definitions, the broad scope, and perhaps that is something that could be dealt with through changes in the legislation.

You have my commitment. I would be happy to work with you, so I will just leave it at that.

Mr. PENCE. Thank you. Thank you.

Thank you, Chairman.

Mr. CONYERS. You are welcome.

Mr. Robert Wexler, the gentleman from Florida?

Mr. WEXLER. Thank you, Mr. Chairman.

With your permission, Mr. Attorney General, I would like to follow the Chairman's questions regarding Mr. Iglesias.

If I understand it correctly, you testified that Karl Rove talked to you about voter fraud in New Mexico in fall 2006.

Mr. GONZALES. Yes, New Mexico and two other jurisdictions. That is correct.

Mr. WEXLER. Mr. Iglesias is selected for the termination list in early November 2006?

Mr. GONZALES. I think on Election Day. Well, I don't remember when he was selected. I wasn't involved in that process.

Mr. WEXLER. Right, it appears on the list.

Mr. GONZALES. Looking at the documents, it appears he first appears on the list on Election Day.

Mr. WEXLER. And it is your testimony you did not select Mr. Iglesias to be put on the list, correct?

Mr. GONZALES. His name was brought forward to me, recommended along with others.

Mr. WEXLER. Right. You did not select him. Did Mr. Sampson select him?

Mr. GONZALES. Mr. Sampson was charged with coordinating this effort.

Mr. WEXLER. He didn't select him?

Mr. GONZALES. I have not spoken with Mr. Sampson about this.

Mr. WEXLER. Right. Did former Deputy Attorney General Mr. Comey, did he select them?

Mr. GONZALES. Of course, he wasn't in the department at that time, so——

Mr. WEXLER. So he didn't select them.

Mr. GONZALES [continuing]. I don't think he selected them.

Mr. WEXLER. That is right. Did Mr. McNulty select them?

Mr. GONZALES. I haven't asked that question to Mr. McNulty.

Mr. WEXLER. Mr. McNulty told us he didn't select them.

Did Mr. Margolis select them?

Mr. GONZALES. Again, I haven't spoken with Mr. Margolis.

Mr. WEXLER. He didn't select them.

We have talked a lot about the President's authority to have who he wants where. Did the President select Mr. Iglesias to be put on the termination list?

Mr. GONZALES. No——

Mr. WEXLER. No, the President didn't select him.

Did the Vice President select him to put him, Mr. Iglesias, on the termination list?

Mr. GONZALES. No.

Mr. WEXLER. No. Okay. So the President didn't, the Vice President didn't, you, the Attorney General, didn't. All of the assistant and former Deputy Attorney Generals didn't put Mr. Iglesias on the termination list.

So who did?

Mr. GONZALES. Well, what is important, Congressman, is that there was a consensus recommendation made to me. How he got on the list was less——

Mr. WEXLER. So a group of people put him on the list?

Mr. GONZALES. What is less important is that I accepted a recommendation and I made the decision. I accept responsibility for the decision.

Mr. WEXLER. No, no, you made a decision, according to yourself, as to accepting the termination list. But you have also said you didn't put him on the list. So somebody else, other than you, other than the President, other than the Vice President, other than every Deputy Attorney General that has come to this Committee, put him on the list.

But with all due respect, Mr. Attorney General, you won't tell the American people who put Mr. Iglesias on the list to be fired. It is a national secret, isn't it?

Mr. GONZALES. Congressman, if I knew the answer to that question, I would provide you the answer. I have not spoken with the individuals involved——

Mr. WEXLER. So you don't know who put him on the list, Mr. Iglesias. Why was Mr. Iglesias put on the list by this mystery person?

Mr. GONZALES. Well, again, I wasn't surprised to see Mr. Iglesias's name recommended to me, based upon conversations that I had had with the senior senator from New Mexico. He had lost confidence in Mr. Iglesias.

Let me just say, Mr. Iglesias's story is a great one, it is the American dream, and there are many good things about his performance, and I very much admire him as a person.

Mr. WEXLER. But you won't tell the American people who put him on a list to terminate his employment.

Mr. GONZALES. I accept responsibility for——

Mr. WEXLER. You accept responsibility for making the decision ultimately to accept the termination list, but you will not come forth and tell the American people who put Mr. Iglesias on the list to be fired.

Mr. GONZALES. Out of respect for the integrity of this investigation and the investigations occurring at the Department of Justice, I have not made that inquiry with respect to other fact witnesses.

Mr. WEXLER. But you were okay with firing them, but you won't tell us who made the recommendation to fire them.

Mr. GONZALES. I think I was justified in relying upon the senior leadership in the department, as I understand——

Mr. WEXLER. Do you know what Mr. Moschella told this Committee about why Mr. Iglesias was put on the list? He said the rationale was because he was an absentee landlord. Are you familiar with that?

Mr. GONZALES. I am familiar with Mr. Moschella's public testimony.

Mr. WEXLER. Right. He delegated authority, apparently, Mr. Iglesias.

Mr. GONZALES. Well, let me just say this: I did not make the decision with respect to Mr. Iglesias——

Mr. WEXLER. I know. You haven't made any decision. You have been very clear about that.

Mr. GONZALES. I accept full responsibility for this.

Mr. WEXLER. But you won't tell us who put Mr. Iglesias on that list?

Mr. GONZALES. You would have a better opportunity to access——

Mr. WEXLER. I would.

Mr. GONZALES. The Committee would, the Congress.

Mr. WEXLER. Are you the Attorney General? Do you run the Department of Justice?

Mr. GONZALES. Yes, I do. And it has been frustrating to me to not be able to ask these kinds of questions. But I want to respect the integrity of this investigation and the investigations going on within the department. If we all came up here, and had the same——

Mr. WEXLER. When did the investigation in the department start?

Mr. GONZALES. If we all came up here——

Mr. WEXLER. It started after they were fired.

Mr. GONZALES [continuing]. Six of us, and had the same testimony about events that occurred over 2 years, you would look at that with great suspicion. You would wonder——

Mr. WEXLER. Sir——

Mr. GONZALES [continuing]. Have you guys talked to each other about facts?

Mr. WEXLER. Sir, you know them, and it has nothing to do with an investigation that is occurring after these people were fired. Because you know the answer before they were fired, because you know who put them on the list but you won't tell us.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Tom Feeney of Florida is now recognized.

Mr. FEENEY. Well, it is always fun to follow my passionate Florida colleague.

Mr. Attorney General, thank you for being here today. And my colleague asked some questions that deserve answers, especially

given the confusion. You have admitted botched P.R., botched administrative procedures.

But are the questions that my friend from south Florida just asked, are they the very questions that the Justice Department's Office of Professional Responsibility, along with the department's Office of Inspector General, is asking as we speak?

Mr. GONZALES. That is certainly my understanding. I mean, we have asked them to look into the allegations of any wrongdoing. If in fact there were management missteps, you know, what were they and what, you know, recommendations about what we can do better going forward?

Mr. FEENEY. And you are not interfering with that investigation in any way?

Mr. GONZALES. I have recused myself from those investigations. [Laughter.]

Again, because I don't want there to be any kind of appearance of impropriety, of improper influence. And so I have recused myself from oversight of those investigations.

Mr. FEENEY. Now, the suggestion is you ought to be micromanaging and involved in all those details. But my guess is you would probably get some criticism if you were——

Mr. GONZALES. I would be criticized if, in fact, I was doing such a thing, I suspect.

Mr. FEENEY. Well, one way or the other, it is welcome to public life.

We have spent extraordinary time asking the same questions of you and many other witnesses. I think they are important questions, and I think that we will all be expecting answers.

It is important to ask these questions, but it is not important to ask the same questions to the same people ad infinitum. But I will do one more and then we will move on to some important things that the department is doing.

Are you aware of any evidence whatever that might tend to demonstrate that people were asked to resign specifically in order to interfere with ongoing investigations for partisan purposes?

Mr. GONZALES. Well, we can say "might tend to demonstrate"—those are words that make me uncomfortable. [Laughter.]

What I can say is, I know that is not the reason why I accepted the recommendations. And I am not aware, based upon my review of the documents, based upon the testimony that I have seen, the public testimony, that people were motivated and coming forward with recommendations for improper, for partisan political reasons.

Mr. FEENEY. There are an awful lot of critical tests that your agency is asked to deal with.

I think, first, among equals, personally, in the environment we live in, of counterintelligence and especially and counterterrorism, I would like to know roughly what portion of your personnel and resources, in today's environment, is dedicated to making sure we don't have an attack on Fort Dix or anywhere else in this country, by investigating through counterintelligence and counterterror operations.

Roughly, what portion of the——

Mr. GONZALES. I don't know if I can break it down in terms of assets or resources. I have made it clear that it is the number-one

priority for the Department of Justice. And it is clearly the number-one priority for the director of the FBI.

And I want to thank Congress for the resources that have been provided to, in particular, the FBI to ensure that this country is safer.

Mr. FEENEY. Well, and historically—by the way, there is a great book, if you haven't read it, that Justice Rehnquist wrote back in 1989, I believe, before major terror attacks, talking about the balance between civil liberties, which is very important to me, called "All the Laws But One," quoting Lincoln in his famous—civil liberties as opposed to the security needs. And that balance tends to change based on the perceived and the real threat.

And following up on that, I have to tell you, Attorney General, that I was one that has been a strong advocate of the Patriot Act and some of the other resources and powers that you alluded to in your last response.

And so, I was very discouraged when we found that there were thousands of mistakes and errors made. I will note that the inspector general's report determined that there was no evidence of intentional wrongdoing by the FBI. But I think we could say that there was some very sloppy work done in complying with the NSL authority.

I would like to know, just very briefly, what the new, recently developed guidelines for the FBI regarding its NSL authority are? Can you describe some of the major differences in about a minute——

Mr. GONZALES. Well, our work there is not complete. The director is thinking seriously about having a compliance and audit unit to go back in and ensure that people are doing their jobs.

We are looking at the whole question of the role of lawyers, quite frankly, in connection with this issue, whether or not there should continue to be a direct report to the special agents in charge. Or maybe it should be the direct report to the general counsel.

We are looking at a new computer system to have better accountability in terms of the number of NSLs. We need to do a better job with respect to our reporting to Congress. I know that the director has required additional training, better education about the use of NSLs.

But more fundamentally, the Inspections Division has gone back in to try to get a better feel about are there additional problems with respect in particular to exigent letters. The I.G. has gone back in to do additional looks. And the National Security Division and our privacy officer is watching carefully about what is going on.

I have asked the inspector general of the department to come back now, I think in 2 months, and give me a report about how the FBI is doing. I take this very seriously——

Mr. FEENEY. We will get a report when that has concluded?

Mr. GONZALES. We will provide you the information as we learn about it.

Mr. FEENEY. Thank you.

And I yield back the balance of my time.

Mr. CONYERS. I thank the gentleman for his inquiry.

The Chair recognizes Steve Cohen from Tennessee.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Attorney General, I want to follow up a little bit on Congressman Wexler's questions. You said you don't know who put Mr. Iglesias on the list; is that correct?

Mr. GONZALES. That is correct.

Mr. COHEN. But you said you knew the President and the Vice President didn't. How do you know they didn't?

Mr. GONZALES. Well, I just know that they would not do that.

Mr. COHEN. Do you think Mr. Nulty or Mr. Sampson would have done it? Obviously, you think they could have done it.

Mr. GONZALES. Of course. Look, I didn't envision the President of the United States and the Vice President being involved in this process. What I——

Mr. COHEN. But you don't know for a fact that they weren't involved in the process through Ms. Miers or through Mr. Rove. You don't know that.

Mr. GONZALES. That is correct. That is correct. But I had no reason to believe that the White House—in fact, I know the White House has said publicly they were not involved in adding or deleting people from the list. That is what the White House has said publicly.

Mr. COHEN. Right. And the White House asked you, as I understand it in your statement, you say here that Deputy Chief Kyle Sampson told you that the counsel to the President, Ms. Miers, inquired about replacing all 93 U.S. attorneys, and you both agreed that wouldn't be a good idea, it would be disruptive and unwise.

So at one point the White House wanted to replace all 93. So when they wanted to replace all 93, why do you think they wouldn't want to replace eight?

Mr. GONZALES. What I have testified also is that I don't know whether or not Ms. Miers thought this was a good idea, whether or not this was even Ms. Miers' idea. She raised this as an idea. We quickly said no——

Mr. COHEN. Did you ever talk to Ms. Miers, to Mr. Rove or to anyone else, or communicate to Ms. Miers or Mr. Rove or anyone else as to why they wanted to remove all 93 U.S. prosecutors?

Mr. GONZALES. I have no recollection of having that kind of conversation with Ms. Miers or Mr. Rove.

Mr. COHEN. And do you have any recollection of a letter to or from them?

Mr. GONZALES. I don't. But going back and looking at the documents, there was some e-mail traffic I think in late December of 2004, early January of 2005, about a conversation involving Mr. Rove stepping into the counsel's office about, what are we going to do about U.S. attorneys?

And then there was a subsequent e-mail back from Mr. Sampson. It is all in the record and I don't recall a conversation with Mr. Sampson during that period of time. This would have been during Christmas week, just 10 days or 2 weeks before my confirmation hearing, and so I have no recollection of that.

But I do remember, as I have gone back and looking at the documents, there was some e-mail traffic about U.S. attorneys just before I became Attorney General.

Mr. COHEN. These eight individuals who were fired, one of them was Mr. Cummins. Did you inquire into why Mr. Cummins was fired?

Mr. GONZALES. Congressman, when you asked did I inquire when, I mean, Mr. Cummins was asked——

Mr. COHEN. Why? Why? Not when, why?

Mr. GONZALES. Mr. Cummins was asked to leave in June, June 14, not December 7. He was not part of that group. And a change was desired by the White House because they had identified a well-qualified individual that they wanted to have as a United States attorney.

Mr. COHEN. Who was the well-qualified individual? His name hasn't surfaced yet.

Mr. GONZALES. Tim Griffin was the person——

Mr. COHEN. Oh, he was well-qualified?

Mr. GONZALES. Well, he certainly had more—well, I don't want to disparage Mr. Cummins, but, yes, if you look at——

Mr. COHEN. You are not disparaging Mr. Cummins.

Mr. GONZALES. Again, if you look at his qualifications in terms of having prosecution experience, being in the JAG Corps, serving in Iraq, yes, I think he was a well-qualified individual.

In fact, Mr. Cummins——

Mr. COHEN. But why was Mr. Cummins asked to leave? Because they wanted to put somebody else in?

Mr. GONZALES. Yes. It is my understanding, I think that is a fair characterization. I might also add that——

Mr. COHEN. Then let me ask——

Mr. GONZALES. Can I finish my answer, Congressman—that in December, there was a newspaper article, I think The Arkansas Times, which indicated that Mr. Cummins was quoted as saying, you know, "I have got four kids, I have to pay for their college. They will be surprised if I don't"——

Mr. COHEN. Thank you. We have been through that. And Mr. Cummins said he didn't intend to resign.

You at one point said, as did your deputy, that all of these resignations are firings, were performance-related. Now, obviously Mr. Cummins was not performance-related. So what you said at that point was wrong.

Mr. GONZALES. And I think I clarified that in my last Senate Judiciary Committee meeting.

In fact, that was the reason for my anger in an e-mail that was on February 7, following the Deputy Attorney General's testimony, is because I had confused in my mind Mr. Cummins being asked to leave on June 14 with the others being asked to leave on December 7. And what I was thinking about in my testimony was those individuals asked to leave on December 7 related to performance, and did not in my mind think about Mr. Cummins, who was asked to leave——

Mr. COHEN. Did you inquire as to why each of these eight individuals were asked to leave?

Mr. GONZALES. I do not recall, Congressman, the conversation that occurred when the recommendations were brought to me. I am sure we had discussions about——

Mr. COHEN. Don't you think that when an individual who is a public official, who is out there in the public line, who is an attorney whose reputation is so important to having their license to practice law, that they are asked to resign from a position that there should be a compelling reason and that you, as their appointed official, should ask and inquire why and realize and come to a belief that there is a compelling reason for them to be determined, and not just accept some mysterious group's recommendation?

Mr. GONZALES. I think a compelling-reason standard is much too high for those of us who are appointed by the President of the United States, and we serve at the pleasure of the United States. And we all understand that. We all know that, by statute, U.S. attorneys serve for 4 years. Thereafter they are holding over. These United States attorneys had served for 4 years.

But no question about it, as a management function, yes, I think we should have done better in terms of communicating with them. We don't owe them the jobs. But I do think that we owe them better.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. CONYERS. The gentleman from Florida, Ric Keller?

Mr. KELLER. Thank you very much, Mr. Chairman.

And, Mr. Attorney General, I have to apologize. I had to step out for a few minutes. I was here earlier. But we are also having a hearing that I was conducting with the secretary of education, Margaret Spellings, at the same time.

Mr. Attorney General, the Bush administration has about 20 months left on the clock. Tell me what your top two priorities are going to be over the next 20 months that you would like to accomplish.

Mr. GONZALES. I will give you three.

Mr. KELLER. Go ahead.

Mr. GONZALES. I was on the South Lawn on September 11th when President Bush arrived. And he and I both knew then that after that our world had changed and that the priority of the law enforcement community would change. And so, moving forward, my top priority will continue to be making sure that America is safe. That is the first thing.

Secondly, I don't think it is possible for people to realize the American dream if they live in fear of gangs, they live in fear of drugs, they live in fear of violent crime. And so that is the second thing, doing what we can to ensure that violent crime is reduced.

Finally, I wear this wristband given to me by Mark Lunsford. His daughter Jessica was killed by a sex offender. And it is a reminder of my commitment and my obligation to make sure that our kids are safe.

Those are the things that I am going to be focused on.

Mr. KELLER. Thank you, Mr. Attorney General.

You have been through more public scrutiny, and probably some pain, in the last month, more than most people have in a lifetime. As a prominent Cabinet member, U.S. attorney, or U.S. Attorney General, you could leave today and make $1 million a year at a law firm pretty easily, but you are staying on and want to stay on.

Is it because of your passion for those three things: violent crime, terrorism and getting after child predators?

Mr. GONZALES. I got into public service because I wanted to do something where I could make a difference, a positive difference in people's lives. I fundamentally, deep down, believe that I can continue to do so.

If I don't think that I can be effective as Attorney General, I will no longer continue to serve as Attorney General. I have got confidence and faith in the people that work in this department. And I think we can continue to serve, effectively, the American people.

Mr. KELLER. Mr. Attorney General, when I am asked at town hall meetings about what is going on with this U.S. attorney situation and you, I tell folks back home that it can all be summarized, the microcosm of this whole, what the media calls a scandal, in one case: And that is the case of Carol Lam.

Carol Lam was a talented lady, U.S. attorney from San Diego, who had successfully prosecuted Duke Cunningham. She also is a lady who had some concerns with your department. I think she was 91 out of 93 in firearms. And I learned, from going to San Diego and talking to folks that she had failed to prosecute alien smugglers, even those who had been arrested 20 times.

Now, you let her go, or told her she was going to leave in December of 2006. And immediately we heard the allegation from some in the media and some Members of Congress that Carol Lam must have been fired because she prosecuted a public corruption case against Republican Duke Cunningham.

Now, I went through and reviewed the documents, talked to people, including Carol Lam. And the timeline is crystal clear. The documents regarding her failure to prosecute alien smugglers, including those who had been arrested 20 times, began in Congress in February of 2004 with Darrell Issa, which is literally 16 months before the local San Diego Union-Tribune broke the very first story about the Duke Cunningham scandal, which shows me that it is literally impossible that that was an improper motive on your part or anyone else.

So, let me ask you directly: Did you ask Carol Lam or any of the other U.S. attorneys to resign because they were prosecuting or investigating public corruption cases against Republicans?

Mr. GONZALES. No. In fact, I am very, very proud of the work of the department in prosecuting public corruption cases. I don't care whether or not we are talking about Republican or Democrat. We are doing our job.

Mr. KELLER. Did anyone at the White House, including but not limited to the President, Karl Rove, Harriet Miers or Josh Bolten, ever come to you and say, "We want you to fire Carol Lam," or any other U.S. attorney, "because they are going after a Republican congressman"?

Mr. GONZALES. They didn't say it to me, and I am not aware of any such direction.

Mr. KELLER. Okay. Thank you, Mr. Attorney General.

I will yield my remaining time to Mr. Cannon. I think the gentleman would like to make a couple of points here.

Mr. CANNON. Going back to Mr. Margolis—who, again, is a very senior career employee—and his view about the Griffin appoint-

ment, I should say directly or indirectly. I also, to be fair to Griffin, his resume at the time I interviewed him looked better for the job than Cummins' did when I interviewed him.

Here was a guy who is not political, who is saying that Griffin was well-qualified. Remember, Griffin was in Iraq. He was in DOJ. He was a judge advocate general. And so we have lots of views on these issues that haven't been out here yet, which indicate that at least in the case of Cummins we have some pretty good information about why he was supplanted.

I thank you, Mr. Chairman. I cede——

Mr. GONZALES. Mr. Chairman, could I make one comment?

It bothers me to have to disparage individuals and to be critical openly about people who worked for the department. And I just want to make a general observation that these are all very, very fine people. And they should be proud of their service. We should all be proud of the fact that they had the courage to engage in public service. And I don't want anyone to think that I don't otherwise appreciate the fine work that they did on behalf of the department.

Mr. CONYERS. Thank you.

The Chair recognizes the distinguished gentleman from Georgia, Hank Johnson.

Mr. JOHNSON. Thank you, Mr. Chair.

Mr. Gonzales, you have led a distinguished career as a lawyer, law school professor, partner major Houston law firm, general counsel to then-Governor George Bush, a justice on Supreme Court of Texas, White House counsel to President George Bush. And now you have ascended to the responsibility of Attorney General of the United States.

And in that connection, you hired as your top two aides Mr. Paul McNulty, the Deputy Attorney General—over 20 years of distinguished experience on the Federal and State levels, much of which was spent as a U.S. attorney. And your number-two man was an Associate Attorney General, also close to 20 years of distinguished experience, much of which has been spent as a U.S. attorney and an assistant U.S. attorney.

Both of them, extensive trial experience and very well-equipped to handle the tasks of their office, as you are.

But instead what you have done is delegated an extraordinary amount of power to two young, inexperienced aides, Ms. Monica Goodling and Mr. Kyle Sampson, neither one of whom had any trial experience, neither one of whom—I think Mr. Sampson may have tried one case in his life—and neither one of whom had any law enforcement background whatsoever.

But yet you signed on March 1st of 2006 a secret order delegating the power to those two inexperienced aides to hire and fire major career employees of the Justice Department, including the Criminal Division, including U.S. attorneys and assistant U.S. attorneys. And you did not even inform your Deputy Attorney General and your Associate Attorney General that you had delegated that power.

Can you tell us why you did that?

Mr. GONZALES. Yes. There is a lot there, Congressman.

The actual decision in terms of reserving to the Attorney General certain personnel decisions was actually made through regulation

which became public in February. And as a result of that change in the regulations reserving the authority on certain personnel——

Mr. JOHNSON. Those were put through at your insistence, correct?

Mr. GONZALES. Yes.

Mr. JOHNSON. You changed the rule so that you could give the power to hire and fire to Kyle Sampson and Monica Goodling.

Mr. GONZALES. We haven't gotten to that point yet.

Mr. JOHNSON. Well, I don't want you to take all my time. I just want you to answer those questions.

Mr. GONZALES. But I want to give you a complete answer, Congressman.

And so, there was nothing secret about the change in terms of reserving to the Office of the Attorney General that kind of authority. Now——

Mr. JOHNSON. You did not let your Deputy Attorney General know about it, did you?

Mr. GONZALES. Well, they were ultimately told—as I understand it, they weren't told through the executive process, because my understanding——

Mr. JOHNSON. You said not to tell your Associate Attorney General?

Mr. GONZALES. My understanding is that they were told of the change.

Mr. JOHNSON. You didn't tell them yourself?

Mr. GONZALES. I did not have the specific conversation with him.

Mr. JOHNSON. Well, let me ask you this question: What exactly did Monica Goodling do insofar as her job as White House liaison? What employment decisions did she make about career and noncareer personnel in the Department of Justice?

Mr. GONZALES. Well, of course, let me just say that she discharged—her responsibility was to discharge the normal responsibilities for a White House liaison.

Mr. JOHNSON. Including making decisions about hiring and firing career and noncareer personnel for the Department of Justice? Correct?

Mr. GONZALES. Well, with respect to political appointees——

Mr. JOHNSON. Is that correct?

Mr. GONZALES [continuing]. That would certainly be appropriate. Now, with respect to career——

Mr. JOHNSON. I mean, is it correct that she——

Mr. GONZALES. Was involved in?

Mr. JOHNSON [continuing]. Was involved in making hiring and firing decisions pertaining to DOJ career and noncareer personnel? Is that correct?

Mr. GONZALES. Let me just say that she was involved to political appointees and with respect to career appointees, there has been some fairly serious allegations made with respect to her role in that. And has already been made public because of the seriousness of those allegations, that matter has been referred for an investigation, so——

Mr. JOHNSON. Right. Did Mr. Sampson——

Mr. GONZALES [continuing]. I am not going to comment.

Mr. JOHNSON. Did Mr. Sampson have the same power, as well, under your memorandum?

Mr. GONZALES. Mr. Sampson would have the same—he was included as part of the delegation. You described——

Mr. JOHNSON. And did he, in fact, play a part in making personnel decisions about Department of Justice career and noncareer personnel?

Mr. GONZALES. Certainly with respect to noncareer. I can't sit here today and tell you——

Mr. JOHNSON. Okay. And were either one of them part of the team that put together the list which included the eight attorneys who were let go on December 7, 2006?

Mr. GONZALES. No question about it. I had charged Mr. Sampson with organizing and coordinating the effort to gathering information and present to me recommendations. Ms. Goodling assisted Mr. Sampson in the discharge or a wide variety of responsibilities, and if you look at——

Mr. JOHNSON. And you don't know of anyone else who assisted them?

Mr. GONZALES. Well, if you look at the e-mail traffic and, from what I understand, from public testimony, obviously there were people who provided input and information.

Mr. JOHNSON. Who would that have been?

Mr. GONZALES. Well, I think, again, based upon looking at the documents, obviously, issues relating to Ms. Lam were raised with me, and I believe that was done by Mr. Bill Mercer. My understanding is that in fact Mr. Comey was in fact consulted about his views about U.S. attorneys.

And so, I mean, if you look at the public testimony and if you look at the documentation, there were people that were being consulted. They may not have known that they were providing information which would then form the basis of some kind of list.

Mr. JOHNSON. Can you name of the people who were involved in the compilation of the list?

Mr. CONYERS. The time has run out. Did you want to finish the response, Mr. Attorney General?

Mr. GONZALES. No.

Mr. JOHNSON. Can you name—well, if I might get a response to you to that last question—can you name any others who were involved in the decisions to put those eight names on the list?

Mr. CONYERS. Could you——

Mr. JOHNSON. Are you going to answer me or what?

Mr. CONYERS. No, he is not answering because your time has expired.

Mr. JOHNSON. All right. Thank you, Mr. Chairman.

Mr. CONYERS. But I recommend that you put it in written communication to the Attorney General.

From Arizona, Mr. Trent Franks, the gentleman is recognized at this time.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And thank you, Judge Gonzales, for coming down here. I know that life has been kind of challenging for you lately. [Laughter.]

And I want you to know that I personally appreciate your service to the country. You have a profoundly difficult job.

And, you know, I was touched by the three priorities that you mentioned, with your job, in being able to combat terrorism and being able to combat gang violence and to protect our children from some of the tragedies that occur out there. And I want you to know I believe that those are very noble aspirations.

It occurs to me that, every day that we have you down at this place, that we are detracting from those vital missions in this country.

And so, if indeed our effort here is to find corruption in the Justice Department, where justice itself is being undermined and where some of the potential accusations here are that your department is undermining justice in specific cases by hiring and firing U.S. attorneys, then I think that our efforts here are justified.

But if indeed they are politically motivated or not to that end, then we become guilty of the very thing that has been thrown in your direction.

So I want to ask a very direct question. You know, we understand that there is a difference between political motivations and motivations to thwart a criminal investigation or to affect a particular case or to undermine justice.

Now, in this country, we have partisan elections. And when we put a President in office, we expect that person to appoint people that reflect the philosophy that we voted for. That comes with the job. I mean, Mr. Clinton fired all the U.S. attorneys. So we expect that.

And political motivations, even though they are tossed about like this, something bad here, those are part of our system and they are intrinsic to its survival.

On the other hand, if someone in your position or in your department should deliberately try to intimidate or fire a U.S. attorney in order to affect a particular case or undermine justice or prevent justice from occurring in a particular case, that is a crime, and that is wrong.

So I ask you very directly, sir: Have you ever fired anyone or caused anyone to be fired or influenced anyone to be fired on the basis of trying to affect a particular criminal case or investigation, or to thwart justice in any way?

Mr. GONZALES. No.

Mr. FRANKS. Do you know of anyone in the Administration or your department that has done either of those things?

Mr. GONZALES. No.

Mr. FRANKS. See, I think, Mr. Chairman, that is indeed the job of this Committee, is to ask those very direct questions.

And, of course, time and justice has a way of prevailing. And the truth of those answers—of which I have to say to you I have seen no evidence that either of those things have occurred, before this Committee or otherwise—but time will probably bear that out one way or the other.

But I just wanted to make sure that we understood what we are all about here. And your job is protecting this country. And while we are interviewing you like this, it cannot possibly help but detract from what you are trying to do to protect this country and to pursue those three priorities that you mentioned earlier.

So I guess one of the things I would like to do, Judge Gonzales, is to ask you, what do you think is the public's greatest misperception of the Department of Justice at this time, given all the circumstances that have occurred here?

Mr. GONZALES. Well, given some of the statements that have been made, the notion that the department has been politicized.

As I indicated in response to an earlier question, there are only a few hundred political appointees. There are tens of thousands of career individuals. The department is great because of the career individuals. They deserve all the credit for the success of the department.

And it would be pretty darn difficult, if not impossible, to make a decision for political reasons and expect to get away with it. If, in fact, a career investigator or prosecutors felt that we were making decisions for political reasons to interfere with a case, you would probably hear about it. We would probably read about it in the papers, because they take this stuff very seriously, as they should. We expect them to.

And, again, I just want to emphasize to the American public that the work of the department continues, irrespective of who the Attorney General is, United States attorney is. It continues because of the great career people in the department.

Mr. FRANKS. Well, Judge Gonzales, let me just thank you for your service to this country and the cause of human freedom.

And with that, I would like to defer here the rest of my time to Steve King.

Mr. CONYERS. Twenty-nine seconds remain, Steve.

Mr. KING. I thank the gentleman from Arizona, the constitutionalist quodetile himself, and the Chairman.

Mr. Chairman, I, like all Members of this Committee, are interested in maintaining our credibility. And I have an article here from the *Wall Street Journal* dated April 7, 2007, that and associated articles, and I ask unanimous consent to introduce them into the record.

Mr. CONYERS. Without objection, so ordered.

[The articles follow:]

ARTICLES PUBLISHED IN VARIOUS SOURCES, SUBMITTED BY THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND MEMBER, COMMITTEE ON THE JUDICIARY

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NEWS SPORTS WEATHER LIVING ENTERTAINMENT BUSINESS OPINIONS MULTIMEDIA WEBIFIED

Local Politics

Aragon, three others, indicted

Three more agree to guilty pleas

By Michael Gerst (Contact)
Thursday, March 29, 2007

Tribune file
Albuquerque Metropolitan Court

Manny Aragon and three others were indicted today on charges that they defrauded taxpayers of $4.2 million during the construction of the Bernalillo County Metropolitan Court.

Also indicted were former Court Administrator Toby Martinez, his wife, Sandra Martinez, and Raul Parra, a contractor.

Each was charged with conspiracy, mail fraud and money laundering, the U.S. Attorney's Office announced this afternoon.

Three other people, including former Albuquerque Mayor Ken Schultz, have accepted guilty pleas in connection with the investigation, the U.S. Attorney's Office said.

Schultz, Marc Schiff, the president of the architecture firm that designed the courthouse, and Manuel Suarez, a board member with Parra's contracting firm, will be sentenced at a future date, according to a news release.

Aragon, the former state Senate president widely viewed as the most powerful politician in the state during his heyday in the 1980s, had been at the center of speculation since the federal investigation first came to light a year ago.

That investigation focused on allegations of kickbacks and padded contracts in the construction of the $60 million Metro Courthouse complex, which opened in 2004 in Downtown Albuquerque and required an additional $3.9 million in state funds.

The investigation also looked at the construction of the adjacent $45 million state District Courthouse, completed in 2001, and the $90 million Metro Detention Center, completed in 2002, but charges filed Thursday focused solely on Metro Court.

Parra was the subject of a 2002 lawsuit by a former business partner alleging that their firm, Technologies West, had been paid for work it never did.

Harvey Peet, who filed that suit, testified that the company's books contained a mysterious entry titled "Manny - $5,000."

That amount matched a $50,000 check made out to cash, he said in depositions for the lawsuit.

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The case against Aragon and others will be handled by Jonathon Gerson, the same attorney who prosecuted former state Treasurer Robert Vigil.

He will be assisted by Paula Burnett of the U.S. Attorney's Office and Chris Lackman of the state's Attorney General's Office.

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INSURANCE JOURNAL

West News

New Mexico Insurance Chief's Leave Extended to Continue Investigation

April 13, 2006

The New Mexico Public Regulation Commission extended for another 30 days the administrative leave of state Insurance Superintendent Eric Serna, who said he is "absolutely certain" he has done nothing wrong.

The paid leave, which began last week, will continue while Attorney General Patricia Madrid investigates his office at the request of the PRC.

Agents of the attorney general were wheeling cartons of papers out of PRC offices even as the commission met behind closed doors to discuss Serna's future.

Commissioner David King said later that the possibility of firing Serna was discussed during the commissioners' closed session but was rejected as premature.

"Right now we're in the allegation stage," King said. There would have to be specific reasons for dismissal, he added, "and I think that's not been shown at this point in time."

After its closed session, the five-member commission resumed its public meeting and voted unanimously without discussion to extend the leave.

The leave was first recommended last week by Madrid, who said there had been an "inadequate controls environment" for some time within the insurance division."

The PRC had asked her to step in after it was disclosed that Serna's division had made an agreement with Century Bank -- a depository for about $400 million paid to the division -- that included fees for the bank higher than allowed by law. Serna says that was an oversight.

Commissioners also were troubled that the bank had contributed to Con Alma Health Foundation, a nonprofit organization founded by Serna to give grants to health providers.

"They are not going to find any illegality or any official impropriety. I can guarantee you of that," Serna said in an interview.

He attended the proceedings -- hoping, he said, for a chance to speak -- but was not asked to address the commission in its public or private session.

"I know it's a political season and I know that there are a lot of innuendo and gossip items out there," Serna also said.

He declined to elaborate, but it was an apparent reference to the Democratic attorney general's running for Congress against U.S. Rep. Heather Wilson, R-N.M.

"I've been in public life a long time and I think it's been a distinguished career and I'm not going to leave public service with this cloud over me," Serna said. "I will do whatever it takes to clear my good name."

Asked if he had done anything illegal or improper, he replied "I'm absolutely certain" he had not.

A group of Republican lawmakers alleged that Madrid has "multiple conflicts of interest" -- including the fact she helped set up Con Alma -- and the investigation of Serna should be handled independently.

King, a Republican, said he also favored an independent investigator. He said he was concerned that Madrid would feel

pressured by campaign criticism that she didn't do enough about problems in the state treasurer's office, and not be as fair with Serna as an independent investigator would be.

Former state Treasurer Robert Vigil and his predecessor, Michael Montoya, were indicted in federal court in a kickback scheme. Montoya has pleaded guilty to one count of extortion and Vigil is scheduled for trial next week.

Public Regulation Commission Chairman Ben Ray Lujan said he had "every faith" that Madrid would conduct the investigation swiftly and ethically.

Serna also said that the allegations in a federal lawsuit filed against him were "ludicrous."

The lawsuit accuses him of using his position to stop an investigation into allegations that an Espanola insurance agent pocketed premiums and didn't secure policies for customers.

The lawsuit alleges Serna pressured staff not to investigate complaints against agent Dennis O'Brien, according to a copyrighted story in the *Albuquerque Journal*.

"That case was not lying dormant," Serna said. He said an investigation had been under way for weeks, and a final report is being written.

He said he was not a friend of O'Brien -- who is also a defendant in the case -- and O'Brien said he was not an ally of Serna's.

In fact, O'Brien said, he asked the Public Regulation Commission to look into the Insurance Division "because I was not happy with some of the things that went on at the department."

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NEWS SPORTS WEATHER LIVING ENTERTAINMENT BUSINESS OPINIONS MULTIMEDIA WEBIFIED

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Local

Indictments string together a web of theft

By Michael Gisch (Contact), Susie Gran (Contact), Maggie Shepard (Contact)
Originally published 06:44 a.m., March 30, 2007
Updated 12:10 a.m., March 30, 2007

Smart Box

How to steal $4.3 million

- The federal indictments say:
- Contractors working on the project would submit inflated bids or fake invoices.
- Then Metro Court Administrator Toby Martinez would approve the bids and invoices.
- State Senate President Manny Aragon would find money in the state budget to pay for them.
- At least seven players, including Aragon and former Albuquerque Mayor Ken Schultz, played a role in the scheme and kept a cut of the excess money.

More than $4 million was stolen from New Mexico taxpayers - with the accused thieves including former Senate President Manny Aragon - during construction of the Bernalillo County Metropolitan Courthouse, long-anticipated federal indictments say.

Those indictments, filed Thursday, detailed a scheme in which contractors would submit inflated bids to then-Metro Court Administrator Toby Martinez, who would approve them.

Aragon, a South Valley Democrat, used his position as state Senate president to secure money for the bids, the indictments claim. He and at least six others are accused of pocketing a cut of the excess funds.

Former Albuquerque Mayor Ken Schultz and two others have taken deals with the U.S. Attorney's Office in Albuquerque in exchange for reduced sentences.

Aragon, Martinez and wife Sandra Martinez, and sub-contractor Paul Parra remain to face a variety of charges.

All seven have been charged with conspiracy and mail fraud. Money laundering charges were also filed against Parra, Aragon and Sandra Martinez.

If convicted on all charges, each could face eight to 10 years in prison, Assistant U.S. Attorney Jonathon Gerson said.

Among the defendants, Aragon, who last year accepted a $200,000 buyout to leave his post as president of New Mexico Highlands University, is the biggest name. But his alleged $750,000 take wasn't the biggest share, according to court documents.

The Martinezes are accused of pocketing $2.05 million. Parra is accused of keeping $775,000, the indictments say.

Attorneys for the Martinezes and their co-defendants did not return phone messages Thursday.

Aragon has previously denied taking kickbacks.

Gerson, the lead prosecutor in the case, said the indicted defendants must appear in court to enter a plea on the charges, likely on April 12.

In the meantime, Gerson said, they will not face arrest.

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This three people who have pleaded guilty will remain free until their sentencing at an undetermined date, Gerson said.

The stage is set

The indictments claim the scheme began in 1998 and continued through 2005, a year after the courthouse opened.

A $46.5 million state appropriation funded through revenue bonds started construction of Albuquerque's Metro Courthouse in 1996.

The next year, Design Collaborative Southwest was hired as the lead architect. Marc Schiff, who has accepted a plea deal in connection with the case, was the DCSW senior partner in charge of the project.

DCSW hired Schultz to work as a lobbyist for the firm.

A communications equipment firm called Datcom Inc. was subcontracted into the project in 2002. The company was run by Manuel Guara, who has also accepted a guilty plea.

In 2003, Sandra Martinez - wife of the court administrator - started a company called Smart Solutions, which she ran from her home, consulting on courthouse projects.

With the pieces in place, the indictments allege, Toby Martinez, Aragon and the contractors set about their scheme.

"The defendants would submit and approve for payment false invoices and excessive requests for payment," the indictments state, adding:

"The defendants would seek appropriations and supplemental appropriations from the Legislature . . . for the purpose, in whole or in part, of making state funds available to pay the false and fraudulent invoices."

In January 2002, the indictments note, Aragon made a capital outlay request in the Senate for $3.6 million for audio-visual and data-processing equipment used for video arraignments.

That was one of several supplemental appropriations for the courthouse project, which wound up costing $83 million, including an adjacent parking garage.

The indictments claim the proceeds of the fraud scheme were laundered through several bank accounts, including the one attached to Smart Solutions.

Aragon, a lawyer, received his share largely through his law office.

Aragon has previously said he was paid $20,000 as a legal consultant for one of the contracting firms, but denied taking kickbacks.

The mail fraud charges stem from allegations that the defendants used the postal service to send and receive the illegal funds.

Where the money went

The government is seeking to recoup the kicked-back money, providing some clues as to where it went.

Toby Martinez invested $600,000 in fraudulent proceeds in a casino boat in Germantown, Tenn., the indictment states. The government also seeks to take his 2005 Lexus.

Aragon invested his money with Financial Network Investment Corp. in El Segundo, Calif., the indictments state.

Next . . .

Though the FBI investigation that led to the indictments also focused on construction at the state District Courthouse and the Bernalillo County Metropolitan Detention Center, Gerson emphasized that Thursday's indictments were only related to Metro Court. The building opened in 2004, with a final price tag, including an adjacent parking garage, of $83 million - nearly double the original state appropriation of $46.5 million.

Defendants Parra and Guara also had roles in the construction of the $45 million state District Courthouse, which opened in 2001 after delays caused by changing the architectural design firm - DCSW was one of the two - and disputes over funding.

Allegations of corrupt construction practices first surfaced in a 2002 lawsuit against Parra by one of his former partners. That lawsuit, which contained references to Aragon, focused on construction of the District Courthouse.

The Bernalillo County Metropolitan Detention Center, also reportedly a focus of the FBI's investigation, opened in 2003 - almost two years late and $33 million over budget. DCSW was the

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architect on the project.

Asked if any other related investigations were still under way, Gerson said he couldn't comment. Office policy prohibited him from even confirming whether pending cases exist.

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INSURANCE JOURNAL

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West News

Title Insurance Lawsuit Names New Mexico Insurance Superintendent

May 4, 2006

New Mexico's suspended Insurance Superintendent Eric Serna, under investigation over a bank contract, is named in a lawsuit that alleges title insurance firms sought to persuade him to raise rates by donating to a nonprofit foundation he helped found.

The lawsuit, filed in state district court, said the title insurance industry gave $21,750 in 2003 and $26,200 in 2004 to Con Alma Health Foundation.

Although tax documents filed by Con Alma do not list specific donors, the lawsuit said the 2003 donation lists the address of LandAmerica Albuquerque Title Co., a subsidiary of LandAmerica Financial Group Inc., parent company of three companies named as defendants.

"A primary purpose of these contributions was to influence defendant Serna, in his capacity as superintendent of insurance, to set unreasonably high rates for title insurance, and to restrain competition as to the price and terms of title insurance in New Mexico," the lawsuit alleges.

Serna said he follows state law in setting rates, and called the allegations concerning Con Alma contributions "laughable."

"That's ridiculous," he said. "We have a transparent process."

Serna resigned earlier this month as president of Con Alma's board after questions arose about a possible conflict of interest between his dual roles on the board and as insurance superintendent.

Charles and Barbara Murphy of Cedar Crest and Haydock Miller Jr. of Santa Fe sued on behalf of themselves and thousands of New Mexicans who bought title insurance. Such insurance guarantees that homeowners are not financially liable if there's a problem with the property's title.

The trio alleges they were forced to pay "excessive and unreasonable prices"for title insurance to refinance their mortgages.

They also allege the defendants engaged in price fixing by not allowing companies to compete for business. The insurance superintendent sets uniform title insurance rates each year, which the lawsuit contends violates the state Constitution.

Defendants include the 10 largest title insurance companies in New Mexico, Serna, the state Public Regulation Commission and its Insurance Division.

Last month, former state Rep. Max Coll and his wife, Catherine Joyce-Coll, sued First American Title Co., the PRC, the Insurance Division and Serna, contending state law allows title insurance firms to charge excessive prices.

The attorney general's office has been investigating a contract Serna signed with a Santa Fe bank.

Con Alma received more than $124,000 from Century Bank, which has had a contract since 2003 to hold insurance company deposits required of firms doing business in the state.

The contract was amended in 2005 to allow a higher fee than state regulations permit. The fee was decreased once it was discovered to be too high.

Serna has denied doing anything illegal or improper.

He was placed on paid leave early this month, and last week the PRC extended that for an additional 30 days pending the investigation, which is being done at the PRC's request.

Commissioners, meanwhile, said the PRC is hiring its own investigators to prepare for possible personnel action. Serna said he was not told about a second investigation, but said he "welcomed any and all investigations, just so they don't last forever."

Commissioner David King said he has asked Serna to consider retiring.

The attorney general also has requested documents from Con Alma, including lists of donations and donors since 2003. An attorney general's spokeswoman said that request is separate from the investigation into the bank contract.

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The Albuquerque Tribune

FBI investigating possible corruption

Aragon's role in jail, courthouse construction is questioned

By Susie Gran
Tuesday, July 11, 2006

For weeks, rumors have swirled about a major investigation into what could be the biggest case of public corruption in New Mexico history.

At the heart are three of the largest public building projects in Bernalillo County and a name familiar to everyone in the state: Manny Aragon.

An FBI spokesman confirms agents have been gathering evidence, but he'll say little else.

Even so, the probe has become a hot topic in the city's legal, architectural and construction communities.

"Obviously, it piques people's interest because people are trying to determine who's behind it and what they've done," said Mike Gibson, executive director of the Associated Contractors of New Mexico.

Then-New Mexico Senate President Manny Aragon puts on a microphone before doing an interview outside the Roundhouse near the end of the legislative session in 1997. (Stacia Spragg/Tribune file)

So far, what is clear is that three major public buildings are in investigators' sights: the $41 million Bernalillo County Courthouse; the $34 million Metropolitan Courthouse and the $90 million Metropolitan Detention Center.

The jail finally opened in 2003, almost two years late and $33 million over the original budget. The County Courthouse, widely known as the state District Courthouse, opened in 2001 but was plagued by disputes between judges and the county over project management.

Testimony in an ongoing lawsuit suggests contracts on the state District Courthouse included money to pay kickbacks, and Aragon, once the powerful leader of the state Senate, might have played a role.

One bit of evidence: a cryptic note reading "Manny - 50,000" in the books of a subcontractor on the state District Courthouse.

Aragon did not return calls for this story. However, in a deposition for the same lawsuit, he denied taking bribes or even knowing of the company involved.

The investigation

FBI spokesman Bill Elwell will say only that agents have been collecting evidence for a grand jury in a "white-collar, public corruption case." He declined to specify targets or projects.

However, state Auditor Domingo Martinez said the FBI asked him for documents related to the building of Metro Court, completed in 2004. In March, Metro Court Chief Judge Judith Nakamura said FBI investigators were seeking documentation related to the courthouse construction.

Martinez said his office also began an inquiry into "procurement issues" in construction of the Metropolitan Detention Center and turned those documents over to the FBI, as well.

Finally, Martinez's office in March requested documents about construction costs on the state District Courthouse, Bernalillo County spokeswoman Liz Hamm said.

Former Bernalillo County Manager Juan Vigil said he was interviewed a month-and-a-half ago by FBI agents about construction of the jail, and the primary subject of their questions was Aragon.

"They had allegations that somebody had given Manny $70,000 to ensure a contractor . . . got the job," he said.

Vigil said the questions turned on Aragon's power as state Senate president, a post Aragon held from 1988 to 2000.

"The insinuation was that because he was president pro tem of the Senate, we would cave in order to get a favorable result from him," Vigil said.

That wasn't the case, Vigil said.

As Bernalillo County manager from 1991 to 2003, Vigil was involved with construction of the state District Courthouse and the jail. Now the administrator of the village of Los Ranchos de Albuquerque, he says he was never pressured by Aragon or county commissioners when contracts were awarded.

It wouldn't have made a difference, he said, because contracts were awarded by a committee of city, county and law enforcement officials.

"Manny - 50,000"

Allegations of corruption on the state District Courthouse project emerged in a 2002 lawsuit between business partners Harvey Peel and Raul Parra.

Peel sued his associates in four companies, including P2RS Group Inc. and Technologies West Limited, claiming they were involved in racketeering activities - including illegal kickbacks.

In testimony for the case, Peel said Technologies West was paid $160,000 for work on the courthouse. His lawsuit alleges the company submitted invoices for services or goods not provided or "for amounts far in excess of the reasonable value of such services and goods, with the intent to deceive or cheat the state of New Mexico."

Out of the $160,000, two checks - totaling $50,000 - were made out to cash. That was the same amount as a puzzling entry - "Manny - 50,000" in Technologies West's books, Peel testified.

Aragon has denied accepting any bribe from Technologies West, Parra or Peel.

In a Nov. 19, 2002, deposition taken in the Peel case, Aragon said, "I have never heard of Tech West."

Aragon did say in his deposition that he provided legal services for P2RS. Peel testified Aragon got a $20,000 annual retainer, according to court documents.

Former P2RS President Darryl Ruehle, in an interview this week, said it was common for the company to "send money to politicians a lot, and Manny was one."

"(It was) classified as a retainer since he really never did anything for us," he said.

Ruehle said he left the company in 1997 because he felt it was being made more a political force than a business that provided a product.

Peel declined to comment for this story, and Parra could not be reached for comment.

P2RS is now dormant, said Judy Wagner, who was appointed receiver for company.

In response to Peel's lawsuit, his partners filed counterclaims, saying he came to the court with "unclean hands," and that they didn't owe him any money.

A confidential settlement was reached that required a payment of $150,000 to Peel, and P2RS was placed in receivership.

Further allegations

In other documents from the 2002 lawsuit, a contractor named Glen Perkal tells how he took precautions to protect his company, Integrity Networking Systems, when he was told by a court official to hire Technologies West as a subcontractor for telecommunications work at the state District Courthouse.

Before he struck the deal, Perkal said he wanted the court's request in writing to protect his company "from somebody coming in and saying that that money didn't need to be spent or that work didn't need to be done or whatever. Basically, it alleviated us of the responsibility for, you know, adding that cost into the contract or worrying about what it was really being used for."

On Sept. 25, 2000, he apparently got what he wanted. A letter signed by Court Administrator Bennina

Armijo-Sisneros specified that Technologies West should be awarded the work.

Perkal's part of the courthouse contract was $400,000, plus $160,000 for Technologies West, according to the court documents.

Perkal in his testimony said he didn't work on the Metro Court project because Court Administrator Toby Martinez wouldn't put a similar arrangement with Technologies West in writing.

Perkal said he called up Parra and "told him we couldn't do the project the way he wanted us to do it, with all of this extra money involved, because we were concerned that somebody would find out, that we would get in trouble."

Perkal said "somewhere in the neighborhood of a million-and-a-half dollars" was the difference between the two proposals he had prepared, then withdrew, for work on Metro Court.

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The West Virginia Record http://www.wvrecord.com

Former nonprofit boss says job was given to Mollohan associate

Wednesday, February 28, 2007

By Cara Bailey (cara@wvrecord.com)

WHEELING - The former president and CEO of a West Virginia nonprofit organization has filed a suit that alleges, among other things, his job was given to "a close associate" of Congressman Alan Mollohan.

Mollohan

Nicholas Tomlin filed a complaint Feb. 22 in Ohio Circuit Court in which he names the Office of Law Enforcement Technology Commercialization Inc., also known as OLETC, the West Virginia High Technology Consortium Foundation and James Estep as defendants. Mollohan is not listed as a defendant, but he is mentioned numerous times in the lawsuit.

OLETC and WVHTCF are nonprofit corporations funded through legislative "earmarks," line items or special spending provisions in budget packages. In this instance, the suit says, the earmarks were supported by Mollohan.

Tomlin was employed by OLETC, starting in September 2000 as the deputy director. He was appointed interim director in September 2004, the complaint states.

On Nov. 18, 2004, the OLETC Board of Directors had its bi-annual meeting in Wheeling.

"During the course of said meeting,... Estep appeared and stated that he had been in contract with the Congressman for West Virginia's First Congressional District (Mollohan) and indicated that it was the Congressman's wish that OLETC be absorbed by WVHTCF, and that WVHTCF would thereafter receive the (National Institute of Justice of the United States Department of Justice) funding previously received by OLETC," the suit says.

James Estep, a resident of Morgantown, is chairman of the Board of Directors of OLETC and president of WVHTCF.

Also in that November 2004 meeting, according to the suit, Tomlin was appointed president and chief executive officer of OLETC.

In the following months, several meetings took place. One, according to the suit, was on Jan. 13, 2005, during which Tomlin met with Craig Hartzell, the interim chairman of the Board of Directors of OLETC.

During the meeting, Hartzell stated he had spoken with Mollohan, and "it had been made clear to him that any plan that did not involve the dissolution of OLETC as a separate corporate entity would not be suitable to the Congressman," the complaint states.

On Feb. 25, 2005, Estep was appointed as chairman of the OLETC Board of Directors, and all but three Board members resigned, the suit says.

During a meeting on March 7, 2005, at Nemacolin Woodland Resort in Farmington, Pa., Tomlin was called in front of nearly 300 individuals and was introduced at the director of OLETC program and a new vice president of WVHTCF.

But the suit says that on March 31, 2005, Tomlin met with Estep and was advised his employment was terminated. However, the two entered into an Employee Agreement that provided Tomlin would remain on paid leave until May 1, 2005, and he would be paid $90,000 contingent upon award of the Tunnel Project, a five-year, $20 million federal contract.

Tomlin's position at OLETC was awarded to Steve Morrison, "a close associate" of Mollohan, the suit says.

In March 2006, Hartzell announced Axiomth Inc., together with its partners including WVHTCF, had been awarded the Tunnel Project. The suit says Tomlin was then supposed to be paid a minimum of $90,000, but he says he never was paid.

In the five-count suit, Tomlin seeks damages, claiming the defendants breached their Employment Agreement, his contractual rights and his business relationships. Tomlin, through attorney Patrick S. Cassidy, seeks punitive and compensatory damages.

Judge Arthur Recht has been assigned to the case.

Ohio Circuit Court case number 07-C-72

[June 25, 2006]

Mollohan relative has past in government contracting: 2 Jarvis companies brought in $86M in fed contracts

(The Dominion Post in Morgantown (WV)(KRT) Via Thomson Dialog NewsEdge) Jun. 25--Companies run by Rep. Alan Mollohan's relative and business partner Joseph L. Jarvis earned millions of dollars in federal contracts before and during the time he was in business with Mollohan, records show.

Jarvis was president of Airspace Technology Corp. and JTP Radiation Inc., which won $86 million worth of contracts between 1984 and 1998, according to records at the General Services Administration. In eight of those contracts -- amounting to about $28 million -- the companies had no competition.

Another of Jarvis' companies, Arrey Industries, earned a $1 million no-bid subcontract the year before he went into business with Mollohan. The company put together software that was supposed to help the Department of Energy decommission nuclear sites, but the project was never finished.

Jarvis, who is Mollohan's third cousin, co-owns 27 condominiums with Mollohan in The Remington complex in Washington, D.C. The two bought 17 units in the property together in 1996 and added 10 units over the next seven years.

Mollohan's ownership in The Remington has been under scruti- ny by the U.S. Attorney for the District of Columbia since the conservative group the National Legal and Policy Center filed a complaint against Mollohan in February. Earlier this month, Mollohan corrected several references to The Remington in his federal financial disclosure statements.

A reporter and editor of The Dominion Post visited The Remington last week in an attempt to give Jarvis an opportunity to explain his business dealings. After being let into the building by a maintenance worker, The Dominion Post employees were told to leave.

"They can't meet with you now," said a woman at the leasing office. The woman, polite but visibly agitated, stepped out of the office to keep the two from approaching the office, and refused a request to view the first-floor corridor. "You'll have to leave the building, now," she said.

Jarvis was listed as president of Airspace Technology and JTP Radiation in records at the Utah Department of Commerce, where the companies are registered. California Secretary of State records show Jarvis was also listed as president of Airspace Technology Corp. in Irvine, Calif., where some of the contracts list the company's address.

Jarvis' companies landed the bulk of their contracts before he and Mollohan invested together.

Jarvis' biggest contract was in 1984, won by his company Airspace Technology Corp. The company sold radar equipment to the Navy under an $11.8 million no-bid contract. The company

continued to supply the radar equipment through 10 more contracts, making a total of almost $40 million.

JTP Radiation Inc. won a $9.8 million competitive contract to sell communications equipment to the Federal Aviation Administration in 1990. In all, the company earned more than $15 million selling equipment to the FAA over the next five years.

JTP Radiation continued to earn money from the FAA after 1996, when Mollohan and Jarvis were investing together. From 1996 to 1998, JTP landed five contracts for a total of $213,000. The company continued to list its address as Salt Lake City, despite the fact that JTP's business registration in Utah expired in 1993.

Jarvis' ties to the Mollohan family go back beyond his investments in The Remington. Mollohan's father, Robert H. Mollohan, served as a director of a company called Airspace Management Group, where Jarvis was president according to Utah records. Robert Mollohan held West Virginia's First District seat for 14 years before his son won it in 1982.

Jarvis' investments with Mollohan were part of the NLPC complaint filed with the U.S. Attorney's Office. In its report, the organization said that Mollohan undervalued his holdings in The Remington, and failed to report assets from the condominium complex.

The Remington

Earlier this month, Mollohan disputed the NLPC's claims. Mollohan said that the valuation of The Remington was correct, because the assets were offset by debt. Though he made several amendments to his financial disclosures in a letter to the Clerk of the House, Mollohan did not revalue The Remington.

"I am not amending the values assigned to my and my wife's investment in The Remington apartment building in Washington, D.C., which were provided by our accountants, because those values were correctly reported," Mollohan said in the letter.

Mollohan's assertion that The Remington assets were offset by debt are borne out by documents on file at the Recorder of Deeds in Washington.

When Mollohan and Jarvis bought The Remington under the name Remington Group, the company took out a $1.5 million loan to make the purchase, which included 17 units. Each subsequent purchase of 10 new units came heavily mortgaged, as well.

In 1999, Remington Inc. refinanced all of the units and took out a $2.3 million loan. By 2003, the loan had been raised to $4.1 million, according to property records. Of that new loan amount, $275,000 was to be used as "purchase money" to acquire new property.

Both of the loans were so-called "back-to-back" loans where Mollohan and Jarvis took out a loan personally, then lent the money in turn to Remington Inc. The back-to-back loan was one of the amendments Mollohan made to his financial statements in his letter earlier this month.

"We received a sizable inheritance, took on considerable financial risks, and had the good fortune to be investing in a rising real estate market," Mollohan said in his statement earlier this month. "It is those factors that are responsible for the increase of our assets."

Jarvis did not return a phone call for comment Friday. Mollohan did not return an e-mail asking for comment Friday.

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Helping Hands

Appropriations, Local Ties And Now a Probe of a Legislator

West Virginia Rep. Mollohan Has Real-Estate Holdings That Also Bring Scrutiny

Growth of Budget 'Earmarks'

By JOHN R. WILKE

FAIRMONT, W.Va.—On a mountaintop above old coal seams that once fueled West Virginia's economy, a gleaming steel-and-glass research center is taking shape, its winged design and 120-foot data tower visible for miles.

The $136 million building is being built with taxpayers' money for the Institute for Scientific Research, a nonprofit group launched by the local congressman, Democrat Alan Mollohan, and funded almost entirely through provisions he put into annual spending bills.

A 12-term congressman, Mr. Mollohan sits on the House Appropriations Committee, a panel that disgraced lobbyist Jack Abramoff dubbed the "favor factory." Working with fellow West Virginian Sen. Robert Byrd, Mr. Mollohan has steered at least $178 million to nonprofit groups in his district over the past five years using "earmarks"—special-interest provisions that are slipped into spending bills to direct money to pet projects.

Photo by Lucas Jackson

Nonprofit Network

Some federal earmarks since 2000 for groups backed by Rep. Alan Mollohan (D., W.Va.)

NONPROFIT/PURPOSE	FEDERAL MONEY
Institute for Scientific Research (above) ■ Research, commercialization	$[illegible]
West Virginia High Technology Consortium Foundation ■ Research, business-incubator services	$[illegible]
Vandalia Heritage Foundation ■ Preservation, economic development	$[illegible]
MountainMade Foundation ■ Promoting state crafts, artisans	$[illegible]

Source: Congressional records

The money has brought more than jobs and building projects to his district. It has formed and financed a tight-knit network of nonprofit institutions in West Virginia that are run by people who contribute regularly to Mr. Mollohan's campaigns, political-action committee and a family foundation. One of these people also invests in real estate alongside Mr. Mollohan and his wife. The network of contributors also includes private companies that get contracts through these nonprofits.

Alan Mollohan

Such a pattern raises questions about whether the donations or deals might be a way beneficiaries of earmarks could influence the legislator's actions. Now, federal prosecutors have opened an investigation of Mr. Mollohan's finances and whether they were properly disclosed, according to people contacted in the inquiry. Mr. Mollohan hasn't been accused of wrongdoing. A spokesman for the U.S. attorney's office in Washington, whose public-corruption unit is conducting the inquiry, declined to comment.

Mr. Mollohan said in an interview he had no knowledge of any investigation. But he said, "I welcome any review of my efforts to diversify the economy of West Virginia, as well as any of our financial investments. All of them are aboveboard, and we operate transparently." He added that "every one of the earmarks is held to the highest standards of accountability" and publicly disclosed. He said he was "extremely proud of what we've been able to do for my state."

For the first time in years, Mr. Mollohan is facing a serious Republican challenge for his seat, from a candidate with active backing of the White House. Mr. Mollohan said he didn't want to suggest that scrutiny of his earmarks might be politically motivated. But he also said, "I'd rather have this explained and understood now rather than a week before the election."

Central to the Mollohan network is a former staffer, Laura Kuhns, who heads the nonprofit Vandalia Heritage Foundation. It is a historic-preservation group that is financed almost exclusively by earmarks backed by Mr. Mollohan. It paid her $182,000 in 2004. Vandalia is coordinating construction of the new building for the Institute for Scientific Research, or ISR, and Ms. Kuhns sits on its board and those of three other nonprofits that get funds via earmarks.

She and her husband also are partners with Mr. Mollohan and his wife in five properties in Bald Head Island, N.C., valued in local real-estate records at a total of $2 million. The Mollohans recently bought a $1.45 million oceanfront home on the island, called the Peppervine House, which they rent out for $8,500 a week, next to the Kuhns' house, known as Cape Fearless. These and other investments, including a stake in a nine-story luxury condominium complex in Washington, appear to have made the Mollohans wealthy.

Mr. Mollohan's government financial disclosure form, which shows only broad ranges of debts and assets, showed household assets of up to $565,000 in 2003, offset by debt of up to $465,000, including $100,000 in credit-card bills. Four years later, the couple's reported assets had soared to between $6.1 million and $24.9 million, with liabilities of $3.7 million to $13.5 million,

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A Congressman's 'Earmarks' Spur a Federal Probe

Continued From First Page

mostly mortgages. Mr. Mollohan said his true assets are at the low end of those ranges.

He and Ms. Kuhns say there is no link between the earmark appropriations Mr. Mollohan pushed through Congress and their real-estate investments, and they deny any impropriety. Mr. Mollohan said that any time he invests with others in real estate, he puts in half the money to avoid the appearance of a conflict. "I wish you were correct that I'm worth millions, but in fact it's borrowed money," he said.

Casting a Shadow

The previously undisclosed investigation of Mr. Mollohan, 62 years old, comes amid a still-continuing Abramoff probe that has cast a shadow over two top Republicans, Bob Ney of Ohio and former House Majority Leader Tom DeLay, who is giving up his seat from Texas. Another Republican, former Rep. Randall "Duke" Cunningham of California, who had also served on the Appropriations Committee, left Congress and was sentenced to prison last month after pleading guilty to accepting $2.4 million in bribes from defense firms in exchange for earmarks and other favors. A criminal bribery investigation is under way into a Louisiana Democrat, Rep. William Jefferson, who has denied wrongdoing.

The cases are part of a widening attack on public corruption, with about 350 Federal Bureau of Investigation agents working 18-hour days nationwide, according to the chief of the Justice Department's criminal division, Alice Fisher. "We are seeing a surge in these cases and we're adopting aggressive tactics including undercover operations," she said.

The House Ethics Committee, on which Mr. Mollohan is the senior Democrat, counsels lawmakers about ties to private entities because of the risk of actions inconsistent with their obligation to the public. The ethics panel has been unable to function—despite the Abramoff corruption scandal, Washington's biggest in years—because of a partisan squabble over staffing in which Mr. Mollohan has led his party's forces.

Mr. Mollohan was among House members embarrassed by having received campaign donations from MCM Inc., one of the contractors from which Mr. Cunningham admitted taking bribes. MCM and its executives gave $3,000 to a political-action committee affiliated with Mr. Mollohan. A spokesman for Mr. Mollohan said that in December, he gave the MCM gifts to charity.

Mr. Mollohan attributes his success in real estate to the hard work of his wife, Barbara, who manages rentals at a 12-unit condo called The Remington. It offers one-bedroom suites on a weekly and monthly basis, advertising as "Washington's Best-Kept Secret." City records show its units are valued at between $230,000 and $275,000 each. The Mollohans have a half interest in 27 of them.

They co-own them with a relative, Joseph L. Jarvis, a retired businessman who received subcontracts from an Energy Department facility in Mr. Mollohan's district. Mr. Jarvis's business address at the time was a building constructed with money approved as a result of federal earmarks provided by Mr. Mollohan. Mr. Jarvis said his going into business with Mr. Mollohan had nothing to do with his group work on the federal earmarks.

The focus of Mr. Mollohan's watch attracted the attention of the National Legal and Policy Center, a self-styled ethics-in-government nonprofit in Falls Church, Va. Funded by donations averaging $100 to $200, the conservative group helped ignite a procurement scandal a couple of years ago that brought down an Air Force contracting official and a chief financial officer of Boeing Co. The group said it found at least 300 entrepreneurships or enclaves in Mr. Mollohan's disclosure forms over the years that had the effect of greatly increasing his assets. It said it forwarded a list to prosecutors.

One firm in Mr. Mollohan's district, Mr. Mollohan's prior disclosure forms properly valued his interest in The Remington and fully disclosed income from it, said people close to the inquiry. Mr. Mollohan's accountant, Blair Eller, said in an interview that the building's full value "may not have been properly reported in the early years" on the disclosure forms. He added that its value had risen sharply in recent years in the hot real-estate market.

More Scrutiny

The probe could bring more scrutiny to earmarks. Attached to appropriations bills, they are usually intended to benefit a specific project in a congressman's district and often escape the scrutiny that is supposed to accompany public expenditures. The number of earmarks has risen sharply in the past decade, to 14,211 in fiscal 2004 from 4,155 10 years earlier, says the nonpartisan Congressional Research Service. The fiscal 2004 earmarks caused $22 billion of federal spending.

Mr. Mollohan is well-positioned to press for earmarks. He has sat on the Appropriations Committee since 1989 and is the senior Democrat on a subcommittee handling appropriations for science projects and the departments of State, Justice and Commerce.

Mr. Mollohan acknowledges having steered federal-agency funds and tenants to a sprawling technology park where the mountaintop Bill building is under construction, even though in some instances the agencies didn't ask for these facilities. The park's anchor is named for him: the Alan B. Mollohan Center for Innovation. A bronze bust of the congressman surveys the lobby.

Government contractors and executives of the nonprofit groups in his network regularly give to his campaign and to an affiliated political-action committee, Summit PAC. A third trouble for funds is the Robert H. Mollohan Family Charitable Foundation, named for the congressman's father. It holds an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, W.Va., ranked a top-100 course by Golf Magazine. The tournament has been very successful. It received $403,000 in contributions in 2003—the latest available figures—from government contractors and other firms. The donors included at least two of the federally funded nonprofits, ISR and Vandalia, the group Ms. Kuhns runs.

A spokesman for Mr. Mollohan said the foundation's board wouldn't release a list of sponsors or their gifts "in respect their privacy." The family foundation gets staff and office services from the West Virginia High Technology Consortium, another Mollohan-backed nonprofit. Its executives are unpaid, however, according to federal tax filings.

The congressman rejects any link between campaign contributions and his efforts on behalf of his district. "I know where the lines are," he said. "Is it credible to say I encouraged the growth of these nonprofits to get fund-raising? That's ridiculous. These nonprofits should be judged on what they have done for the state." Every one of them has created jobs, bended the economy or rescued natural resources, he said. And Mr. Mollohan said he has earned the political gifts that have come from government contractors and others "by being an effective and hard-working representative."

Ms. Kuhns has long been a central figure in the congressman's efforts to earmark spending for West Virginia. After serving his staff, where she handled appropriations projects, 14 years ago, she went to work for a local real-estate developer that now does work for many of the Mollohan-funded nonprofits and employs her husband.

Since 2001, she has run Vandalia, which has won $20 million in the past five years in federal funding to rehabilitate historic buildings and invest in depressed real estate in the district, largely through Mollohan-backed earmarks. Besides ISR, she serves on the board of Mountaintop Foundation, a small, federally funded nonprofit dedicated to promoting West Virginia crafts. She's also on the board of the only out-of-state foundation to get Mr. Mollohan's backing, the National Housing Development Corp. It is a California group that has won $21 million in earmarks over five years.

Ms. Kuhns said she and her husband have done nothing wrong and have worked hard for West Virginia. "There's no smoking gun here," she said. "All of these entities are rigorously audited. There is a tremendous public trust there is no accountability in earmarks. Nothing could be further from the truth."

ISR is the largest nonprofit funded by Mr. Mollohan's efforts, winning at least $76 million of federal spending through his earmarks in the past five years. It paid its top three executives a total of $777,000 in 2004, the latest available figures. The president of ISR, James Estep, said in an interview that it has created hundreds of West Virginia jobs and nurtured dozens of high-tech companies. From his office overlooking the I-79 Technology Park—on 500 acres largely purchased with federal funds—Mr. Estep pointed to bulldozers at a building site.

"This was cow pasture in 1985. Now there are 1,600 people working here," he said.

The research center will offer laboratory and office space and large manufacturing bays built into the mountain. Mr. Estep said he won't have trouble drawing tenants. Until then, he said he would fill part of the new building with a small robot-manufacturing firm spun off from the West Virginia High Technology Consortium—another group funded by Mollohan-backed earmarks. The robot firm, known as Innovative Response Technologies and now a for-profit, recently won a $13 million Navy contract for 1,500 mobile "foldbots" for remotely inspecting possible roadside bombs.

Mr. Mollohan earmarked $2.75 million in the 1994 and 1995 Defense Department spending bills to develop the robots, funneling the money to the nonprofit consortium. The new Navy contract will be shared with another defense firm in Mr. Mollohan's district that has also been a contributor to his campaign, called Azimuth Corp.

Mr. Mollohan said he had no role in getting the Navy contract and applauded the work. But he acknowledged he sometimes has pressed federal agencies to spend money for projects they didn't want. The FBI and National Aeronautics and Space Administration didn't want to move operations into the I-79 Technology Park in West Virginia, he said, but they "are part of a thriving federal services sector in the state. "I'm sure that NASA didn't want to build the space center in Houston, either, when Lyndon Johnson sent them out there," he said.

"All the News That's Fit to Print"

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SPECIAL PROJECTS BY CONGRESSMAN DRAW COMPLAINTS

PROSECUTOR REVIEWS CASE

Millions of Federal Dollars Sent to 5 Foundations in West Virginia

By JODI RUDOREN

As lawmakers have increasingly slipped pet projects into federal spending bills over the past decade, one lawmaker has used his powerful perch on the House Appropriations Committee to funnel $250 million into five nonprofit organizations that he set up.

Those actions have prompted a complaint to federal prosecutors that questions whether any of that taxpayer money helped fuel a parallel growth in his personal fortune.

The most ambitious effort by the congressman, Alan B. Mollohan, is a gleaming glass-and-steel structure with a swimming pool, sauna and spa rising in a former cow pasture in Fairmont, W.Va., thanks to $153 million of taxpayer money he garnered through special spending allocations known as earmarks.

The headquarters building is likely to sit largely empty upon completion this summer, because the Mollohan-created organization that it was built for, the Institute for Scientific Research, is in disarray, its chief executive having resigned under a cloud of criticism over his $500,000 annual compensation, also paid by earmarked federal money.

The five organizations have diverse missions but form a cozy, cross-pollinated network in the forlorn former coal capitals of north-central West Virginia. Mr. Mollohan has recruited many of their top employees and board members, including longtime friends or former aides, who in turn provide him with steady campaign contributions and positive publicity in their newsletters.

The conservative National Legal and Policy Center in Falls Church, Va., filed a 500-page complaint with the United States attorney for the District of Columbia on Feb. 28 challenging the accuracy of Mr. Mollohan's financial disclosure forms. The forms show a sharp spike in assets and income from rental properties from 2000 to 2004.

Federal authorities said yesterday that they were reviewing the complaint, which was reported in The Wall Street Journal.

The case has led several Republican leaders to call for Mr. Mollohan's removal from the House ethics committee, where he is the senior Democrat.

In a statement yesterday, he said, "These groups were not created to benefit me in any way, and they never have."

Mr. Mollohan noted that the National Legal and Policy Center had attacked other Democrats and their union supporters and that it began its inquiry last May after he had voted against Republican efforts to water down House ethics rules.

"Obviously, I am in the crosshairs of the National Republican Party and like-minded entities," said Mr. Mollohan, who faces a serious electoral challenge in November. Vice President Dick Cheney is scheduled to headline a fund-raiser on April 21 for the Republican whom the White House recruited to run against Mr. Mollohan.

"They are angry at me, and I fully expect that from now until November they will continue to make baseless charges against me, my record and my family," the statement said. "I will vigorously defend my service and not be intimidated by their heavy-handed tactics."

In previous interviews, Mr. Mollohan acknowledged that he had failed to pay 2004 taxes on income from rental properties in Washington and North Carolina, resulting in a state lien of $6,948.28 being filed on Dec. 1. He said the case was resolved by final payments of all taxes, interest and penalties by January.

Fairmont, W.Va., is the hometown of Representative Alan B. Mollohan.

"Obviously it's totally my fault," he said. "I just neglected this, and it was paid late, and I regret that."

In the last three years, Mr. Mollohan, a Democrat first elected in 1982 to a seat long held by his father, has bought $2 million worth of property on Bald Head Island, N.C., with Laura Kartz Kahan, a former employee who now runs one of the organizations and is on the boards of two others.

He was unapologetic about his earmarks, saying that local lawmakers know their constituents' needs best, and that he was hardly alone in mainlining money back home. "The amount of money in the transportation bill spent in Illinois in earmarked projects is astronomical," he said. "It puts $100 million on the L.S.R. building in real perspective."

The earmarking occurred as an abundance of local projects was added to spending bills outside the normal budget review, from $32.8 billion in 2000 to $64 billion in 2006, the Congressional Research Service said. Although it is impossible to trace individual earmarks for certain, an analysis by Citizens Against Government Waste, a Washington watchdog, found $480 million added in the House or in conference committees, most likely by Mr. Mollohan, for his district since 1995. That sum helped West Virginia rank fourth on the watchdog list — $131.58 for each of the 1.8 million West Virginians this year.

Although Mr. Mollohan's mentor, Senator Robert C. Byrd, has long blanketed the state in bacon in the form of large public works projects and federal complexes, Mr. Mollohan has directed more than half his ear-

Continued on Page A10

David Johnston and Aron Pilhofer contributed reporting for this article.

marks to his five organizations of his design.

Several people involved in the appropriations process said no other lawmaker employed that strategy to the same extent.

The first and largest is the West Virginia High Technology Consortium Foundation, which is absorbing the troubled Institute for Scientific Research. Another, the Canaan Valley Institute, works on stream restoration and wastewater treatment. The Vandalia Heritage Foundation redevelops dilapidated buildings, and the MountainMade Foundation helps artisans market wares.

"He's basically judge, jury and executioner for all this money," said Keith Ashdown, vice president of the Taxpayers for Common Sense in Washington.

Of the empty building in Mr. Mollohan's hometown, Fairmont, Mr. Ashdown added, "This is sort of Mollohan's field of dreams, but in his case, he's building it, and it doesn't look like they're going to come."

Kenneth F. Boehm, chairman of the National Legal and Policy Center, said the bulk of his complaint to the federal prosecutors was made up of public documents that showed 260 instances of omitted or undervalued assets on the financial disclosure forms that Mr. Mollohan filed with the ethics committee from 1996 to 2004.

Those forms show a jump in Mr. Mollohan's portfolio from less than $500,000 in assets generating less than $80,000 in income in 2000 to at least $6.3 million in assets earning $200,000 to $1.2 million in 2004, along with large mortgage debts.

Among the concerns in the complaint, Mr. Boehm said, are commissions that Ms. Kuhns's husband, Donald, received as a real estate broker on deals for the organization that she controls. The couple have donated at least $10,000 to Mr. Mollohan's political committees since 1998.

The complaint also looks at whether Mr. Mollohan properly reported 27 condominiums in the Remington, near Foggy Bottom in Washington. He and his wife own the building with a cousin, Joseph L. Jarvis, whose business once received money from a federal contract in Mr. Mollohan's district.

"The $64,000 question that's all over this thing is during the period of time all these earmarks went to very closely associated nonprofits run by people who were very close to him, did any of the money go from Point A to Point B?" Mr. Boehm asked in an interview. "Did any of his newfound wealth result from, in any way, shape or form, individuals who had benefited from his official actions?"

Lifeblood for a Weak Economy

About 75 miles southeast of Fairmont along windy roads in Thomas (pop. 473) sits the Buxton & Landstreet Building, whose lifeblood is Mr. Mollohan's largess. The Vandalia Heritage Foundation used $1.2 million in earmarks from the Department of Housing and Urban Development to help transform the yellow-brick behemoth, built in 1901 as the coal company store, from broken down to bustling.

The first floor is a vibrant gallery where the MountainMade Foundation, relying on its own earmarks from the Small Business Administration to pay Vandalia its $5,166.67 in monthly rent, sells items like Mr. Byrd's thick autobiography for $35 and a maple desk for $5,250.

Upstairs, 41 people work on stream restoration and wastewater treatment in the Canaan Valley office, whose $5,100 rent to Vandalia is covered by earmarks from the Environmental Protection Agency and the National Oceanic Atmospheric Administration.

"What else are you going to do to reinvent this economy?" asked Ms. Kuhns, Mr. Mollohan's former aide who runs Vandalia and is the co-owner of the North Carolina beach property with the congressman. "A lot of what we do would not get done otherwise."

Created in 2000 to help artisans market their creations over the Internet — Mr. Mollohan favors the earthenware pottery — MountainMade also runs glassblowing, spinning and felt-making workshops in another downtown building that Vandalia renovated.

The Canaan Valley Institute, which grew out of an effort to create a wildlife refuge near property that Mr. Mollohan owns, is building a $10 million headquarters with classrooms and laboratories on 3,336 acres that it bought with earmarks he secured.

Vandalia owns more than a score of properties throughout Mr. Mollohan's district like the Baltimore & Ohio station in Grafton that it is turning into a museum and office space and lots in Fairmont, where it plans to build houses. Earmarks from HUD bought the mothballed Waldo Hotel in Clarksburg ($230,000 in 2000) and 1,129 acres in Canaan Valley ($2.4 million in 2004).

Mr. Mollohan and the organizations' managers said their goal was to wean from earmarks and be self-sustaining. But Canaan Valley, the oldest, continues to rely on earmarks for 97 percent of its money. Last year, MountainMade received $1,085,308 from the S.B.A., nearly twice its $553,000 in sales. MountainMade also had a $124,000 state grant.

Stephen Crowley/The New York Times

Alan B. Mollohan, left, senior Democrat on the House ethics committee, with Commerce Secretary Carlos Guitierrez at an appropriation hearing yesterday.

Special Projects by Congressman From West Virginia Draw Complaints

As for Vandalia, 92 percent of its $31.5 million in grants since 1999 arrived through federal earmarks. Separately, the 2004 tax return for the organization shows that 96 percent of its $8.5 million revenue was from government grants.

None of the three groups have dues-paying members, like many such organizations, or run regular fund-raisers. They worry about the crackdown on earmarks. The Vandalia pipeline has begun to dry up since Mr. Mollohan left the subcommittee that appropriates HUD money. The organizations said success in finding other sources had been sporadic.

The Quid Pro Quos

"The congressman gave us money" for this or that is how the groups' leaders frequently explain their programs. And they generally return the favor at fund-raisers.

A review of campaign finance records by The New York Times shows that from 1997 through February 2006, top-paid employees, board members and contractors of the five organizations gave at least $397,122 to Mr. Mollohan's campaign and political action committees.

Thirty-eight individuals with leadership roles, including all five chief executives — all but one of whose 2004 salaries outpaced the $98,456 national average among nonprofit leaders — contributed, often giving the maximum allowed.

At the same time, workers at companies that do business with the federally financed groups were among Mr. Mollohan's leading contributors. Employees of TMC Technologies, which had a $56,000 contract with Vandalia in 2003, have given $63,450 since 1998. Workers at Electronic Warfare Associates and Man Tech International, military contractors that rent space from the technology consortium and whose chief executives are on the board of the Institute for Scientific Research, combined to give $86,750.

For Kate McComas, a weaver who is the executive director of MountainMade, the $1,000 check that she wrote in March 2004 at a Mollohan fund-raiser was a first. "I bought a pair of high heels to wear," Ms. McComas recalled. "I thank him every occasion I see him for the opportunity we have here."

Asked whether contributions were required or expected, Kevin Niewoehner, the departed chief executive of the Institute for Scientific Research, said: " 'Required' is such a strong term. The political environment and the access that goes along with it has a number of expectations that involves what is appropriate and what isn't appropriate." He added that the first hint that he was falling out of favor occurred in October, when a $250 check he wrote to the campaign was returned uncashed.

"I received invitations to those events on a regular basis," he said. "I was invited to participate, and I participated."

'Teaming to Win'

Mr. Mollohan scoffed at the suggestion that the overlap among the groups that he supports and his supporters meant anything more than a meeting of the minds.

"I like to think I'm supported because I work hard," he said. "Because I bring a collaborative, a 'teaming to win,' if you will, approach to solving the really difficult challenges facing West Virginia."

The team includes overlapping rosters among the five organizations. In addition to Ms. Kuhns's multiple roles, Jack Carpenter, an old friend of the congressman, is vice president of the consortium and chairman of the MountainMade board. The board once included Mr. Mollohan's wife, Barbara.

Raymond A. Oliverio, executive vice president of the consortium, is also treasurer of the Robert H. Mollohan Foundation, named for the congressman's late father. Gina Fantasia, Vandalia's legal counsel, moved over last year from the Institute for Scientific Research. Her brother Nick, mayor of Fairmont, is chairman of the Vandalia Redevelopment Corporation, a heritage foundation sister.

"He effectively referred to it as a family," said a person involved in the Mollohan network, likening the operation to keiretsu, the Japanese concept of intermeshed corporate boards.

Down the hill from the steel structure here is the more pedestrian $14 million Alan B. Mollohan Innovation Center, built with $3.5 million in earmarks. It is the home of the high-tech consortium, which began in 1990 as six small companies hoping to seed a new economic area. The center has 200 affiliates throughout the state. Earmarks are its engine, underwriting high-tech projects like AmberView, which seeks to create a national database of three-dimensional school photographs to help find missing children.

The consortium has had better luck following earmarks with competitive grants. Its Information Research Corporation was spun off as a for-profit subsidiary after obtaining a $10 million Navy contract to build 3,300 BomBots, robotlike tractors that remotely deliver explosives.

"The congressman has enabled programs and entities to get started," said Tom Witt, director of the West Virginia University Bureau of Business and Economic Research. "But at some point, they're going to have to make the transition or they'll die."

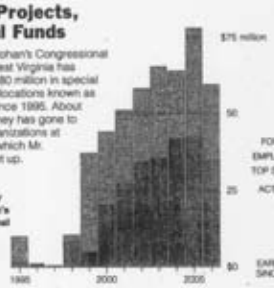
The big test will be the $134 million Institute for Scientific Research building, three-quarters paid by NASA and HUD earmarks. The 17-member staff is barely large enough to fill a corner of the 600-plus capacity of the building.

THE NEW YORK TIMES **NATIONAL** SATURDAY, APRIL 8, 2006

Local Projects, Federal Funds

Alan B. Mollohan's Congressional District in West Virginia has received $480 million in special spending allocations known as earmarks since 1995. About half the money has gone to the five organizations at right, all of which Mr. Mollohan set up.

Earmarks for Mr. Mollohan's Congressional District



West Virginia High Technology Consortium Foundation

FOUNDED 1990
EMPLOYEES 148
TOP SALARY $260,000
ACTIVITIES Runs its own research projects and works with companies to seed high-tech projects. Planning a technology park.
EARMARKS SINCE 1995 **$30 million** from HUD, S.B.A. and the Justice Department

Institute for Scientific Research

1990
57
$362,286
Conducts basic information technology and engineering research for federal agencies.
$108 million from NASA and HUD

Canaan Valley Institute

1995
49
$147,450
Partners with local groups on environmental problems, particularly stream restoration and wastewater treatment.
$71 million (awarded funds) from E.P.A. and NOAA

Vandalia Heritage Foundation

1998
12
$102,000
Restores historic buildings, acquires property for development and runs "legacy" projects of oral histories.
$20 million from HUD

MountainMade Foundation

2000
19
$65,565
Helps local artisans sell wares. Runs craft workshops.
$8 million from S.B.A.

A10 THE NEW YORK TIMES NATIONAL SATURDAY, APRIL 22, 2006

Under Fire, Top Democrat Is Leaving Ethics Panel

By JODI RUDOREN

After two weeks of intense pressure from Republicans and newspaper editorials in his state and around the country, the leading Democrat on the House ethics committee resigned from the panel yesterday over criticism of how he had handled earmarked appropriations and his own finances.

The congressman, Alan B. Mollohan of West Virginia, has used his coveted seat on the Appropriations Committee to steer some $250 million over a decade to five nonprofit organizations that he set up. A conservative Washington-based group, the National Legal and Policy Center, has filed a complaint with federal prosecutors questioning those appropriations and the accuracy of Mr. Mollohan's personal financial disclosure forms as his wealth swelled significantly from 2000 to 2005.

"While I am confident that any charges or allegations that this organization and its Republican allies make against me will be as meritless and, indeed, as frivolous as those they have made thus far, they must be responded to fully," Mr. Mollohan wrote in a letter to the House Democratic leader, Representative Nancy Pelosi of California. "I do not want these baseless allegations to divert attention from the important work that the House ethics committee must undertake in the remainder of this Congress, or to serve as an excuse for committee inaction."

Mr. Mollohan's letter described his resignation from the committee as temporary but did not say how long it might last.

The ethics committee is the only one in the House whose membership is evenly divided between the two parties. It has been stalemated for 18 months, taking no steps to look into Congressional corruption scandals, with Mr. Mollohan and the Republican chairman, Representative Doc Hastings of Washington, engaged in a standoff over rules and staffing.

Mr. Mollohan's resignation comes in an election year when Democrats have made ethics a central campaign theme. Ms. Pelosi replaced him with Representative Howard L. Berman of California, his predecessor as the committee's top Democrat from 1997 to 2003.

"This is an honor I could have done without," Mr. Berman said in a statement.

Mr. Hastings, in his own statement, said he liked Mr. Berman and was "confident that now we'll finally be able to get the ethics committee moving."

Mr. Mollohan has been a congressman since 1982, but is facing a very serious challenge this fall. Only yesterday Vice President Dick Cheney visited his district to raise money for the campaign against him.

On Thursday, a leading West Virginia newspaper, The Charleston Daily Mail, ran an editorial calling on Mr. Mollohan to quit the ethics panel, joining The Washington Post and The New York Times, among several other papers. And in taped telephone calls over the last week, the National Republican Congressional Committee urged tens of thousands of registered voters in four districts, including Mr. Mollohan's, to call him and tell him to do so.

The core question is whether there are any links between the special earmarked appropriations to the nonprofit groups and Mr. Mollohan's real estate investments, including land he owns on Bald Head Island, N.C., with Laura Kurtz Kuhns, a former aide who runs one of the groups and serves on the boards of two others. The National Legal and Policy Center maintains that Mr. Mollohan has undervalued or failed to list scores of investments on his financial disclosure forms over the years, an accusation he denies.

Mr. Mollohan has also been a central player in an effort to start a community bank focused on loans to high-tech companies. The bank's investors include two of the federally financed nonprofits, several people involved with the groups and many of his top campaign donors.

James L. Estep, president of the West Virginia High Technology Consortium Foundation, said that it had put $500,000 toward the bank project and that a second of Mr. Mollohan's nonprofits, the Institute for Scientific Research, had pledged $250,000. That led Michael Hudnall, a West Virginia banker whom Mr. Mollohan recruited to lead the project as it began in 2004, to bow out.

"I'm uncomfortable when a nonprofit that is funded by my and your taxes invests in any venture that's not going to have a return for several years," Mr. Hudnall said in an interview.

James Cava, a leading Mollohan contributor who is heading what would be called Innova Bank, said Mr. Mollohan himself was not among some 20 investors who have signed on so far. Mr. Cava, who said the group had not yet filed an application for a charter with the state banking commission, would not disclose how much money had been committed.

Aron Pilhofer contributed reporting for this article.

A18 THE NEW YORK TIMES NATIONAL FRIDAY, APRIL 28, 2006

F.B.I. Set to Present Subpoenas To Lawmaker's Nonprofits

By JODI RUDOREN

The F.B.I. has notified three nonprofit organizations created by Representative Alan B. Mollohan and financed primarily through special federal appropriations he steered their way that they should expect subpoenas soon for financial and other records.

Mr. Mollohan, Democrat of West Virginia, stepped down from the House ethics committee last week over accusations of financial impropriety that stem largely from a complaint the conservative National Legal and Policy Center has filed with the United States attorney in Washington.

The nonprofits at issue are the Vandalia Heritage Foundation, the Institute for Scientific Research and the Canaan Valley Institute. The F.B.I.'s notification to them has occurred over the last two days and signals that the bureau is looking deeper into the 500-page complaint, which among other things suggests ties between the special appropriations, or earmarks, and Mr. Mollohan's personal real estate investments.

Mr. Mollohan's office did not return repeated calls yesterday. Nor did Vandalia's president, Laura Kurtz Kuhns, whose ownership of vacant lots on Bald Head Island, N.C., with Mr. Mollohan and their spouses is a prime focus of the conservative group's complaint.

Though Ms. Kuhns could not be reached, an official of Mr. Mollohan's network of nonprofit groups confirmed that Vandalia had been told to expect a subpoena. And leaders of the two other nonprofits — Kiesa L. Smith, Canaan Valley's executive director, and James L. Estep, president of the Institute for Scientific Research — said they planned to cooperate fully with the F.B.I.

Mr. Estep said an investigator for the bureau called the institute's office yesterday to get confirmation of the mailing address and warn of a coming "informational subpoena."

Mr. Estep, who also heads the West Virginia High Technology Consortium Foundation, a nonprofit created by Mr. Mollohan that has not been contacted by the authorities, added: "They're welcome to come into either organization, and we will provide whatever they want and answer whatever questions they have. We have nothing to hide."

Ms. Smith said her receptionist took a call Wednesday in which an F.B.I. representative promised a subpoena for financial records within "a couple of days."

"We have 18 public audits, it's fine," she said. "Anybody can look at our records. They're public information."

The Washington Post
Saturday, April 22, 2006

Democrat Leaves Ethics Panel

Financial Reports' Accuracy at Issue

By Jonathan Weisman
Washington Post Staff Writer

Rep. Alan B. Mollohan (W.Va.) stepped down temporarily from his post as ranking Democrat on the House ethics committee, amid accusations that he used his congressional position to funnel money to his own home-state foundations, possibly enriching himself in the process.

As recently as Thursday, Mollohan, a 12-term lawmaker, had said he would not step aside, but he bowed to pressure yesterday from House Democratic leaders eager to pursue their campaign against what they call a "culture of corruption" in the Republican Party.

Rep. Alan B. Mollohan is out temporarily.

"It has become clear that the unprecedented campaign that has been launched against me will continue to be at least as relentless as it has been to date," he said in a letter to House Minority Leader Nancy Pelosi (Calif.), maintaining his innocence. "I do not want these baseless allegations to divert attention from the important work that the House Ethics Committee must undertake in the remainder of this Congress."

In a 500-page complaint filed with a Justice attorney in February, the conservative National Legal and Policy Center in Falls Church challenged the accuracy of Mollohan's financial disclosure forms and de-

See ETHICS, *A12, Col. 1*

Top Democrat Leaves House Ethics Panel

ETHICS, From A1

called a remarkable change in the lawmaker's personal fortune.

Mollohan's real estate holdings and other assets jumped in value from $500,000 in 2000 to at least $5.3 million in 2004, said Ken Boehm, chairman of the legal center.

During the same period, Mollohan used his position on the House Appropriations Committee to secure more than $150 million in appropriations for five nonprofit entities that he helped establish in his congressional district. One of the groups is headed by a former appropriations aide, Laura Kurtz Kuhns, with whom Mollohan bought $2 million worth of property on Bald Head Island, N.C.

The congressman has steadfastly maintained that the surge in his personal worth came from an inheritance, some smart investments and a sharp run-up in real estate values, especially in Washington.

Pelosi joined Mollohan in asserting that the accusations against Mollohan stem from a partisan effort to deflect attention from the Republicans' ethical problems. They include a criminal indictment in Texas against former House majority leader Tom DeLay (R-Tex.), a guilty plea to bribery charges by former GOP congressman Randy "Duke" Cunningham, and the guilty pleas of former GOP lobbyist Jack Abramoff and two former DeLay aides.

Editorials in The Washington Post, the New York Times and, on Thursday, the Charleston (W.Va.) Daily Mail had called for Mollohan to step down from the ethics committee.

Even some Democratic leadership aides said he has not fully answered questions surrounding the appropriations he obtained, which funded generous salaries for Mollohan associates and former aides. One of them, the Institute for Scientific Research, paid its three top executives a total of $777,000 in 2004. Employees of those nonprofit groups and associated contractors, in turn, contributed generously to Mollohan's campaign committees and a Mollohan family foundation.

"Frankly, I am shocked it took Mr. Mollohan this long to come to the conclusion that he could not serve as the senior Democrat on the ethics committee while under federal investigation over his financial dealings," said Rep. Thomas M. Reynolds (N.Y.), chairman of the National Republican Congressional Committee.

Boehm said he was unimpressed by Mollohan's actions. What he wants to see is a revision of at least the financial disclosure forms that his group says are demonstrably false. As for committee assignments, Boehm said, "If I had a choice, I would say resign

See ETHICS, A13, Col. 1

Rise in Lawmaker's Wealth Questioned

ETHICS, From A12

from the Appropriations Committee. That's where the real stuff happens."

The ethics panel, officially known as the Committee on Standards of Official Conduct, has its own problems. The panel has been dysfunctional since House leaders moved in early 2004 to replace its aggressive chairman, Rep. Joel Hefley (R-Colo.), with Rep. Doc Hastings (R-Wash.), a closer ally of the party leadership, then tried to change committee rules to block investigations driven by Democrats.

Republicans have long said that Mollohan, at the behest of Pelosi, has thwarted all efforts to reach a compromise on new rules that would get the committee functioning again.

"Congressman Mollohan and the Democrats have repeatedly used the Ethics Committee to play politics while blocking the committee from functioning," said House Majority Leader John A. Boehner (R-Ohio) in a statement.

Republicans questioned why Pelosi turned to Rep. Howard L. Berman (Calif.) — a lawmaker not currently on the ethics committee — to take Mollohan's top Democratic spot on the panel.

Rep. Stephanie Tubbs Jones (Ohio), the next most senior Democrat on the committee, took a trip to Puerto Rico in 2001 that was financed by a lobbyist, an infraction that Republicans say links her to the lobbying scandals bedevilling some of their colleagues.

THE WALL STREET JOURNAL.

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TUESDAY, APRIL 25, 2006 - VOL. CCXLVII NO. 98 - ★★★★ $1.00

Lawmaker Bought Farm With CEO Who Gained From Appropriations

By JOHN R. WILKE

Rep. Alan B. Mollohan, the West Virginia Democrat whose real-estate holdings and financial disclosures have drawn federal scrutiny, last year bought a 300-acre farm with the head of a small defense contractor that had won a $2.1 million contract from funds that the congressman added to a 2005 spending bill.

The joint purchase of the farm, which sits on the Ohio River in West Virginia, is the most direct tie yet disclosed between Rep. Mollohan and a beneficiary of the federal spending he has steered toward his home state. It raises new questions about possible conflicts of interest by Rep. Mollohan and his use of such spending. House ethics guidelines warn lawmakers to avoid business deals with those who benefit from their official acts.

Public records show the farm was purchased jointly by Rep. Mollohan and Dale R. McBride, chief executive of PMW Composite Systems Inc. of Bridgeport, W.Va. In an interview, Mr. McBride described himself as a longtime friend of the congressman and denied any conflict of interest. "I know perception becomes reality at the end of the day, but it's not always fair," he said.

Rep. Mollohan, a 12-term congressman, resigned from his post as senior Democrat on the House Ethics Committee last week, saying he wanted to focus on refuting charges he said are being spread by political opponents.

Over the past five years, Rep. Mollohan steered more than $250 million to a network of nonprofit groups in West Virginia, including more than $20 million in the latest fiscal year, often through narrow spending provisions known as earmarks. The Wall Street Journal reported in an April 7 story that executives of these groups and companies had contributed regularly to Rep. Mollohan's campaigns and to his family foundation. They included at least two people who were partners with the lawmaker in various real-estate investments.

Alan B. Mollohan

Federal Bureau of Investigation agents have begun asking questions in Washington and West Virginia about the lawmaker's holdings and whether they were properly disclosed, according to people who have been contacted in recent days. Such investigations often end with no charges filed, and Rep. Mollohan has not been formally accused of misconduct.

The congressman rejects any link between his investments and earmarks that he says he has backed to create jobs and economic opportunity in West Virginia. "Any claim whatsoever that these investments are in any way related to my actions as a member of Congress is categorically false," he said last week.

According to public records, the

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A10 TUESDAY, APRIL 25, 2006 THE WALL STREET JOURNAL.

Lawmaker Purchased Farm With Executive Who Received Funds

Continued From First Page

300-acre farm bounded by the Cheat River in Tucker County was purchased for $900,000 on May 31, 2005, by a newly formed entity known as M&M Partners LLC. A deed of trust filed with the county clerk on Sept. 26 shows that M&M's principal members are Rep. Molohan and Mr. McBride, CEO of both FMW and its holding company, Aero Corp.; both of which are located in Rep. Molohan's congressional district. Mr. McBride said FMW, a 13-year-old closely held company specializing in metal composites, is profitable, but declined to provide sales or income figures.

Mr. McBride said the purchase was a "50-50 deal" and that the two men shared the cost equally and co-signed the $600,000 mortgage.

A spokesman for Rep. Molohan said the Cheat River farm purchase does not represent a conflict of interest and that the congressman did not earmark the money to FMW. "The congressman does not earmark money to companies,"

Many earmarks are not supported or sought by the agencies they are supposed to benefit.

spokesman Ron Hudnk said in an email on Friday. "He supports funding for programs in which West Virginia companies are participating, and which result in jobs for West Virginians. This is a very common—and appropriate—part of the appropriations process."

Not all details of the funding of the FMW contract are known. The money was part of a much larger appropriations bill for fiscal year 2005, which began Oct. 1, 2004, to fund the National Aeronautics and Space Administration, legislation that is controlled by the House subcommittee on which Mr. Molohan is a senior member.

Mr. Molohan announced the funding for FMW himself in December 2004. A press release by the West Virginia High Technology Consortium—a nonprofit group also funded by earmarks pushed by Rep. Molohan—applauded the lawmaker's role in securing the funds for FMW, which were to be used to develop lightweight payload pallets for space-shuttle missions. "Molohan earmarked money for the program in the federal government's year-end spending bill," said the press release, which has since been removed from the group's Web site.

Rep. Molohan has many business and personal ties to Mr. McBride, whom

Home-State Farm
A 300-acre property purchased by Rep. Alan B. Molohan and a defense contractor straddles West Virginia's Cheat River.
WEST VIRGINIA
Approximate property location
Cheat River
Parsons
Thomas
Davis
Elkins
Beverly
Buckhannon
Clarksburg
Fairmont
Morgantown
Wheeling
Charleston
Huntington
Ashland
Pittsburgh
Washington
Cumberland
Hagerstown
Frederick
Baltimore
Annapolis
Washington
Richmond
Norfolk
Raleigh
Charlotte
Columbia
Atlanta
Birmingham
Nashville
Knoxville
Lexington
Cincinnati
Dayton
Columbus
Toledo
Detroit
Lansing
Chicago
Indianapolis
Louisville
St. Louis
Springfield
Kansas City
Des Moines
Omaha
Sioux City
Minneapolis
Duluth
Milwaukee
Madison
Green Bay
Cheyenne
Denver
Colorado Springs
Pueblo
Albuquerque
Santa Fe
Amarillo
Lubbock
Dallas
Fort Worth
Austin
San Antonio
Houston
Corpus Christi
Oklahoma City
Tulsa
Wichita
Topeka
Lincoln
Sioux Falls
Rapid City
Billings
Bismarck
Fargo
Boise
Salt Lake City
Las Vegas
Reno
Sacramento
San Francisco
Fresno
Los Angeles
San Diego
Phoenix
Tucson
Portland
Seattle
Spokane
Anchorage
Fairbanks
Juneau
Honolulu
Hilo
Kahului
Lihue
Kailua-Kona
Miami
Tallahassee
Jacksonville
Orlando
Tampa
Key West
Boston
Hartford
Providence
Portland
Concord
Augusta
Burlington
Albany
Buffalo
Rochester
Syracuse
Utica
Binghamton
Elmira
Scranton
Harrisburg
Philadelphia
Pittsburgh
Wilmington
Dover
Atlantic City
Trenton
Newark
Jersey City
Paterson
Elizabeth
Camden
Reading
Allentown
Lancaster
Wilkes-Barre
Williamsport
Erie
Altoona
Johnstown
State College
Chambersburg
Gettysburg

Lawmaker and Beneficiary Bought a Farm

By JODI RUDOREN

Representative Alan B. Mollohan, the West Virginia Democrat who stepped down from the House ethics committee last week over accusations of financial improprieties, bought a $900,000 farm last year with a lifelong friend whose business he has supported with special federal appropriations known as earmarks.

Mr. Mollohan acknowledged yesterday that he had on several occasions steered earmarks to federal agencies to finance contracts with his friend's company, FMW Composite Systems. He said that he could not recall all the specifics, but that the earmarks included $2.1 million to the National Aeronautics and Space Administration in late 2004 for a space shuttle and $2.5 million to the Marine Corps for tank fuel bladders.

But Mr. Mollohan said that he was not FMW's only "Congressional sponsor" and that he saw no conflict of interest between his personal real estate purchase and the company's federal contracts.

"The test for funding programs that companies are participating in is the same for everyone; the test is whether it's a good project and what it means for employment and economic development in West Virginia," said Mr. Mollohan, a senior member of the Appropriations Committee and its subcommittee that finances the space agency. "Friendship had nothing to do with my support for any government program."

Mr. Mollohan's financial dealings with FMW's chief executive, Dale R. McBride, were first reported on Tuesday by The Wall Street Journal.

In a telephone interview, Mr. Mollohan said he and Mr. McBride had a 50-50 ownership of the 300-acre farm near Parsons, W.Va., and of its $800,000 mortgage.

"A conflict assumes that you are benefiting from that relationship in an inappropriate way, and that's just not the case," he said. "I'm benefiting to the extent of my ownership, and that benefit is totally reliant on my asset."

Mr. McBride is one of three of Mr. Mollohan's real estate partners who have received federal contracts or earmarks, which is a major aspect of a 500-page complaint that the conservative National Legal and Policy Center filed with the United States attorney's office challenging Mr. Mollohan's finances.

Over the past three years, Mr. Mollohan and his wife have bought five empty lots with Laura Kurtz Kuhns and her husband on Bald Head Island, N.C., where the two couples have side-by-side oceanfront vacation homes that they rent out. Ms. Kuhns, a former aide in Mr. Mollohan's Washington office, is the director of the Vandalia Heritage Foundation, one of five nonprofit organizations Mr. Mollohan founded and then financed with $250 million in earmarks since 1999.

Seeing nothing wrong with steering money to a friend's company.

The Mollohans are also co-owners of 27 condominiums with Rosemary and Joseph Jarvis Jr., who is a third cousin of the congressman and had a Department of Energy contract in the mid-1990's.

The House ethics manual does not specifically address such private real estate investments, but cautions against members' accepting benefits or making "pecuniary gains" that could be perceived as connected to their official duties.

The West Virginia farm is one of eight parcels Mr. Mollohan owns in Tucker County, where Vandalia and two of the other nonprofit organizations have been active. Mr. Mollohan and Mr. McBride said they had been searching for years for a farm like the one owned by Mr. Mollohan's parents, where they had baled hay and chased cattle as children.

"It's a place for us to get away where cellphones don't work and fish bite and beer stays cold," Mr. McBride said of the spread along the Cheat River that they bought from a former FMW executive's widow.

Mr. McBride serves on the board of one of the Mollohan-created nonprofit agencies, MountainMade, which helps local artisans sell their wares. He gave $13,700 to Mr. Mollohan's campaign and political action committees between 1997 and this February. He is also among the organizers of a Mollohan-backed effort to create a bank in his district specializing in loans to high-technology companies, whose investors include two of the nonprofit agencies.

FMW Composite Systems was founded in 1993 by Mr. McBride, an Army veteran and a lawyer who previously worked in the coal industry, a tire business and a real estate brokerage. It is privately held, and Mr. McBride would not disclose its annual revenue, but said "a fair portion" of the business was in federal contracts.

Records show the company as having received $2.9 million in seven contracts from the Navy and the Air Force in 2004.

In 2002, FMW got a $619,000 subcontract from the Institute for Scientific Research — another Mollohan-created earmark beneficiary — for a NASA project known as the Super Lightweight Interchangeable Carrier, developing a new pallet to carry tools and materials inside the space shuttle. FMW continued to get NASA contracts for the carrier for several years, including $1.5 million in 2005 from Mr. Mollohan's $2.1 million earmark.

Associated Press

Alan B. Mollohan said he did not think of a conflict of interest.

"Congressman Mollohan was briefed on the program by us, yes," Mr. McBride said, adding that his company delivered the new pallet, weighing 1,800 pounds instead of the old one's 3,800, in July, 2005. "Yes, he's been helpful, of course, but in terms of the numbers of programs or numbers of dollars that he's provided to various programs, he's not the largest, by far."

Mr. Mollohan said Tuesday that the potential conflict of interest "did not occur to me" when buying the farm with Mr. McBride. Asked whether any other real estate partners had federal contracts, he said his brother, Robert H. Mollohan, with whom he inherited the Ramada Inn in Morgantown, W.Va., "moves lawns" for military reserve units around the state.

"I had absolutely nothing to do with it," Mr. Mollohan said of his brother's contracts, adding that he did not even know the name of the landscaping company. "Robert got that all on his own."

Aron Pilhofer and Ron Nixon contributed reporting for this article.

A6 Thursday, April 27, 2006 The Washington Post

No Quid Pro Quo In Land Deal, Says W.Va. Democrat

The Washington Post

Rep. Alan B. Mollohan (D-W.Va.) said this week that his purchase of farm property with a corporate chief executive has no relationship to his support for legislation providing a $2.1 million defense contract to the CEO's company.

Responding to a Wall Street Journal report published Tuesday, Mollohan said he and Dale R. McBride, head of PMW Composite Systems Inc. of Bridgeport, W.Va., have been close friends for 50 years.

Mollohan, who recently resigned from his position as the ranking Democrat on the House ethics committee because of a controversy over other investments, said he and McBride plan to use the 300-acre property for personal recreation, not for development.

Rep. Alan B. Mollohan is facing questions about his wealth.

Mollohan contended that he and McBride are equally at risk and equally responsible for paying off the eight-year, $900,000 mortgage they obtained from the previous owner, a widow.

"This has everything to do with friendship," he said, referring to the land acquisition. "This is totally 50-50," he added, saying that he received no special treatment from McBride.

Mollohan said he supported the $2.1 million contract for PMW after asking the same questions he applies to all decisions concerning money going to his home state: "Is it a good project, and does it mean jobs and economic development for West Virginia?"

The conservative National Legal and Policy Center filed a 500-page complaint against Mollohan with a U.S. attorney in February, challenging the accuracy of Mollohan's financial disclosure forms and detailing the run-up in Mollohan's wealth in recent years.

From 2000 to 2004, the congressman's holdings in real estate and other assets shot up in value from $562,000 to at least $6.3 million. Mollohan has argued that there is nothing untoward in the growth of his net worth, and that he has benefited from the surge in real estate values across the country.

In addition to winning approval of the contract for McBride's company, Mollohan used his position on the House Appropriations Committee to secure more than $150 million in appropriations for five nonprofit groups in his congressional district, including one run by a former congressional aide who, along with her husband, bought $2 million worth of property with Mollohan and his wife, according to an April 8 report in the Journal.

The Washington Post

Monday, May 15, 2006

West Virginia Democrat is Scrutinized

Mollohan Has Close Ties to Groups Handling His District's Appropriations

By Jeffrey H. Birnbaum
Washington Post Staff Writer

Starting in the 1990s, Rep. Alan B. Mollohan (D-W.Va.) chose an unusual way to funnel federal funds into his poverty-ridden district. He set up a network of nonprofit organizations to administer the millions of dollars he directed to such public endeavors as high-tech research and historic preservation.

Over the same period, Mollohan's personal fortunes soared. From 2000 to 2004, his assets grew from no more than $565,000 to at least $6.3 million. The partners in his rapidly expanding real estate empire included the head of one of these nonprofit groups and the owner of a local company for which he arranged substantial federal aid.

Mollohan used his seat on the House Appropriations Committee to secure more than $150 million for five nonprofit groups. One of the groups is heading by a former aide with whom Mollohan bought $2 million worth of property on Bald Head Island, N.C.

Controversy over this blending of commerce and legislation has triggered a federal probe, cost Mollohan his position on the House ethics committee and undermined the Democrats' effort to portray the GOP as the party of corruption because of the Jack Abramoff scandal. As

See MOLLOHAN, A7, Col. 1

Rep. Alan B. Mollohan is under federal investigation.

MOLLOHAN, From A1

early as today, the 12-term congressman will admit that he misstated some transactions in his congressional filings, according to Mollohan staffers.

"Mollohan has earmarked tens of millions of dollars to groups associated with his own business partners. That immediately raises the question whether these funds were allocated to promote the public good or to promote his interests and the interests of his partners," said Ken Boehm, chairman of the National Legal and Policy Center, a conservative watchdog group. "He also got very rich very quick, and that suggests a relationship that is suspect if not corrupt."

Mollohan is now engaged in the most arduous election of his career. Republicans have recruited Chris Wakim, a state legislator and Persian Gulf War veteran, to run against him, and have sent President Bush and House Speaker J. Dennis Hastert (R-Ill.) into the district to campaign. To fight back, Mollohan is raising much more money than ever, is visiting the district more often, and has hired a nationally known media consultant to help craft his commercials.

The Washington Post Monday, May 15, 2006 A7

Rep. Mollohan's Financial Dealings Scrutinized

During a trip home last week to northern West Virginia, Mollohan was questioned at length by a radio interviewer from Weirton about his business connections. But everywhere else, Mollohan — the son of a longtime congressman and a cousin of a former senator — was welcomed as a patron of the state. At a huge police training event in Moundsville, a federal employee thanked him for providing the money for "everything you see today." In Morgantown, at a meeting about a missing-child alert system that his legislation had underwritten, he received a standing ovation.

In an interview, Mollohan said he is unapologetic and proud of the thousands of jobs he has brought to West Virginia and that, legally speaking, everything he has done to secure them is "squeaky clean." But he acknowledged that his actions might look incriminating and that he may have had an ethical "blind spot" that prevented him from questioning whether he, as a government official and vice chairman of the ethics panel, should have invested with such close associates.

"I would have done things differently," he said as he drove through West Virginia's northern panhandle. "It puts you in a position where people could say there's something untoward going on."

The House ethics committee warns lawmakers to avoid exactly those kinds of situations. Its Web site admonishes federal officials not to accept favors or benefits "in circumstances that might create the appearance of influencing the performance of official duties."

Mollohan's transactions — first reported last month by the Wall Street Journal — were uncovered by the National Legal and Policy Center, a small research institute in Virginia that gets some of its funding from the politically conservative Scaife family of Pittsburgh. In March, NLPC turned over 500 pages of documents to the FBI alleging that Mollohan engaged in nine years of false reporting and the appearance of impropriety in his business contacts with contractors.

As a result, Mollohan, 63, faces a widening federal investigation. The FBI has notified his nonprofit organizations that they will be subpoenaed soon and, according to Mollohan, a subpoena has already been served on a D.C. real estate company in which he has invested. In addition, Mollohan plans to divulge that he misstated on House financial disclosure forms the amount of loans and income from some of his real estate holdings.

Mollohan calls the charges against him inaccurate and partisan. He says NLPC is part of an orchestrated effort by Republicans to undermine the Democrats' anticorruption message — a charge NLPC denies — and to transform West Virginia's congressional delegation from majority Democratic to majority Republican. He also asserts that he is being punished for leading the ethics committee when it sanctioned former House majority leader Tom DeLay (R-Tex.) three times in a single year.

Mollohan has served in the House without serious challenge since 1983. He said he knew he wanted to be a congressman from the moment he stood on the House floor in 1953 when his father, Robert H. Mollohan, was first sworn in. "It was like an imprinting," Mollohan said. His first election in 1982 was also formative. The state was in a deep recession, and Mollohan pledged then to make his first priority the diversification of the state's coal-and-steel-dependent economy.

By Alan Ostrowitz for the Washington Post

Rep. Alan B. Mollohan (D-W.Va.) says that although his actions may look incriminating, they are legal.

The engine of that initiative, he determined from the beginning, would have to be the federal government. "Immediately I started to try to understand the government marketplace," he said.

From his perch on the Appropriations Committee, Mollohan has directed hundreds of millions of dollars into his district for that purpose. His colleague, Sen. Robert C. Byrd (D-W.Va.), a master of such "earmarking," was responsible for relocating to the state large facilities of NASA and the FBI, among other agencies. But Mollohan was a major player, too. His projects have made him, in effect, one of the region's leading industries.

In his home town of Fairmont, near Morgantown, for example, federal funds allocated at Mollohan's behest have purchased 500 acres for an office park that includes the Alan B. Mollohan Innovation Center, an office building for high-tech firms; a taxpayer-financed, $136 million building (complete with swimming pool and spa) that its manager hopes will house a federal agency; and other offices filled primarily with companies with federal contracts.

The congressman brought in so many taxpayer dollars that he decided to create a special set of organizations to oversee them. These nonprofit groups include the West Virginia High Technology Consortium Foundation, which manages the office park, and the Vandalia Heritage Foundation, which focuses on refurbishing real estate.

The practice of setting up such entities is rare and has been widely criticized as a mutual back-scratching exercise. "These types of organizations permit lawmakers to reward their own people, and themselves, without having to pay federal taxes," said Thomas A. Schatz, president of Citizens Against Government Waste, a watchdog group.

Mollohan defends the groups as the best way to control the appropriations he sends back home. He also said they were needed because it was hard to find people he could trust to run the projects. "There is a limited pool of people who are committed to a service mission," he said.

To head Vandalia Heritage, Mollohan tapped Laura K. Kuhns, who for years was a key aide in his congressional office. But in addition to watching over real estate improvements that Mollohan funded, Kuhns donated personally to a Mollohan political committee and invested with him in North Carolina real estate. The Mollohans and the Kuhnses own four lots on Bald Head Island and built neighboring beachfront homes (though Mollohan is now selling the house to pay debts).

Mollohan denies that he raked off any of the federal funds that went to his state while his personal portfolio ballooned. Rather, he said, his newfound wealth is due primarily to the run-up in value of his family's ownership of 27 condos in a Foggy Bottom high-rise. By leveraging that asset, he said, he has been able to buy other properties, usually with the help of loans, in North Carolina and West Virginia.

One of those properties is a $900,000, 300-acre farm along West Virginia's Cheat River that Mollohan purchased last year with a childhood friend and business associate, Dale R. McBride. A donor to Mollohan's campaigns, McBride is active in the high-tech consortium, a director of the Robert H. Mollohan Family Charitable Foundation (located in the Fairmont office park) and a pleader for taxpayer financing.

McBride asked Mollohan to earmark money for the U.S. space program to buy a special lightweight pallet that McBride's FMW Composite Systems Inc. had the expertise to produce. Mollohan complied, and FMW got a $1.5 million contract in 2003. That same year Mollohan and McBride became 50-50 partners in the farm.

The federal contract and the farm acquisition "were completely independent," McBride said. But he does understand with "regret" that the two are being examined together.

Mollohan promises a report soon that will explain how he so quickly became a multimillionaire.

BROADCAST TRANSCRIPT

Date: April 20, 2006
Time: 6:00 PM - 7:00 PM
Special Report With Brit Hume
Fox News Channel

BRIT HUME, anchor: Next on Special Report, a Congressman charged with assessing the ethics of other lawmakers faces some questions about his own actions. That story and an interview after a break.

* * *

HUME: House Speaker Dennis Hastert, a Republican, recently called on the ranking Democrat on the House Ethics Committee to step down from that post; The New York Times editorial page has said the same thing. So what is this all about and will he step aside? We sent FOX NEWS congressional correspondent Brian Wilson on the road today to get some answers.

BRIAN WILSON reporting:

In an interview with FOX NEWS today in West Virginia, Congressman Allen B. Mollohan said he has no intention of stepping down from his position as top Democrat on the House Ethics Committee.

Congressman Allen B. Mollohan (D-West Virginia): I'm not contemplating that at all.

WILSON: Have you been asked to do that by leadership?

MOLLOHAN: No, I have not.

WILSON: Questions have been raised recently about Mollohan's practice of using his position on the House Appropriations Committee to send hundreds of millions of dollars in taxpayer money to private foundations that he established in his home district and which are operated by his friends. (Visual of ISR banner)

Federal election records revealed that those friends often returned the favor by making hundreds of thousands of dollars in campaign contributions.

KEN BOEHM, NATIONAL LEGAL AND POLICY CENTER: What's different about this from every other member of Congress is he wasn't just taking care of his friends; he was taking care of his business partners.

WILSON: Conservative congressional watchdog Ken Boehm.

BOEHM: And he was taking care of his business partners during a narrow window of time, four years, when he was becoming extraordinarily wealthy.

WILSON: As a member of Congress, Mollohan makes $165,000 a year but he was up to his eyeballs in credit card debt only a few years ago. He is now worth millions. (Clip of Mollohan in Congress)

Boehm points to the Vandalia Heritage Foundation as an example of what he finds troubling. It's operated by Mollohan's former congressional staffer Laura Kuhns. (Visual of Vandalia Heritage Foundation building and Laura Kuhns)

Congressman Mollohan and Kuhns are also partners in a number of real estate deals including properties on Bald Head Island, North Carolina, where the Congressman owns this million-dollar-plus beach house that he rents for more than $8,000 a week. (Visual of beach house)

Then there is the Remington Condominium Complex in Northwest DC, in which Mollohan is half owner. (Visual of The Remington)

BOEHM: He had an increase in 6,566 percent in this one asset between the years 2000 and 2004.

WILSON: The Congressman says there is an explanation, his wife made a very good investment.

MOLLOHAN: She's in real estate and we're very proud of the fact that that's been successful. Now, I can't take credit for the escalation in the price of the real estate, but we, over the 10 years that we've owned that, have in partnership, purchased 27 of those units. Well, you do the math.

BOEHM: If you owned a condo for $100,000, very modest priced condo, and you received a 6,566 percent increase it would be worth, in four years, $6.6 million. I don't know anybody who has made that kind of real estate investment in Washington.

WILSON: Boehm has turned over 500 pages of documents related to Mollohan's investments to the FBI, which is investigating.

Mollohan is a bit of a problem now for the Hill Democrats who have repeatedly accused Hill Republicans of fostering a culture of corruption; to have the top Democrat on the House Ethics Committee under such scrutiny interferes with their message.

THE STATE JOURNAL
NEWS FOR WEST VIRGINIA'S LEADERS

Congressman's Cousin Received Federal Contracts

Posted 5/11/2006 06:00 AM

Mollohan claims his adversaries behind criticism.

Story by Beth Gorczyca Email | Bio

WASHINGTON, D.C. -- U.S. Rep. Alan Mollohan, D-W.Va., has come under fire in recent weeks for allegedly directing federal money to friends and business associates in the northern part of the state.

Now it appears as though a Mollohan relative also received federal contracts worth millions.

Mollohan's third cousin, Joe Jarvis, was involved in real estate for years. But in 1995, Jarvis made a slight career change, opening a company with his wife, Rosemary, called Arrey Industries. The company received three federal contracts or subcontracts between 1995 and 2000 from the U. S. Department of Energy.

Now, some people, including the conservative National Legal and Policy Center, are asking how Jarvis' company received those contracts in the first place.

"The real question is how he ended up being a government contractor," said the watchdog group's chairman Ken Boehm, who spent nine months looking into Mollohan's finances after noticing a rapid increase in the congressman's personal wealth.

"In 1995, (Jarvis) got a subcontract that originated in Congressman Mollohan's district from the Department of Energy facility in Morgantown."

Jarvis did not return several calls left at his home in Washington, D.C.

Information from the West Virginia Secretary of State's Office shows the Jarvises incorporated Arrey in September 1995. The incorporation papers listed the business' purposes as doing research and development of computer software technologies and related computer services. Rosemary Jarvis was named the company's president, vice president and treasurer.

Like her husband, Rosemary Jarvis has a background in real estate.

Arrey Industries' first Energy Department contract was to help the federal government evaluate the impact of decontaminating and decommissioning nuclear plants. The company received two more contracts -- in 1996 and 1998 -- to continue their work.

In 1997, the Federal Energy Technology Center posted on its Web site a data sheet about a Arrey Industries project. The project, known as the Phoenix project, was supposed to provide a "well-organized, accessible and

extensive database of decommissioning and decontamination related information." Arrey was listed as the prime contractor with two subcontractors also working on the project -- MRJ Inc., a defense contractor with experience in software development, and NEXI Inc., a company with experience in decommissioning nuclear plants in Europe, according to the data sheet.

Arrey said it would fulfill its contract by distributing CD-ROMs containing "a graphical user interface" to access, browse, query and analyze algorithms and databases.

"The idea is to provide useful information quickly and easily to improve the efficiency and safety of the (decontamination and decommissioning) activity," Arrey said on the data sheet.

Boehm said Arrey's Phoenix project, as well as the company itself, raises questions. He said there is no paper trail to show why Arrey Industries received the contracts it did, what exactly it produced and what gave the company the expertise to do the work in the first place.

He said the timing also is questionable.

One year after Arrey Industries received its first federal contract, the Jarvises, Mollohan and the congressman's wife, Barbara, began buying condominiums in The Remington building in Washington, D.C.

The initial 17 condominiums cost about $85,000 each. The two couples gradually purchased more units as property values increased. They now own 27 units worth between $300,000 and $350,000 each.

"(Joe Jarvis) put he was in real estate, which in fact, he was. Then he gets a highly technical subcontract from the Department of Energy facility in the congressman's district. And he gets it during the same two- to three-year period when he's entering into a business relationship with the congressman," Boehm said.

Arrey Industries used to have an office in the Alan B. Mollohan Innovation Center at the West Virginia High Technology Consortium Foundation. But the company was dissolved in 2005, and a different business now occupies the office.

Mollohan said the federal subcontracts and the purchase of the condos had nothing to do with each other.

"I do know he had a company, and I do know he had a federal contract. But we don't have responsibility for that whatsoever," Mollohan said.

He said the two couples decided to invest in The Remington because of long-time interests in real estate by both couples. He said he and his wife began investing in property shortly after they got married. They bought townhouses they both lived in and rented out, as well as homes and apartments.

"It's just something my family does. My dad had The Ramada in Morgantown. So it was pretty natural," he said.

Mollohan said questions about the rapid rise in his personal wealth are simple to explain and simple to understand. He said the real estate market was relatively depressed in the mid 1990s when the Mollohans and Jarvises first invested in the condos.

Then it rebounded -- quickly.

"Anybody who lives in this area, unless they're living under a rock, or anybody who really lives anywhere, appreciates the fact that real estate's gone up dramatically, particularly in Washington, particularly in that area," Mollohan said, adding, "This really is not that complicated."

The congressman said the hubbub about his finances, his real estate holdings and his cousin's federal contracts are the result of political retribution.

"I think the motives that are behind it are very apparent. They are political," he said.

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A14 NYT

WEDNESDAY, JUNE 14, 2006

National Report

The New York Times

Congressman in F.B.I. Inquiry Corrects Errors in Financial Disclosure Forms

By JODI RUDOREN and ARON PILHOFER

WASHINGTON, June 13 — Nearly two months after stepping down as the top Democrat on the House ethics committee, Representative Alan B. Mollohan on Tuesday filed some two dozen corrections to his past six annual financial disclosure forms, saying his accountant had uncovered "a relative handful of unintentional and immaterial mistakes."

Mr. Mollohan, of West Virginia, is facing his most intense electoral challenge since he was first elected in 1982, fueled in part by an F.B.I. investigation into possible links between his real estate investments and five nonprofit groups he founded and supported with special federal appropriations known as earmarks.

In releasing the long-awaited financial report, Mr. Mollohan said it "shows that government money has never been used" and "no money has ever been diverted from the nonprofits" to his investments. He compared the National Legal and Policy Center — a conservative group whose written complaint prompted the F.B.I. inquiry — to Senator Joseph R. McCarthy for publicly describing "250 misrepresentations and omissions" in his financial forms but refusing to release the 500-page complaint detailing the accusations.

"It has been obvious for some time that N.L.P.C. is not really interested in learning the truth," Mr. Mollohan said in a statement. "It is not a public watchdog. It is an attack dog controlled by, and linked to, national political operatives who are desperate to unseat me."

Most of the amendments Mr. Mollohan filed with the clerk of the House are minor matters of sloppiness, switching closing dates on real estate deals or tweaking income totals from rental properties. But the congressman also acknowledged that from 1999 to 2003 he failed to include a significant transaction relating to the Remington condominiums he and his wife own with Rosemary and Joseph Jarvis, distant cousins who have a history of bankruptcy and failed federal contracts.

Mr. Mollohan said he did not report the $1.3 million "back-to-back loan" — in which the couples borrowed money from a bank and then loaned it to their corporate entity that owns the condominiums — because he believed it was not required and because the net value was zero.

The report also revealed that the Mollohans borrowed $35,000 last year from Laura Kurtz Kuhns, executive director of one of the nonprofits whose records were subpoenaed by the F.B.I., and her husband, Don. The Kuhns were partners with the Mollohans in a $2 million purchase of five empty lots on Bald Head Island, N.C., where they also have side-by-side beachfront vacation homes.

Ken Boehm, president of the National Legal and Policy Center, said Mr. Mollohan's report proved the "pattern of misrepresentations and omissions" his group had alleged. He noted that Mr. Mollohan said he could not correct financial forms from 1996 to 1998 because the records remain officially on file for only six years, and Mr. Boehm said those earlier reports include "even more embarrassing disclosures."

"If N.L.P.C.'s allegations were all false, why is he amending six years worth of financial disclosure reports involving millions of dollars worth of assets?" Mr. Boehm asked in an e-mail message.

The report shows the Mollohans are highly leveraged real estate investors, refinancing properties in Washington, West Virginia and North Carolina, and taking cash out to buy more.

In 2005, the couple's assets swelled to $8 million to $31 million, up from $6 million to $22 million in 2004 (and under $500,000 in 2000). Their reported income remained in the same broad range used by these Congressional forms, $200,000 to $1.3 million, and their liabilities grew slightly, to $4 million to $13 million, up from $2.6 million to $13.3 million.

Jodi Rudoren reported from Washington for this article, and Aron Pilhofer from New York.

Rep. Mollohan Admits Errors in Disclosure

Former Ethics Panelist Amends Forms

The Washington Post

A6 Wednesday, June 14, 2006

By Jeffrey H. Birnbaum
Washington Post Staff Writer

Rep. Alan B. Mollohan (D-W.Va.), under federal investigation for blending his commercial investments with his duties as a congressional appropriator, acknowledged yesterday that he misstated more than a dozen transactions on his financial disclosure forms.

The 12-term lawmaker said he recently discovered "a limited number of inadvertent errors" in his public reports from 1999 through 2004. He said he has amended those forms "to correct any inaccurate impressions about my finances." He also released a chronology to explain how his assets grew from no more than $565,000 in 2000 to at least $6.3 million in 2004, primarily through heavily leveraged real estate transactions.

Mollohan resigned earlier this year as the ranking Democrat on the House ethics committee after a federal probe was begun into his personal finances. The investigation started soon after the National Legal and Policy Center, a small, conservative research institute in Virginia, turned over 500 pages of documents to the FBI in March. The NLPC alleged that the documents showed that Mollohan engaged in nine years of false reporting and the appearance of impropriety in his business contacts with federal contractors.

Mollohan strongly denied any wrongdoing. "NLPC is dead wrong in implying that I have improperly benefited from my office," Mollohan said yesterday.

"The group also has ignored that we received a sizable inheritance, took on considerable financial risks and had the good fortune to be investing in a rising real estate market," Mollohan said. "It is those factors that are responsible for the increase of our assets."

The NLPC noted that one recent change in Mollohan's filing that the congressman did not highlight yesterday was a $35,000 loan in 2004 from Laura K. Kuhns and her husband. Kuhns, a former Mollohan aide, has invested in real estate with Mollohan and also heads a West Virginia foundation that benefits from appropriations targeted to the group by the lawmaker. The congressman's filing in 2005 indicates that he repaid the loan in full.

Mollohan's review of his reports, sparked by the federal probe, found many other errors as well.

He and his wife together have a 50 percent stake in a company that owns condominiums in a Foggy Bottom building. For 2000 to 2002, Mollohan said he understated his income from that company twice and overstated the income once — in each case by several thousand dollars — and amended his reports accordingly.

He also failed to report $2.3 million in loans that he took out to benefit the business, Remington Inc., from 1999 to 20022. Mollohan said that he did not have to disclose the loan under a strict interpretation of House rules but that "in an abundance of caution" he decided to do so. He also amended his public record to include a note receivable from Remington in 2003 of between $1 million and $5 million.

Mollohan added to his 2001 report his wife's purchase for $37,461 of a one-third interest in a company that owns the Ramada Inn in Morgantown, W.Va. She bought the share from Mollohan's brother. Mollohan and his sister own the other two-thirds of the firm, which had been owned by their now-deceased father, former congressman Robert H. Mollohan.

In 2003, Mollohan said he understated the size of a $1.5 million construction loan from Central Carolina Bank as "up to $1 million." The next year he said he misstated several dates on which he took out loans to buy property in North Carolina, and he also incorrectly listed the amounts of some of those loans.

In North Carolina, the Mollohans invested in four lots on Bald Head Island with Kuhns and her husband and also built neighboring beachfront houses there. Kuhns heads the Vandalia Heritage Foundation, which focuses on refurbishing real estate in Mollohan's district and uses money that Mollohan has earmarked for the purpose.

One of the lots was sold in January and the three others have been contracted for sale, Mollohan said in a statement. Mollohan has also said that he is selling his beachfront home in order to reduce his debts.

In his latest financial disclosure report, Mollohan said he values 12 separate properties at about $6.6 million and he added that they have mortgages of more than $4.4 million.

Rep. Alan B. Mollohan (D-W.Va.) offered a chronology of how his assets grew from about $565,000 in 2000 to $6.3 million or more in 2004.

BROADCAST TRANSCRIPT

December 11, 2006
Lou Dobbs Tonight
CNN

LOU DOBBS, ANCHOR:

The Democrats vow to take on the culture of corruption in Washington, but are they just part of it? The Democratic congressman likely to head the committee that overseas the FBI budget is himself under investigation by the FBI. And the congressman who was found with $90,000 in his freezer headed for another term after being re-elected to the House.

Lisa Sylvester reports on one Democrat under FBI scrutiny. His new job will give him oversight of the budget of the FBI.

Andrea Koppel reports on another Democrat under investigation who just won re-election and is now demanding his powerful committee seat back. We begin tonight with Lisa Sylvester. Lisa.

LISA SYLVESTER reporting: Lou, we saw former congressman Bob Ney and former congressman Duke Cunningham--both lawmakers are now disgraced and out of office. But it's not just Republicans. Now there are allegations of wrongdoing involving a Democrat from West Virginia.

Depending on who you ask, Representative Alan Mollohan is either a very savvy real estate investor or a congressman who may have become rich by helping key friends.

KEN BOEHM, NATIONAL LEGAL AND POLICY CENTER: In the year 2000 he was worth several hundred thousand dollars. Just four years later he was worth between--he had more than $6 million, as much as $24 million in assets.

SYLVESTER: According to financial disclosure reports, those assets include more than a dozen condos in Washington, DC, and a North Carolina beach house. Mollohan and a former congressional staffer, Laura Kuhns, bought real estate investments along the Carolina coast.

Congressman Mollohan tapped the same congressional aide to head up one of five nonprofit organizations he set up in his West Virginia district. In the last five years, Mollohan, who sits on the Appropriations Committee, helped channel more than $150 million in taxpayer money to keep these economic development nonprofits thriving.

The National Legal and Policy Center filed a 500-page complaint with the Justice Department this year detailing Mollohan's business arrangements. But in a strange twist, Mollohan may end up chairing the very subcommittee that has jurisdiction over the Justice Department's budget.

MELANIE SLOAN, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON: It's well known that Mr. Mollohan is now under investigation by the Justice Department and the FBI, and it's a very awkward position for the FBI or the Justice Department to go to Mr. Mollohan, to talk about their appropriations, at the same time he is in charge of their purse strings.

SYLVESTER: A spokesman for Mollohan said, quote, "The allegations and suggestions of wrongdoing made by the NLPC are utterly false," end quote, and added that the congressman made his fortune from an inheritance that he reinvested in a booming real estate market.

In a statement, Mollohan's former congressional aide said, "I have never personally profited from earmarks in any way, nor have earmarks funded my real estate investments or other personal purchases."

The complaint filed against Mollohan also looks at campaign contributions. The executives and officers of these nonprofits that received millions of dollars in federal earmarks were quite generous to the Mollohan re-election campaign. They donated more than $12,000 between 2004 and 2006. Lou.

DOBBS: Lisa, thank you. Lisa Sylvester from Washington.

Congressman William Jefferson, the Louisiana Democrat, won a strong election victory in a runoff Saturday, even though he is under investigation by the FBI. And now he will have to battle the Democratic leadership if he wants his committee seats back.

Andrea Koppel reports from Washington.

ANDREA KOPPEL reporting: Representative WILLIAM JEFFERSON, Democrat, Louisiana: God bless you all.

KOPPEL: Congressman William Jefferson had hardly finished celebrating his re-election Saturday when he began lining up support for another campaign--winning back his seat on the powerful House Ways and Means Committee.

CNN has learned that Jefferson told Congressman Mel Watt, the outgoing chairman of the Congressional Black Caucus, he wants to be reinstated. That could put the eight-term Louisiana Democrat on a collision course with Speaker-elect Nancy Pelosi, who forced him off the tax-writing committee in June.

REP. NANCY PELOSI, SPEAKER-ELECT: It's very sad, but we are a Democratic--our House Democratic Caucus is determined to uphold a high ethical standard. We've said it and now we are doing it.

KOPPEL: Pelosi's concern back then, that government allegations Jefferson may have accepted bribes, including $90,000 from an FBI informant found in his freezer, would

BROADCAST TRANSCRIPT

Sunday, July 2, 2006
ABC-TV network
World News Tonight

DAN HARRIS, anchor:

And now to the story of a congressman who's actually proud to be called the "Prince of Pork." He is very good at bringing home the bacon for his district; so good, in fact, that the FBI is now taking a hard look at whether this Democrat from West Virginia is breaking the law. However he's doing it, he's spending an awful lot of your money. Here's ABC's John Cochran.

JOHN COCHRAN reporting:

The remote town of Thomas, West Virginia, is proud of its arts and crafts store.

KATE McCOMAS, MOUNTINMADE FOUNDATION: Everything in the gallery I made by an artist who lives in West Virginia.

COCHRAN: It's part of the MountainMade Foundation, which relies far more on federal taxpayers than on sales. This year alone, it got $2.2 million, thanks to Congressman Alan Mollohan. Folks like Kate McComas, the boss here, are happy to contribute to Mollohan's reelection.

McCOMAS: I contributed $1,000.

COCHRAN: Critics see a connection between campaign contributions and groups who benefited from federal funds: $71 million for the Canaan Valley Institute; $39 million for the Alan B. Mollohan Innovation Center; $28 million for the Vandalia Heritage Foundation; $108 million for the Institute for Scientific Research.

STEVE ELLIS, TAXPAYERS FOR COMMON SENSE: It's an endless loop of this funding of federal taxpayer dollars going out and campaign contributions coming back.

COCHRAN: So, you say isn't this just Washington as usual? No. Mollohan is different because the FBI is investigating him and the groups he enriched through taxpayer dollars. Those dollars provided lucrative contracts and high salaries for its supporters.

Investigators want to know whether in return those supporters helped Mollohan become a multimillionaire. Mollohan is part owner of $2 million worth of property on this North Carolina island. He also owns part of this luxury apartment building in Washington.

A conservative research group says much of his new wealth was never declared on financial disclosure forms. (Visual of National Legal and Policy Center sign)

KENNETH BOEHM, NATIONAL LEGAL AND POLICY CENTER: There are criminal penalties under the Federal False Statements Accountability Act if mistakes are willful and knowing and material. And in this case, he hid millions of dollars worth of assets.

COCHRAN: Mollohan says he inadvertently misstated some transactions, but insists he did nothing illegal. And he takes pride in the nickname he has earned bringing money into his state, "Prince of Pork."

REP. ALAN MOLLOHAN, DEMOCRAT, WEST VIRGINIA: I am proud of the efforts we've undertaken for the First Congressional District of West Virginia, and if being the "Prince of Pork" is--merits that designation, then I'm proud of that, yeah.

COCHRAN: Proud of bringing in $1/2 billion over the past 10 years.

That's Your Money. John Cochran, ABC News, Morgantown, West Virginia.

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The Washington Times
www.washingtontimes.com

And now the ethics-challenged Mollohan

Published December 16, 2006

Rep. Alan Mollohan, West Virginia Democrat, is the next embarrassment for Nancy Pelosi's "most ethical Congress in history." Mr. Mollohan is slated to chair the appropriations panel which oversees the budget of the Justice Department, including the FBI. But the FBI is currently investigating him for possible appropriations and ethical improprieties.

The 11-term lawmaker stepped down as ranking Democrat on the House Ethics Committee in early 2006 pending the outcome of the investigation. There are two controversies here: one concerning a suspicious surge in Mr. Mollohan's personal wealth in connection with real estate investments -- his net worth surged from the low-to-mid six figures in 1999 to at least $6.8 million and as much as $25 million by 2005 -- while he was in office; and one concerning $250 million in federal appropriations to five nonprofit organizations that Mr. Mollohan himself set up and which employ his friends and some of his campaign contributors.

Both are troubling for their own reasons. In one case, the West Virginia lawmaker purchased real estate with a longtime friend who is also a recipient of money from his earmarks. It took a complaint by a conservative watchdog, the National Legal and Policy Center, before Mr. Mollohan properly reported his net worth, including substantially undervalued assets, undisclosed real estate holdings and interests in companies to the federal government.

Then there is the earmarking, which seemingly shows that cronyism has been Mr. Mollohan's modus operandi for years. When the New York Times reported the story in April, it characterized the arrangement as "a cozy, cross-pollinated network" in which Mollohan-recruited executives "provide him with steady campaign contributions and positive publicity in their newsletters." One executive resigned after the revelation of his taxpayer-funded salary of $500,000. Highly compensated jobs and lavish taxpayer funded earmarks for their foundations were Mr. Mollohan's backscratching for friends. They scratched his back with re-election money.

Mrs. Pelosi: What was that about the "culture of corruption"?

After the failed bids to install the Abscam-plagued Rep. Jack Murtha as majority leader and the previously impeached Rep. Alcee Hastings as Intelligence Committee chairman, we'd have thought that Democrats learned the lesson. But now Mrs. Pelosi wants to give a key appropriations slot to a lawmaker who can't keep his friends' hands off huge sums of tax dollars.

That's quite a turn for the "most ethical Congress in history."

TPM MUCKRAKER.COM

Rep. Alan Mollohan (D-WV) VOA/U.Bar

Under FBI Scrutiny, Mollohan Runs up $160K Legal Bill
By Justin Rood - January 31, 2007, 1:08 PM

West Virginia congressman Alan Mollohan (D) has used $160,000 worth of services by a white collar criminal defense firm, according to new campaign filings.

Mollohan, who chairs the House panel which controls the Justice Department budget (including the FBI), has been under investigation by the FBI for a rather knotty mess of nonprofits, friends and real estate deals that appear to have made a lot of money for a lot of people.

According to documents filed by his campaign with the Federal Elections Commission, the law firm Kellogg Huber Hansen Todd Evan has collected $140,000 from his campaign. The campaign says that as of Dec. 31, 2006, it owed the firm another $20,000,

Mollohan has said that because of the investigation he would recuse himself from decisions concerning the FBI's budget, but some believe that doesn't resolve the conflict of interest.

"Just the fact that he's not going to micromanage the FBI's budget doesn't mean he can't play havoc with the Justice Department budget," conservative watchdog Ken Boehm told CNSNews.com earlier this month. "When the Justice Department goes to his subcommittee - and they need all sorts of approval out of his subcommittee for other spending things and other things they want - they're going to a man they're investigating," he said.

Boehm's group, the National Legal and Policy Center, has extensively investigated Mollohan. The congressman's office did not immediately have a comment on the matter.

For the moment, Mollohan's records appear to show he's spent more on his defense than Rep. John Doolittle (R-CA), who's spent around $120,000 for legal assistance relating to a federal investigation of his ties to Abramoff. But both men are dwarfed by the legal fees incurred by former Appropriations Committee chairman Rep. Jerry Lewis (R-CA). As of December, Lewis had spent $860,000 on lawyers. His campaign faces a deadline of today to deliver an updated report covering expenses for the month of December, which may include more fees. Doolittle and Mollohan have already filed that report.

Update: Through a spokesman, Rep. Mollohan gave us the following statement: "The legal expenses were incurred in responding to the claims of a right-wing group in Washington that there were irregularities in my financial disclosure documents. That resulted in the preparation and public release of an extensive financial disclosure report and analysis last June. That work debunked the claims and the accompanying innuendos."

More Trouble for Alan Mollohan

Update: The Mollohan news just keeps coming.

New Porkbuster slogan at the end of the post!

Roll Call (subscription required) reports this morning that Alan Mollohan broke House rules in soliciting people to bankroll a trip to Spain for him, his wife, and staff. They also report on earmarks and contributions that look pretty bad. I would highlight the relationships between donations and earmarks, but the entire article would be in italics.

W.Va. Firms Footed Mollohan Trip
May 8, 2006
By John Bresnahan,
Roll Call Staff

Rep. Alan Mollohan (D-W.Va.), his wife and two top aides took a five-day trip to Spain in June 2004 that was paid for by a group of government contractors for whom Mollohan steered tens of millions of dollars in earmarked funds, according to travel records and other documents.

The trip sponsor listed on travel disclosure forms is the "West Virginia (WV)-01 Trade Delegation," which Mollohan's office described as an "ad hoc group" of 19 government contractors and West Virginia-based nonprofits that came together to pay for the trip. The total cost of the trip for Mollohan, his wife and aides was $7,874.

Mollohan's trip to Spain was arranged by the West Virginia High Technology Consortium Foundation, a nonprofit organization Mollohan created back in 1990. Mollohan has helped steer more than $30 million in federal funds to the foundation as part of his overall effort to revitalize West Virginia's economy.

In a statement, Mollohan said his trip to Spain was proper and in accordance with House ethics regulations.

"In June 2004, I led a delegation of West Virginia high-tech companies to Bilbao, Spain to pursue collaborative opportunities with the high-tech businesses and associations in that region," Mollohan said in the statement. "The trade mission was fully disclosed in complete compliance with all House rules and guidelines..."

But the details of the Bilbao trip fully illustrate the political and potential legal challenges Mollohan now faces.

West Virginia companies and organizations that rely on Mollohan and his seat on the powerful Appropriations Committee paid for the trip and sent representatives along to accompany him. Those organizations, through their employees, then donated more than $160,000 to his re-election campaign or political action committee during the 2003-04 election cycle.

One of those companies, a West Virginia high-tech firm called TMC Technologies, issued a July 28, 2004, press release stating that it "was invited by Congressman Alan B. Mollohan to participate in a trade mission to the Biscay region of Spain," which includes Bilbao.

Under House regulations for privately funded travel, Members are specifically prohibited from soliciting sponsored trips.

Just a month before the trip, TMC Technologies announced that it had received a $5 million contract from the National Oceanic and Atmospheric Administration thanks to a Mollohan earmark. In 2003, TMC Technologies received a $2 million NOAA contact, also via a Mollohan earmark.

TMC, which had a $50,000 contract in 2003 with a nonprofit run by one of Mollohan's former aides and current business partners, has contributed heavily to his political committees. TMC officials and its employees donated more than $39,000 to Mollohan's re-election campaign and leadership PAC during the 2003-04 election cycle.

Like TMC, *many of the companies that paid for the Spain trip are also sponsors of the Robert T. Mollohan Family Charitable Foundation, named after the Congressman's late father.*

The Robert T. Mollohan Family Charitable Foundation sponsors an annual charity golf tournament; this year's event is scheduled for Sept. 5 at the Pete Dye Golf Club in Bridgeport, W.Va. Mollohan has declined to reveal how much each company donated to the foundation, but the amount raised by the organization totaled $1.35 million during a three-year period, according to the foundation's tax records.

Wade Linger, TMC's president, said the company's press release regarding the Bilbao trip was in error, although he and another TMC employee did take part in the excursion.

"If TMC issued a press release stating it was invited by Congressman Mollohan to participate in the the Spain mission, then that would have been an overstatement," Linger said in a statement. "But the invitation did not actually come from Congressman Mollohan."

Linger added: "The relationship between TMC officials and Mr. Mollohan is that TMC officials are constituents who live and work in Mr. Mollohan's Congressional district."

TMC ended up contributing $2,500 to the West Virginia High Technology Consortium Foundation to help pay the costs of Mollohan's junket, according to Linger. As a nonprofit group, the foundation is allowed to pay for Congressional travel...

Another company that had a representative on the trip was FMW Composite Systems. A recent Wall Street Journal article highlighted the relationship between Mollohan and the CEO of FMW, Dale McBride, whom Mollohan has described as a life-long friend.

Mollohan and McBride purchased a 300-acre farm together in West Virginia in May 2005. In December 2005, FMW won a $2.1 million NASA contract from a program funded through a

Mollohan earmark.

Other companies or organizations that helped underwrite the trip to Spain have benefited from Mollohan's assistance as well.

ManTech International Corp., a Fairfax, Va., defense contractor, shared in an $8.2 million contract that Mollohan secured.

The National Technology Transfer Center, officially known as the Robert C. Byrd National Technology Transfer Center after the state's senior Senator, founded what it calls the Alan B. Mollohan Business Accelerator Program in 2003. From 2001 to 2004, Mollohan helped steer more than $2 million in federal grants and contracts to the center from the Justice Department, NASA and the Environmental Protection Agency.

ProLogic, Inc., of Fairmont, W.Va., a software company, got $670,000 from NASA in 2004, thanks to Mollohan.

Morgantown-based Azimuth Inc. won a $20 million contract from the Department of Homeland Security this year. Azimuth provides electronics and software engineering support services. Azimuth's "mentor" firm, Electronic Warfare Associates, is a large defense contractor.

D.N. American, an information technology services company in Fairmont, W.Va., received funding out of a $3 million earmark by Mollohan for recycling programs via the Energy Department. The funding was announced in January 2004.

Other organizations represented on the 2004 trip include: Braun Technology; DSD Laboratories Inc., now known as Backbone Security; Galaxy Global Corp.; Information Research Corp.; Lockheed Martin; SAIC; Touchstone Research Laboratory Ltd.; Vandalia Heritage Foundation; and the Vandalia Redevelopment Corp.

Wow. Alan Mollohan had better have a great relationship with his constituents, because this doesn't look good. He really needs to come clean very soon. It will hurt that this information hits the papers a few weeks after the initial report from the Wall Street Journal. The "Robert T. Mollohan Family Charitable Foundation" is likely to have to open its records eventually; it's sure to be another blow at Mollohan when that happens. Mollohan's political career is now in jeopardy. If I were he, I would make sure that everything which will eventually come out, comes out now. That'll give him more time to rebuild ties with his constituents - to the extent that's possible.

This all suggests a new slogan for Porkbusters: ***"Earmarks: Look What They're Doing for Alan Mollohan!"*** The Appropriators could wind up the biggest backers of reform!

Mollohan's primary is tomorrow, May 9. He is unchallenged.

http://influencepeddler.blogspot.com/2006/05/more-trouble-for-alan-mollohan.html

April 7, 2006

PAGE ONE

Allan B. Mollohan

Helping Hands

Appropriations, Local Ties
And Now a Probe of a Legislator
West Virginia Rep. Mollohan
Has Real-Estate Holdings
That Also Bring Scrutiny
Growth of Budget 'Earmarks'

By JOHN R. WILKE
April 7, 2006; Page A1

FAIRMONT, W.Va. -- On a mountaintop above old coal seams that once fueled West Virginia's economy, a gleaming steel-and-glass research center is taking shape, its winged design and 120-foot data tower visible for miles.

The $136 million building is being built with taxpayers' money for the Institute for Scientific Research, a nonprofit group launched by the local congressman, Democrat Alan Mollohan, and funded almost entirely through provisions he put into annual spending bills.

A 12-term congressman, Mr. Mollohan sits on the House Appropriations Committee, a panel that disgraced lobbyist Jack Abramoff dubbed the "favor factory." Working with fellow West Virginian Sen. Robert Byrd, Mr. Mollohan has steered at least $178 million to nonprofit groups in his district over the past five years using "earmarks" -- special-interest provisions that are slipped into spending bills to direct money to pet projects.

The money has brought more than jobs and building projects to his district. It has formed and financed a tight-knit network of nonprofit institutions in West Virginia that are run by people who contribute regularly to Mr. Mollohan's campaigns, political-action committee and a family foundation. One of these people also invests in real estate alongside Mr. Mollohan and his wife. The network of contributors also includes private companies that get contracts through these nonprofits.

Such a pattern raises questions about whether the donations or deals might be a way beneficiaries of earmarks could influence the legislator's actions. Now, federal prosecutors have opened an investigation of Mr. Mollohan's finances and whether they were properly disclosed, according to people contacted in the inquiry. Mr. Mollohan hasn't been accused of wrongdoing. A spokesman for the U.S. attorney's office in Washington, whose public-corruption unit is conducting the inquiry, declined to comment.

Mr. Mollohan said in an interview he had no knowledge of any investigation. But he said, "I welcome any review of my efforts to diversify the economy of West Virginia, as well

as any of our financial investments. All of them are aboveboard, and we operate transparently." He added that "every one of the earmarks is held to the highest standards of accountability" and publicly disclosed. He said he was "extremely proud of what we've been able to do for my state."

For the first time in years, Mr. Mollohan is facing a serious Republican challenge for his seat, from a candidate with active backing of the White House. Mr. Mollohan said he didn't want to suggest that scrutiny of his earmarks might be politically motivated. But he also said, "I'd rather have this explained and understood now rather than a week before the election."

Central to the Mollohan network is a former staffer, Laura Kuhns, who heads the nonprofit Vandalia Heritage Foundation. It is a historic-preservation group that is financed almost exclusively by earmarks backed by Mr. Mollohan. It paid her $102,000 in 2004. Vandalia is coordinating construction of the new building for the Institute for Scientific Research, or ISR, and Ms. Kuhns sits on its board and those of three other nonprofits that get funds via earmarks.

She and her husband also are partners with Mr. Mollohan and his wife in five properties in Bald Head Island, N.C., valued in local real-estate records at a total of $2 million. The Mollohans recently bought a $1.45 million oceanfront home on the island, called the Peppervine House, which they rent out for $8,555 a week, next to the Kuhns' house, known as Cape Fearless. These and other investments, including a stake in a nine-story luxury condominium complex in Washington, appear to have made the Mollohans wealthy.

Nonprofit Network

Some federal earmarks since 2000 for groups backed by Rep. Alan Mollohan (D., W.Va.)

NONPROFIT; PURPOSE	FEDERAL MONEY
Institute for Scientific Research (above) ■ Research, commercialization	$76 million
West Virginia High Technology Consortium Foundation ■ Research, business incubator services	$31 million
Vandalia Heritage Foundation ■ Preservation, economic development	$28 million
MountainMade Foundation ■ Promoting state crafts, artisans	$6 million

Source: Congressional records

Mr. Mollohan's government financial disclosure form, which shows only broad ranges of debts and assets, showed household assets of up to $565,000 in 2000, offset by debt of up to $465,000, including $100,000 in credit-card bills. Four years later, the couple's reported assets had soared to between $6.3 million and $24.9 million, with liabilities of $3.7 million to $13.5 million, mostly mortgages. Mr. Mollohan said his true assets are at the low end of those ranges.

He and Ms. Kuhns say there is no link between the earmark appropriations Mr. Mollohan pushed through Congress and their real-estate investments, and they deny any improprieties. Mr. Mollohan said that any time he invests with others in real estate, he puts in half the money to avoid the appearance of a conflict. "I wish you were correct that I'm worth millions, but in fact it's borrowed money," he said.

Casting a Shadow

The previously undisclosed investigation of Mr. Mollohan, 62 years old, comes amid a still-continuing Abramoff probe that has cast a shadow over two top Republicans, Bob Ney of Ohio and former House Majority Leader Tom DeLay, who is giving up his seat from Texas. Another Republican, former Rep. Randall "Duke" Cunningham of California, who had also served on the Appropriations Committee, left Congress and was sentenced to prison last month after pleading guilty to accepting $2.4 million in bribes from defense firms in exchange for earmarks and other favors. A criminal bribery investigation is under way into a Louisiana Democrat, Rep. William Jefferson, who has denied wrongdoing.

The cases are part of a widening attack on public corruption, with some 200 Federal Bureau of Investigation agents working on such cases nationwide, according to the chief of the Justice Department's criminal division, Alice Fisher. "We are seeing a surge in these cases and we're adopting aggressive tactics, including undercover operations," she said.

The House Ethics Committee, on which Mr. Mollohan is the senior Democrat, cautions lawmakers about ties to private entities because of the risk of actions inconsistent with their obligation to the public. The ethics panel has been unable to function -- despite the Abramoff corruption scandal, Washington's biggest in years -- because of a partisan squabble over staffing in which Mr. Mollohan has led his party's forces.

Mr. Mollohan was among House members embarrassed by having received campaign donations from MZM Inc., one of the contractors from which Mr. Cunningham admitted taking bribes. MZM and its executives gave $23,000 to a political-action committee affiliated with Mr. Mollohan. A spokesman for Mr. Mollohan said that in December, he gave the MZM gifts to charity.

Mr. Mollohan attributes his success in real estate to the hard work of his wife, Barbara, who manages rentals at a 52-unit condo called The Remington. It offers one-bedroom suites on a weekly and monthly basis, advertising as "Washington's Best-Kept Secret." City records show its units are valued at between $220,000 and $275,000 each. The Mollohans have a half interest in 27 of them.

They co-own them with a relative, Joseph L. Jarvis, a retired businessman who received subcontracts from an Energy Department facility in Mr. Mollohan's district. Mr. Jarvis's business address at the time was a building constructed with money approved as a result of federal earmarks provided by Mr. Mollohan. Mr. Jarvis said his going into business with Mr. Mollohan had nothing to do with his prior work on the federal contracts.

The jump in Mr. Mollohan's wealth attracted the attention of the National Legal and Policy Center, a self-styled ethics-in-government nonprofit in Falls Church, Va. Funded by donations averaging $100 to $200, the conservative group helped ignite a procurement scandal a couple of years ago that brought down an Air Force contracting official and a chief financial officer of Boeing Co. The group said it found at least 200 misrepresentations or omissions in Mr. Mollohan's disclosure forms over the years that

had the effect of grossly undervaluing his assets. It said it forwarded a list to prosecutors.

One focus of their probe is whether Mr. Mollohan's prior disclosure forms properly valued his interest in The Remington and fully disclosed income from it, said people close to the inquiry. Mr. Mollohan's accountant, Blair Eiler, said in an interview that the building's full value "may not have been properly reported in the early years" on the disclosure forms. He added that its value had risen sharply in recent years in the hot real-estate market.

More Scrutiny

The probe could bring more scrutiny to earmarks. Attached to appropriations bills, they are usually intended to benefit a specific project in a congressman's district and often escape the scrutiny that is supposed to accompany public expenditures. The number of earmarks has risen sharply in the past decade, to 14,211 in fiscal 2004 from 4,155 10 years earlier, says the nonpartisan Congressional Research Service. The fiscal 2004 earmarks caused $53 billion of federal spending.

Mr. Mollohan is well-positioned to press for earmarks. He has sat on the Appropriations Committee since 1986 and is the senior Democrat on a subcommittee handling appropriations for science projects and the departments of State, Justice and Commerce.

Mr. Mollohan acknowledges having steered federal-agency funds and tenants to a sprawling technology park where the mountaintop ISR building is under construction, even though in some instances the agencies didn't ask for these facilities. The park's anchor is named for him: the Alan B. Mollohan Center for Innovation. A bronze bust of the congressman surveys the lobby.

Government contractors and executives of the nonprofit groups in his network regularly give to his campaign and to an affiliated political-action committee, Summit PAC. A third conduit for funds is the Robert H. Mollohan Family Charitable Foundation, named for the congressman's father. It holds an annual charity golf tournament at the Pete Dye Golf Club in Bridgeport, W.Va., named a top-100 course by Golf Magazine. The tournament has been very successful. It received $455,000 in contributions in 2003 -- the latest available figures -- from government contractors and other firms. The donors included at least two of the federally funded nonprofits, ISR and Vandalia, the group Ms. Kuhns runs.

A spokesman for Mr. Mollohan said the foundation's board wouldn't release a list of sponsors or their gifts "to respect their privacy." The family foundation gets staff and office services from the West Virginia High Technology Consortium, another Mollohan-backed nonprofit. Its executives are unpaid, however, according to federal tax filings.

The congressman rejects any link between campaign contributions and his efforts on behalf of his district. "I know where the lines are," he said. "Is it credible to say I encouraged the growth of these nonprofits to get fund-raising? That's ludicrous. These

nonprofits should be judged on what they have done for the state." Every one of them has created jobs, boosted the economy or rescued natural resources, he said. And Mr. Mollohan said he has earned the political gifts that have come from government contractors and others "by being an effective and hard-working representative."

Ms. Kuhns has long been a central figure in the congressman's efforts to earmark spending for West Virginia. After leaving his staff, where she handled appropriations projects, 16 years ago, she went to work for a local real-estate developer that now does work for many of the Mollohan-funded nonprofits and employs her husband.

Since 2000, she has run Vandalia, which has won $28 million in the past five years in federal funding to rehabilitate historic buildings and invest in depressed real estate in the district, largely through Mollohan-backed earmarks. Besides ISR, she serves on the board of MountainMade Foundation, a small federally funded nonprofit dedicated to promoting West Virginia crafts. She's also on the board of the only out-of-state foundation to get Mr. Mollohan's backing, the National Housing Development Corp. It is a California group that has won $31 million in earmarks over five years.

Ms. Kuhns said she and her husband have done nothing wrong and have worked hard for West Virginia. "There's no smoking gun here," she said. "All of these entities are rigorously audited. There is a misperception that there is no accountability in earmarks. Nothing could be further from the truth."

ISR is the largest nonprofit funded by Mr. Mollohan's efforts, winning at least $76 million of federal spending through his earmarks in the past five years. It paid its top three executives a total of $777,000 in 2004, the latest available figures. The president of ISR, James Estep, said in an interview that it has created hundreds of West Virginia jobs and nurtured dozens of high-tech companies. From his office overlooking the I-79 Technology Park -- on 500 acres largely purchased with federal funds -- Mr. Estep pointed to bulldozers at a building site. "This was cow pasture in 1995. Now there are 1,000 people working here," he said.

The research center will offer laboratory and office space and huge manufacturing bays built into the mountain. Mr. Estep said he won't have trouble drawing tenants. Until then, he said he would fill part of the new building with a small robot-manufacturing firm spun off from the West Virginia High Technology Consortium -- another group funded by Mollohan-backed earmarks. The robot firm, known as Innovative Response Technologies and now a for-profit, recently won a $10 million Navy contract for 3,500 mobile "BomBots" for remotely inspecting possible roadside bombs.

Mr. Mollohan earmarked $3.75 million in the 2004 and 2005 Defense Department spending bills to develop the robots, funneling the money to the nonprofit consortium. The new Navy contract will be shared with another defense firm in Mr. Mollohan's district that has also been a contributor to his campaign, called Azimuth Corp.

Mr. Mollohan said he had no role in getting the Navy contract and applauded the work.

But he acknowledged he sometimes has pressed federal agencies to spend money for projects they didn't want. The FBI and National Aeronautics and Space Administration didn't seek to move operations into the I-79 Technology Park in West Virginia, he said, but they're now part of a thriving federal-services sector in the state. "I'm sure that NASA didn't want to build the space center in Houston, either, when Lyndon Johnson sent them out there," he said.

Write to John R. Wilke at john.wilke@wsj.com[1]

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(1) mailto:john.wilke@wsj.com

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Mr. KING. Thank you, Mr. Chairman.

And I want to thank the Attorney General for his testimony here today.

And I appreciate the tone and the tenor of the gentleman from Arizona. And we all are concerned about the safety of the American people, and it has been extraordinarily safe since September 11th, given what we anticipated.

And I would yield back to the gentleman from Arizona.

Mr. FRANKS. And I just thank the gentleman for coming.

Mr. CONYERS. Members of the Committee, we are trying to finish up as close to 2:30 as possible. And so the Chair is going to be very strict with the time from this point on.

And we recognize the gentleman from California, Brad Sherman.

Mr. SHERMAN. Thank you.

The Administration has put forward various theories under which anyone, even American citizens, could be arrested without being charged with a crime. One of these is the theory that you could be classified as an enemy combatant.

Are there any American citizens being held today for over a month who have been denied habeas corpus or access to an attorney?

Mr. GONZALES. I don't believe so, Congressman.

Mr. SHERMAN. Wouldn't it be your duty as Attorney General to make sure that their rights to habeas corpus were honored?

Mr. GONZALES. Well, but, you know, there are a lot of people in this government, and sometimes people do things that they shouldn't be. And I am not suggesting that that is occurring here, but you are asking me, you know, a question that I hadn't really thought about.

Mr. SHERMAN. Is there any agency answerable to the—well, is there any part of the Department of Justice——

Mr. GONZALES. We are all answerable to the Constitution and to our laws, yes.

Mr. SHERMAN. Now, are there any U.S. citizens being held now by foreign governments or foreign organizations that are without access to attorneys as a result of rendition where agents of the Administration have taken people into custody and then given them up to foreign officials?

Mr. GONZALES. I don't, Congressman, I don't know if I have the answer to that question either. It is something that I would have to look at.

Mr. SHERMAN. Wouldn't you, as the chief office responsible for protecting our civil rights, want to know?

Mr. GONZALES. Yes, and I am not suggesting that that——

Mr. SHERMAN. I would hope that——

Mr. GONZALES [continuing]. Is occurring. I just, quite frankly, I haven't thought about this.

Mr. SHERMAN. Will you respond for the record to those questions? Thank you.

Mr. GONZALES. I would be happy—if I can respond to the questions, I will do that.

Mr. SHERMAN. Let me move on to another question. You now have focused more on these—yes, go ahead.

Mr. GONZALES. I don't want the press to run out and say, "Oh my gosh, U.S. citizens are being held by the government secretly, other governments." I don't think that is the case. I just want the American people to understand that.

Mr. SHERMAN. I look forward to a definitive answer for the record, and let's move on.

You have now spent more time looking at these eight U.S. attorneys then you might have expected to. Are there any of them that you think it was a mistake to fire and that it would have been in the interest of the Administration of justice to have left at their posts?

Mr. GONZALES. You know, I have gone back and thought a lot about this. You are right. And, in fact, I spoke with the Deputy Attorney General after Mr. Sampson's public testimony and asked him, "Okay, do you still stand by the recommendation?" And the answer was yes.

I think the one that is probably the closest call for me is Mr. Bogden in Nevada, and I talked about this in my Senate testimony. It is for that reason that I have reached out to Mr. Bogden and have offered my assistance in trying to help him, move him forward with employment.

But again, the standard is, was anything improper here——

Mr. SHERMAN. I am not asking improper; we all make mistakes.

Mr. GONZALES. I stand by the decisions. I stand by the decisions.

Mr. SHERMAN. So if you had it to do all over again, these eight would be toast.

Mr. GONZALES. No, because, again, we would have used a different process, and I don't know whether or not, using this different process, the same recommendations would have come to me. I relied upon the recommendations.

Mr. SHERMAN. Well, I am asking you whether you made a mistake, not whether you liked your process. Did the conclusion to fire these eight——

Mr. GONZALES. I think——

Mr. SHERMAN [continuing]. Was that the right, best thing to do for the administration of justice?

Mr. GONZALES. I think I stand by the decision. In hindsight, I am not happy with the process. I know that, to me, the process is important too, and I think using a different process, we may have come out with different recommendations to me which would have made a difference, perhaps.

Mr. SHERMAN. Well, let me move on. You have said that it would—you know, U.S. attorneys deal with political sensitive investigations. It would be wrong to fire one in order to thwart an ongoing investigation.

Would it be wrong to fire a U.S. attorney because he failed to announce indictments before an election date?

Mr. GONZALES. Well, of course, with respect to making public an indictment, that is something, particularly if you are talking about an announcement on or around election, you may get criticized if you do it before the election; you may get criticized if you do it after the election. What I tell people is try to be sensitive and do what is best for the case.

Mr. SHERMAN. Let me move on. Let's say an investigation had been completed and it was politically painful to your party how it went, somebody got indicted or convicted. Would it be wrong for you to fire a U.S. attorney after the investigation, not for the purpose of thwarting the investigation, which had already been completed, but for the purpose of rebuking that attorney for having chosen to investigate those associated with your political party?

Mr. GONZALES. I am not sure I am comfortable with answering that question. I will say this——

Mr. SHERMAN. Do you think it might be okay to fire somebody because they successfully completed an investigation?

Mr. GONZALES. Let me just give an example of the way we deal with these cases: Representative Bob Ney. We accepted a plea from Representative Ney 6 weeks before the election. We didn't have to do that before the election. I am sure there were some Republicans around the country who sort of scratched heads when we in fact took that plea right before the election. Why did we do that? We did it because we aren't motivated by politics. We do what is best for the case.

Mr. CONYERS. Thank you very much.

Steve Chabot of Ohio, Ranking Member on the Subcommittee on the Constitution.

Mr. CHABOT. Thank you very much, Mr. Chairman.

And thank you, Attorney General Gonzales, for being here today.

I want to apologize for not having been here for the entirety of this hearing, because I am the Ranking Member on the Small Business Committee and for the last couple of hours we had a hearing on that. So, in any event.

General Gonzales, last August I want to thank you for coming to my district, the city of Cincinnati. And you joined with us there—myself, chief of police and others—to participate in a roundtable discussion with local city and Federal law enforcement officials such as the U.S. attorney, Mr. Lockhart, there and FBI Special Agent in Charge Tim Murphy.

And the roundtable focused on the violent crime problems that continue to plague communities all over the country including my city, Cincinnati.

During that meeting, several federal-local cooperative approaches were discussed to reduce gun violence and illegal drug use in the region, such as Project Safe Neighborhoods. In addition, you announced the addition of 23 new Federal prosecutors in the Organized Crime Drug Enforcement Task Force, including one for southwest Ohio. Cincinnati is located in southwest Ohio.

My question to you, General Gonzales, is: What has the Department of Justice been doing, and what are you willing to do to address violent crime and gun violence? And has the addition of a Federal prosecutor in southwest Ohio resulted in increased Federal prosecutions? And has funding assisted the local FBI, DEA and ATF special agents in charge in their investigations of gun violence and illegal drug use and violent crime?

I know that is a lot in one question.

Mr. GONZALES. Congressman, I will answer the specifics in terms of Cincinnati. I would like to be able to get back to you and give you accurate numbers.

But let me just say, I think we have enjoyed a good period in terms of decline in crime rates. We are starting to see, however, some disturbing upticks in certain communities around the country.

And it is for that reason that we initiated this 18-city tour recently, where we sent out DOJ officials to communities around the country, where some communities have enjoyed success in reducing crime; others have not been so successful. Trying to understand the reasons why—what is working, what is not working. We are very close to be in a position to talk about what we have learned and perhaps make some recommendations.

I am worried about it. Again, as I indicated in response to an earlier question, I don't think people can really realize America's promise if they are worried about their neighborhood—safety, guns, drugs, gangs. This is something that I view as one of the things I am going to be focused on in these remaining months in the Administration, because I think it is important as the Attorney General to do that.

Before 9/11, Project Safe Neighborhood was the number-one domestic law enforcement program for the Department of Justice, which is to reduce gun crime. And so we are still going to remain focused on that.

I am worried about gangs. It is going to require the help of our neighbors down south. I am going to a regional anti-gang summit in June with the attorney generals from Mexico and Central American countries, because we can't just solve that issue solely within the United States.

But I look forward to working with you on this issue. You have been a terrific partner and a champion for your district. And I hope there are additional things that we can do to help you.

Mr. CHABOT. Thank you very much, Mr. Attorney General.

And one final area I would like to explore briefly here. As you know, the city of Cincinnati suffered through riots back in April of 2001. And in April of this past year, the Department of Justice made the decision to terminate its memorandum of agreement with the city of Cincinnati, finding that the city and police department have met the more than 80 provisions set forth by the Department of Justice.

The city continues to work with local officials to meet additional requirements that are set forth in a separate agreement, which is known as the Collaborative Agreement.

The MOA between the city and the Department of Justice was incorporated by reference into the Collaborative Agreement and thus has played a significant role in the administration of the Collaborative Agreement.

Will the Department of Justice acknowledge and support the city's and the police's good faith efforts if any dispute were to arise between now and termination of the Collaborative Agreement?

Mr. GONZALES. We have always had a good working relationship with the police. If there are things that we can do to be helpful, of course we will look at that, Congressman.

In terms of what our official jurisdiction or authority may be in this matter, we will have to wait and see. But, again, if there are things that the department can do to continue to help the citizens

of Cincinnati be safe and that the citizens enjoy their rights, we will be happy to look at that.

Mr. CHABOT. Thank you very much, Mr. Attorney General.

And I yield back the balance of my time, Mr. Chairman.

Mr. CONYERS. Thank you.

The Chair now recognizes in some way the newest Member of the Committee, Tammy Baldwin of Wisconsin.

Ms. BALDWIN. Thank you, Mr. Chairman.

Welcome, General Gonzales.

I want to ask unanimous consent to submit for the record a *New York Times* article entitled, "A Woman Wrongly Convicted and a U.S. Attorney Who Kept His Job." Before submitting it, there are just two paragraphs I would like to read.

It says, "The United States Court of Appeals for the 7th Circuit, which heard Ms. Thompson's case this month, did not discuss whether her prosecution was political, but it did make clear that it was wrong. And in an extraordinary move, it ordered her release immediately without waiting to write a decision." "'Your evidence is beyond thin,' Judge Diane Wood told the prosecutor. 'I am not sure what your actual theory in this case is.'"

"Members of Congress should ask whether it was by coincidence or design that Steven Biskupic, the United States attorney in Milwaukee, turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race."

I would ask unanimous consent to submit that for the record.

Mr. CONYERS. Without objection, so ordered.

[The article follows:]

ARTICLE PUBLISHED IN *THE NEW YORK TIMES*, APRIL 16, 2007, SUBMITTED BY THE HONORABLE TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND MEMBER, COMMITTEE ON THE JUDICIARY

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A Woman Wrongly Convicted and a U.S. Attorney Who Kept His Job

BYLINE: By ADAM COHEN

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Opponents of Gov. Jim Doyle of Wisconsin spent $4 million on ads last year trying to link the Democratic incumbent to a state employee who was sent to jail on corruption charges. The effort failed, and Mr. Doyle was re-elected -- and now the state employee has been found to have been wrongly convicted. The entire affair is raising serious questions about why a United States attorney put an innocent woman in jail.

The conviction of Georgia Thompson has become part of the furor over the firing of eight United States attorneys in what seems like a political purge. While the main focus of that scandal is on why the attorneys were fired, the Thompson case raises questions about why other prosecutors kept their jobs.

The United States Court of Appeals for the Seventh Circuit, which heard Ms. Thompson's case this month, did not discuss whether her prosecution was political -- but it did make clear that it was wrong. And in an extraordinary move, it ordered her released immediately, without waiting to write a decision. "Your evidence is beyond thin," Judge Diane Wood told the prosecutor. "I'm not sure what your actual theory in this case is."

Members of Congress should ask whether it was by coincidence or design that Steven Biskupic, the United States attorney in Milwaukee, turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race.

There was good reason for the appeals court to be shocked. Ms. Thompson, a 56-year-old single woman, seems to have lost her home and spent four months in prison simply for doing her job. Ms. Thompson, who spent years in the travel industry before becoming a state employee, was responsible for putting the state's travel account up for competitive bid. Mr. Biskupic claimed that she awarded the contract to an agency called Adelman Travel because its C.E.O. contributed to Mr. Doyle's campaign.

To charge her, Mr. Biskupic had to look past a mountain of evidence of innocence. Ms. Thompson was not a Doyle partisan. She was a civil servant, hired by a Republican governor, with no identifiable interest in politics. She was only one member of a seven-person committee that evaluated the bidders. She was not even aware of the Adelman campaign contributions. She also had a good explanation for her choice: of the 10 travel agencies that competed, Adelman submitted the lowest-cost bid.

While Ms. Thompson did her job conscientiously, that is less clear of Mr. Biskupic. The decision to award the contract -- the supposed crime -- occurred in Madison, in the jurisdiction of Wisconsin's other United States attorney. But for reasons that are hard to understand, the Milwaukee-based Mr. Biskupic swept in and took the case.

While he was investigating, in the fall of 2005, Mr. Biskupic informed the media. Justice Department guidelines say federal prosecutors can publicly discuss investigations before an indictment only under extraordinary circumstances. This case hardly met that test.

The prosecution proceeded on a schedule that worked out perfectly for the Republican candidate for governor. Mr. Biskupic announced Ms. Thompson's indictment in January 2006. She went to trial that summer, and was sentenced in late September, weeks before the election. Mr. Biskupic insisted in July, as he vowed to continue the investigation, that "the review is not going to be tied to the political calendar."

But the Thompson case was "the No. 1 issue" in the governor's race, says the Wisconsin Democratic Party chairman, Joe Wineke. In a barrage of commercials, Mr. Doyle's opponents created an organizational chart that linked Ms. Thompson -- misleadingly called a "Doyle aide" -- to the governor. Ms. Thompson appeared in an unflattering picture, stamped "guilty," and in another ad, her name was put on a graphic of jail-cell doors slamming shut.

Most of the eight dismissed prosecutors came from swing states, and Democrats suspect they may have been purged to make room for prosecutors who would help Republicans win close elections. If so, it might also mean that United States attorneys in all swing states were under unusual pressure.

Wisconsin may be the closest swing state of all. President Bush lost it in 2004 by about 12,000 votes, and in 2000, by about half that. According to some Wisconsin politicians, Karl Rove said that their state was his highest priority among governor's races in 2006, because he believed a Republican governor could help the party win Wisconsin in the 2008 presidential election.

Mr. Biskupic insists that he prosecuted Ms. Thompson only because he believed a crime was committed, and that he did not discuss the political implications of the case or the timing with anyone in the Justice Department or the White House. Congress has asked the Justice Department for all e-mail messages about the case to help resolve the matter.

But even if there were no discussions, Mr. Biskupic may have known that his bosses in Washington expected him to use his position to help Republicans win elections, and then did what they wanted.

That would be ironic indeed. One of the biggest weaknesses in the case against Ms. Thompson was that to commit the crime she was charged with she had to have tried to gain personally from the contract, and there's no credible evidence that she did. So Mr. Biskupic made the creative argument that she gained by obtaining "political advantage for her superiors" and that in pleasing them she "enhanced job security for herself." Those motivations, of course, may well describe why Mr. Biskupic prosecuted Ms. Thompson.

Mr. GONZALES. Could I respond?

Mr. CONYERS. Yes.

Ms. BALDWIN. At the time, I——

Mr. CONYERS. Would you mind if he responded to that article?

Mr. GONZALES. First of all——

Ms. BALDWIN. I have lots of questions about it, so——

Mr. GONZALES. Well, go ahead. As long as we are talking about that, that would be—I haven't read the article. I have no idea of knowing whether what is in there is true or not, but——

Ms. BALDWIN. Anyway, I said, at the time of this remarkable case in the 7th Circuit that I believed Congress should investigate not only the circumstances surrounding the forced resignations of eight U.S. attorneys but also whether partisan politics influenced or even dictated the investigations conducted by U.S. Attorney's Offices in order to stay in the Administration's good graces.

And I am pleased to have an opportunity to ask you some questions today.

General Gonzales, since your appearance before the Senate Judiciary Committee, I am sure you have taken additional steps to refresh your memory on subject matters that you did not recall during that hearing.

So, let me ask you again, are you aware that Mr. Biskupic was on the first known version of the list compiled by your chief of staff, Mr. Sampson, dated March 2, 2005, recommending names of U.S. attorneys to be fired?

Mr. GONZALES. Yes, my understanding is, Congresswoman, is that, actually, the list included all the United States attorneys. And the documentation reflected, sort of, Mr. Sampson's, I presume, then-current view of their performance.

But with respect to Mr. Biskupic, let me just remind everyone, this was a career prosecutor who made the charging decision on the Georgia Thompson case in consultation with the then-Democratic State attorney general and the Democratic local prosecutor. They all agreed this was the right thing to do——

Ms. BALDWIN. Let me——

Mr. GONZALES [continuing]. No question that the decision by the circuit was quite different, quite surprising. But the notion that Mr. Biskupic would in any way—this was a career prosecutor, again—charging decisions made in consultation with Democratic officials, I just think is ludicrous.

Ms. BALDWIN. A career prosecutor who was on the list, and then was——

Mr. GONZALES. And he didn't know that. He has publicly said he didn't know he was on the list.

Ms. BALDWIN. General Gonzales, among my concerns are many press reports and also documents produced by your Justice Department that show that Wisconsin Republican operatives were actively complaining and feeding documents to the White House about the need for more voter fraud investigation of prosecution in Milwaukee in late 2004 and 2005, right before Mr. Biskupic was placed on this list.

Documents produced by your department indicate that Karl Rove was looking at a Milwaukee Journal Sentinel article on alleged vot-

ing irregularities on February 2, 2005, just 1 month before Mr. Biskupic was placed on the list.

Do you know whether Mr. Rove or anyone else who was concerned about voter fraud prosecution played a role in Mr. Biskupic's being placed on the list?

Mr. GONZALES. Well, again, all the United States attorneys that I recall are on this initial list——

Ms. BALDWIN. Well, his name——

Mr. GONZALES [continuing]. And the White House has indicated that they did not play a role in adding or deleting people from the list.

And let me just say, the Georgia Thompson case is not a voter fraud case.

Ms. BALDWIN. I am running out of time, so I——

Mr. GONZALES. It is a public integrity case.

Ms. BALDWIN. I want to read to you an excerpt from Mr. Sampson's interview with Judiciary Committee staff. This is regarding——

Mr. GONZALES. Can I see it? Can I see? If, in fact, you are reading from his testimony, I would like to see it.

Ms. BALDWIN. I would be happy to have a copy made. I can read it and then—this is on page 57 of the documentation. This is questioning concerning Mr. Biskupic's name on the list.

Mr. Sampson replies, "I have a vague recollection—I am not sure when in time it occurred—of a conversation with the Deputy Attorney General about Biskupic. What I remember about that conversation is the Deputy Attorney General suggesting that Mr. Biskupic had been recommended by appointment by Chairman Sensenbrenner, and that identifying him as somebody who might be asked to resign would perhaps not be a wise thing to do politically if it brought the ire of Chairman Sensenbrenner. I do not remember when that was."

Then the person asking Mr. Sampson questions said, "Very good. I take it you didn't have any conversations with Mr. Sensenbrenner or any other officials outside of the Department of Justice concerning Mr. Biskupic." Mr. Sampson: "That is right. I don't remember having any conversations like that."

So my question for you——

Mr. CONYERS. Time has run out. You want to finish your——

Ms. BALDWIN. My question is, would you not view this to be a political consideration relating to these personnel decisions? Don't you find it disturbing that speculation about the reaction of a Member of Congress played a role in his bring on the list or taken off the list?

Mr. GONZALES. Well, again, you will have to talk to Mr. Sampson about the list. Mr. Biskupic was not recommended to me for change, and therefore there was no consideration by me as to whether or not a change should occur.

And, you know, the views of a senator or a Member of Congress about the performance of a United States attorney, I don't think it is the wrong thing to take those into account. You are often involved in making recommendations and providing your views with respect to appointments of United States attorneys.

And so I don't think there is anything surprising about that.

Mr. CONYERS. The Chair recognizes from Texas, Judge Louie Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

And thank you, General, for being here to testify.

Earlier, a colleague across the aisle, Ms. Lofgren, had mentioned that there are over 300,000 names that need to be checked and that are pending at the FBI. I am hoping we will have time for a hearing on that and the appropriate people in to testify, because I certainly agree with her, that is a major problem.

But that is not the point of the hearing. We also had another colleague that was grilling you, General, about the national security letters and the alleged abuses, and I think that needs to be the source of another hearing. But I believe the director of the FBI, personally, I think, would be a more appropriate witness than you are on that.

So what we are about here today, as I understood it, was more about the U.S. attorneys firings, and before I get into that, I just think there is something very important.

Earlier in the hearing, our colleague from California, Ms. Sánchez, has used the word "target" about another colleague, and then when that was brought up by my friend from California, Mr. Lungren, she had indicated he was turning her words and that she didn't use those words, and that was just in a matter of minutes, and then later apologized if she had said something inappropriate.

And I want to encourage my colleagues across the aisle, please, I know the tendency has been with the general here when he couldn't recall something that happened days, weeks, months before or maybe he misrecalled something, the indications have been to call him a liar basically, either inferring that or just stating it.

And I want to encourage my colleagues not to treat Ms. Sánchez like that. I think she make a honest mistake, even though it was just a matter of minutes later that she couldn't recall what she said. Please don't be so judgmental to our colleague, Ms. Sánchez. I think it was an honest mistake, and please don't judge her the way you have judged the Attorney General.

Mr. CANNON. Is the gentleman suggesting a double standard, if he would yield?

Mr. GOHMERT. No, I am not suggesting a double standard. I am asking that Ms. Sánchez not be judged like the general has been on recall.

Now, with regard to *The New York Times*, that was brought up by another colleague across the aisle in an article offered—and I would mention that on March 24 of 1993, *The New York Times* had an article and said, "All 93 United States attorneys knew they would be asked to step down, since all are Republican holdovers. And 16 have resigned so far. But the process generally takes much longer, and had usually been carried out without the involvement of the Attorney General. Ms. Reno was under pressure to assert her control over appointments at the Justice Department. She was Clinton's third choice for Attorney General, arrived after most of the department's senior positions were already filled by the White House." And on further, it says, "It was unclear whether Ms. Reno initiated the request for resignations, or whether it was pressed on

her by the White House. The Attorney General said it was a joint decision."

Now, there are other indications, other articles about some of those investigations that may have been affected. But I would ask you, General, if there was no intent there by the Clinton administration to impede any investigation or affect an investigation, and all 93 U.S. attorneys were fired within 12 days of Attorney General Reno taking office, simply for political reasons, is that a crime?

Mr. GONZALES. No.

Mr. GOHMERT. No, it is not a crime?

Mr. GONZALES. No.

Mr. GOHMERT. So they can do that, strictly for political reasons.

Mr. GONZALES. The U.S. attorneys serve at the pleasure of the President of the United States.

Mr. GOHMERT. Well, if it turned out that this was a joint decision by the Attorney General and the White House in 1993, and others within the Justice Department, to have all 93 resigned at the same time, is that a crime in and of itself?

Mr. GONZALES. No.

Mr. GOHMERT. Now, we have also heard across the aisle reference to a U.S. attorney named McKay. And I would reference a article from The Weekly Standard, March 14, 2007, which indicated that U.S. Attorney John McKay from Washington state—in 2004, the governor's race was decided in favor of Democrat Christine Gregoire by 129 votes on the third recount.

As the *Seattle Post-Intelligencer* and other media outlets reported, some of the voters were deceased. Others were registered in storage rental facilities. And still others were convicted felons. More than 100 ballots were discovered in a Seattle warehouse.

None of this constitutes proof that the election was stolen. But it should have been enough to prompt Mr. McKay, a Democrat, to investigate—something he declined to do, apparently on grounds he had better things to do.

Now, if you or the President—particularly the President, since you have said they serve at the pleasure of the President—if somebody were fired because they would not investigate what appeared to be problematic and potentially a crime, is that a legitimate basis for a firing or resignation?

Mr. GONZALES. Of course, it could be, depending on the circumstances. Obviously, if a crime has been committed, potentially committed, I mean, there is an obligation upon the Department of Justice to investigate and to prosecute. There obviously is prosecutory discretion——

Mr. CONYERS. We have a time problem, Mr. Gohmert.

Mr. GOHMERT. All right. Thank you.

Thank you, Mr. Chairman.

Mr. CONYERS. And I thank you, sir.

The Chair recognizes a former assistant U.S. attorney himself, Adam Schiff of California.

Mr. SCHIFF. Mr. Gonzales, I wanted to go over some of your testimony in the Senate. You testified in September of 2005, Senator Domenici called you to complain that Mr. Iglesias was in over his head and lacked the resources to prosecute corruption cases. Is that correct?

Mr. GONZALES. I don't know if I said in connection with that particular call that he lacked the resources. I think what I testified to was the fact that he was concerned that Mr. Iglesias did not have the top talent working on public corruption cases generally.

And I think in subsequent conversations that occurred in 2006, I think there were concerns raised by Senator Domenici about whether or not there were sufficient resources available to handle other kinds of cases.

Mr. SCHIFF. Well, you testified in the Senate that he told you in these conversations that he lacked the resources to handle corruption cases. Are you saying that is not correct today?

Mr. GONZALES. What I am saying is that I recall him saying with respect to some of the conversations. I don't recall, sitting here today, that he said that with respect to the first case.

What I recall in the first conversation was Senator Domenici questioned whether or not, does Mr. Iglesias have his best people working on these kinds of very difficult cases?

Mr. SCHIFF. On corruption cases?

Mr. GONZALES. That is my recollection, yes.

Mr. SCHIFF. So in September 2005, he talked to you about corruption cases. In January of 2006, you spoke with him again. Again, he complained about Mr. Iglesias and his handling or lack of resources with respect to corruption cases, correct?

Mr. GONZALES. My recollection, Congressman, is that the subsequent—I have a recollection that in one of the conversations, which I believe occurred in 2006, one of the two conversations that I had, he mentioned generally voter fraud cases. That is the extent of my recollection.

Mr. SCHIFF. In none of your Senate testimony do you indicate that Senator Domenici talked to you about voter fraud, only about corruption cases.

Mr. GONZALES. I don't remember being asked specifically about the conversations that I had in 2006, Congressman. Obviously, I mean——

Mr. SCHIFF. Well, your testimony was that you had three conversations.

Mr. GONZALES. Yes.

Mr. SCHIFF. And there were two points that Senator Domenici made. First, that he was in over his head——

Mr. GONZALES. I didn't mean——

Mr. SCHIFF. Second, that he lacked resources to prosecute corruption cases——

Mr. GONZALES. I didn't mean to imply that those were the only points or things said in those conversations.

Mr. SCHIFF. So now you recall that he also talked about voter fraud cases?

Mr. GONZALES. Yes. It is not a recollection that I have just sitting here today. But, yes, I have a recollection that the issue of voter fraud cases, generally—not specific cases, but generally—was raised in one of those two conversations in 2006.

Mr. SCHIFF. And you also said in the Senate that, as a result of your conversations with the senator, you lost confidence in Mr. Iglesias. Is that correct?

Mr. GONZALES. Obviously, I was not surprised to see Mr. Iglesias's name recommended to me. The fact that the senior senator——

Mr. SCHIFF. That is not my question. You testified in the Senate you lost confidence in him as a result of this. Is that correct?

Mr. GONZALES. Not having the confidence of the senior senator and the senior leadership in the department was enough for me to lose confidence in Mr. Iglesias to recommend——

Mr. SCHIFF. Okay. So you lost confidence in him after these three calls?

In July of 2006, after these three conversations, you go out to New Mexico, you meet with Mr. Iglesias. You said not a word about losing confidence with him, did you?

Mr. GONZALES. I don't recall mentioning that, no, sir.

Mr. SCHIFF. In fact, you were there to announce you were providing resources not for corruption cases and not for voter fraud cases by for immigration cases, something you have never said Senator Domenici raised with you?

Mr. GONZALES. I don't recall Senator Domenici raising with me concerns about immigration cases.

Mr. SCHIFF. So nothing you did or said in July of 2006, during your meeting with Mr. Iglesias, is consistent with what you are saying now about your conversations with Senator Domenici?

Mr. GONZALES. I don't recall raising these issues with Mr. Iglesias in my visit in 2006.

Mr. SCHIFF. Now, you were the only one on the phone with Senator Domenici during these three calls. Is that correct?

Mr. GONZALES. From my end. I don't know whether or not anyone was on the phone as well from his end.

Mr. SCHIFF. So, on your end, you are the only one who would know what the substance of those conversations was?

Mr. GONZALES. Again, I was the only one——

Mr. SCHIFF. In March of this year, when Mr. Roehrkasse, your press spokesman, said that in none of these conversations, none of these three conversations, were corruption cases mentioned. That wasn't true, was it?

Mr. GONZALES. Well, again, I don't know whether or not Mr. Roehrkasse was talking about specific corruption cases or as a general category. Senator Domenici did not mention specific corruption cases.

Mr. SCHIFF. And you don't think that is misleading, for him to tell the country and for you to have a press conference the week after and not correct the record, for him to tell the country there was no mention of a corruption case in your conversations?

Mr. GONZALES. There was no mention of a corruption case.

Mr. SCHIFF. Oh, there was mention about corruption cases but not a corruption——

Mr. GONZALES. I do not think it was misleading, Congressman.

Mr. SCHIFF. Mr. Gonzales, I worked in the department for 6 years. And I love that department. And it makes me ill to see what has happened to it.

And for you to come here today and say there is nothing improper about firing a good prosecutor to make room for someone to

pad their resume shows me how little respect you have for the professionals in your charge.

Mr. CANNON. Would the gentleman yield?

Mr. SCHIFF. And I hope you will reconsider your decision, and I hope you will resign, because the department is broken, and I don't think you are the one to fix it.

Mr. CANNON. Would the gentlemen yield? Who is the prosecutor that the gentleman is referring to, Mr. Iglesias or——

Mr. CONYERS. The gentleman, time. Excuse me.

Mr. CANNON. I ask unanimous consent for 30 seconds for the gentlemen to help clarify what he just said.

Mr. CONYERS. All right.

Mr. CANNON. Were you referring to Mr. Cummins or Mr. Iglesias, when you made those really rather harsh statements to the Attorney General?

Mr. SCHIFF. Mr. Chairman, what I am referring to are the three conversations the Attorney General had with Senator Domenici, in which he purportedly complained that Mr. Iglesias lacked the resources to prosecute corruption cases. He talked about—and then have——

Mr. CANNON. Would the gentleman yield——

Mr. CONYERS. The gentleman is not going to get any more time, this gentleman. Finish your statement.

Mr. SCHIFF. And the Attorney General's spokesman told the country, and the Attorney General failed to correct the record, that in none of these conversations was a corruption case or corruption cases mentioned. That, to me, is misleading to be charitable.

Mr. CONYERS. The gentleman's time has expired.

And the last Member on the minority side to be recognized, as usual, is Jim Jordan from Ohio. [Laughter.]

Mr. JORDAN. That is usual because I am the newest Member of the Committee, right?

Mr. CONYERS. Exactly.

Mr. JORDAN. Okay.

Mr. CONYERS. That is the only reason.

Mr. JORDAN. Thank you. I appreciate that clarification.

Thank you, Mr. Attorney General, for being with us this afternoon—this morning and this afternoon. I am not going to ask you about the U.S. attorney issue. I want to talk about two other things I think are timely.

The first is, we have a constituent who has brought this to our attention, and there is also a "Dear Colleague" letter dated yesterday from Congressman Etheridge, Congressman King, Senator Leahy, Senator Specter regarding the Hometown Hero Survivor Benefit Act, a good piece of legislation I am sure you are familiar with.

Mr. GONZALES. Yes.

Mr. JORDAN. And your department was a part of helping craft that, working with the Congress and helping put that law together 4 years ago.

The letter points out—and this is, I guess, my concern as well—that there have only been two positive—and for those Members of the Committee who aren't familiar with the act, it is for EMTs, firefighters, police officers who suffer a heart attack or stroke in

the line of duty when it is stressful duty, not something that is just routine, but actually out there serving their communities, serving the public, rescuing people.

"There have been 230 applications received by the department and only two positive determinations." I am reading from the letter, the "Dear Colleague" letter.

Can you comment about why so few, when it actually passed several years ago, and, again, strong bipartisan support? I think the legislation was crafted narrowly, was well done, and would like your comment.

Mr. GONZALES. But it created a whole new system of eligibility under the Public Safety Officers' Benefits Program, and rather complicated. And it took us a period of time to work on regulations.

We received a lot of comments. We solicited a lot of comments about this. We went back and looked at the entirety of the program, quite frankly.

And so those all became final on September 11, 2006. And so I think we are now in a position to move forward, and hopefully we can get some decisions made, certainly on a quicker basis.

But that is the reason for the delay. It just took us longer than we anticipated to get these regulations in place.

Mr. JORDAN. Second issue is—and I am looking today at just a different issue altogether, but just wanted to bring it up, is in today's Washington Times. Want to know what your thoughts are and feelings and what the department is doing on the issue of sanctuary for illegal aliens.

Some cities have certain policies in place. Some churches are adopting certain policies. There is a great article, as I pointed out, in today's Washington Times about that issue.

Can you comment about that?

Mr. GONZALES. I don't know specifically in terms of what we are doing specifically on this issue. Obviously, we have a job to do, in terms of the enforcement of Federal laws. But in terms of specifically what we may do with respect to communities that offer up sanctuary, I would like to have the opportunity to get back to you on that.

Mr. JORDAN. I will yield the balance of my time to—I was going to yield to Mr. Cannon, but I would yield to——

Mr. CANNON. Thank you. Actually, I——

Mr. JORDAN [continuing]. Mr. Cannon.

Mr. CANNON [continuing]. Asked the gentlemen to yield.

And as long as Mr. Schiff is here, I just wanted to clarify: Mr. Schiff, if you don't mind, you talked about firing a U.S. attorney so that somebody else could pad his resume. Were you talking about Mr. Iglesias or did you mean Mr. Cummins as the U.S. attorney that was fired?

Mr. SCHIFF. At the very end of my remarks, when I said that I thought that it was outrageous for the Attorney General to come here today——

Mr. CANNON. But I actually want to be very specific.

Mr. SCHIFF. And I am asking—I am asking—yes.

Mr. CANNON. Were you talking about padding the resume of Mr. Griffin, which is unrelated to Mr. Iglesias? It is my time, and I would actually just like to clarify that for the record.

Mr. SCHIFF. Well, if you will let me answer, I will be happy to clarify.

What I am referring to is the Attorney General's response to Ms. Sánchez. When she asked, "Don't you think it is improper to fire someone to allow somebody else to pad their resume, to fire a perfectly good prosecutor," and the Attorney General's response was, "There is nothing improper about that."

Mr. CANNON. Reclaiming my time, you have two complaints about the Attorney General.

Mr. SCHIFF. And I think there is something incredibly improper about that.

Mr. CANNON. Reclaiming my time, you have two complaints against the Attorney General. One is what you accused him of, being improper; and the other is the padding the resume, and that goes back to Ms. Sánchez. And I was just trying to clarify that.

I would like to point out for the record—in fact, it has been an interesting hearing, Mr. Chairman. We started out talking about bread crumbs, and, of course, with the $250,000 that your side is spending on attorneys, we would hope that that would be more like caviar.

But in any event, at some point we have to get to the gist of what the problem is here. And if the problem is whether or not Mr. Iglesias was competent or should be fired, let me just remind the panel that Mr. Margolis, who is not a political hack—he is a career guy, well-respected—said, "Given everything I know today, he," referring to Mr. Iglesias, "would have been number one on my list to go." He later said that he was absolutely furious about the way Mr. Iglesias handled these kind of things.

To challenge the Attorney General the way I think he has been challenged here just seems to me to be highly inappropriate. If you are concerned about the Department of Justice, let's get this thing solved, let's get the questions answered. We have had dozens of interviews——

Mr. CONYERS. The gentleman's time has expired.

Mr. CANNON [continuing]. A dozen interviews and hearings. Let's get beyond this, unless there is something really——

Mr. CONYERS. The gentleman's time has expired.

The Chair now recognizes as far as we can go, we are down to only three more witnesses—the gentleman from Alabama, Artur Davis; himself a former assistant U.S. attorney.

Mr. DAVIS. Thank you, Mr. Chairman.

General Gonzales, you have said several times that the U.S. senator, Senator Domenici, lost confidence in the U.S. attorney.

Mr. GONZALES. That was my impression, yes.

Mr. DAVIS. Is it your practice to sample the opinion of U.S. senators regarding their confidence in U.S. attorneys?

Mr. GONZALES. No. What is really important——

Mr. DAVIS. No, my question is: Is it your practice to sample——

Mr. GONZALES. Can I give you the answer?

Mr. DAVIS. Well, is it your practice to sample the opinion of U.S. senators regarding performance?

Mr. GONZALES. What is important here is that there was a consensus recommendation by the senior leadership in the Department of Justice who knew the performance of U.S. attorneys——

Mr. DAVIS. No, sir. I only have a limited amount of time, General Gonzales——

Mr. GONZALES [continuing]. And made the recommendation to me.

Mr. DAVIS. General, I have a limited amount of time. Is it your practice, yes or no, to sample the opinion of all 100 U.S. senators regarding the performance of United States attorneys?

Mr. GONZALES. Of course not, but, in this particular case, what is important——

Mr. DAVIS. Are there any Democratic senators—we only have a limited time, General.

Mr. GONZALES. The senior leadership in the department gave me their base recommendations——

Mr. DAVIS. I am not asking about Mr. Iglesias, General Gonzales. I am asking in general.

Mr. GONZALES. I am responding——

Mr. DAVIS. Are there any Democratic senators who have expressed concern about U.S. attorneys, and have there been terminations based on the concern of Democratic senators, yes or no?

Mr. GONZALES. Not that I can recall.

Mr. DAVIS. Is there significant justification, Mr. Gonzales, for a significant disparity in the number of Democrats prosecuted versus the number of Republicans prosecuted, with respect to local elected officials? Was there any reason for that disparity?

Mr. GONZALES. I wouldn't know if such a disparity existed. It is not something that we look at.

Mr. DAVIS. Would it concern you?

Mr. GONZALES. It is not something we keep track of.

Mr. DAVIS. Would it concern you if there were a disparity between the number of elected Democratic officials prosecuted and the number of elected Republican officials prosecuted?

Mr. GONZALES. Well, again——

Mr. DAVIS. Would it concern you if it existed, yes or no?

Mr. GONZALES. It depends on the reasons for it.

Mr. DAVIS. Well, I will ask to put it in the record, Mr. Chairman, a survey done by the University of Minnesota, which surveys prosecutions of local elected officials between 2001 and 2006 and surveys with respect to the partisan affiliation. Eighty-five percent of the local officials prosecuted were Democrats. Twelve percent were Republicans——

Mr. CANNON. Would the gentleman yield?

Mr. DAVIS. No, I will not yield.

Mr. CANNON. Well, are you——

Mr. DAVIS. General Gonzales, do you dispute that characterization?

Mr. GONZALES. I don't know the basis of this report. We don't keep that kind of numbers. And quite frankly, for us to do, that would be more alarming.

Mr. DAVIS. Well, General Gonzales, let me ask you the question: Would it concern you if you did your own research and you discovered that there was a significant disparity?

Mr. GONZALES. We are not going to do that kind of research——

Mr. DAVIS. Would it concern you if it were reported——

Mr. GONZALES [continuing]. Because I think it would be dangerous to do that kind of research.

Mr. DAVIS. Would it concern you?

Mr. GONZALES. Listen, it would concern me if we are not making cases based on the evidence.

Mr. DAVIS. General Gonzales, I would represent to you that—and you can certainly check the data yourself—50 percent of the local elected officials in this country are Democrats, 41 percent are Republicans. Again, I ask you the question: Do you have any reason to assert that seven times more Democrats are guilty of Federal crimes than Republicans?

Mr. GONZALES. I have no way or knowing the legitimacy of this report you are citing to. I don't know the basis of these numbers.

Mr. DAVIS. Let me, if I can, go back to the Wisconsin case to possibly test this theory. These were the facts in the Wisconsin case: A woman who was a career appointee, who had appointed by a Republican governor, was working for the State tourism department.

She was indicted because a contract was awarded to a political contributor to the Democratic governor. There was no testimony at trial that she knew of the contribution. There was no testimony at trial that she was asked to award the contract to this particular company. And there was testimony at trial that the company was the lowest bidder.

Are you aware that in that particular case involving Georgia Thompson the 7th Circuit vacated the conviction from the bench?

Mr. GONZALES. Yes, I am aware of that.

Mr. DAVIS. Do you know of any other case while you have been Attorney General where an appeals court vacated a conviction from the bench?

Mr. GONZALES. Highly unusual.

Mr. DAVIS. Does that concern you, sir?

Mr. GONZALES. Well, again——

Mr. DAVIS. Let me turn to—my time——

Mr. GONZALES. The fact that we have a career prosecutor making decisions——

Mr. DAVIS [continuing]. Let me turn to the Alabama case.

Mr. GONZALES [continuing]. With Democratic officeholders——

Mr. DAVIS. General, we can't both talk at the same time. I have the time, sir.

The Alabama case, the former governor of Alabama, who was a Democrat, was indicted——

Mr. GONZALES. Can I be allowed to answer questions?

Mr. CONYERS. Yes. The Attorney General has the privilege to respond to the question.

Mr. DAVIS. Let me pose the Alabama context, and you can respond to both.

Mr. CONYERS. Well, wait a minute, Mr. Davis. Let's let him respond to the other question that you asked.

Briefly, sir.

Mr. GONZALES. The government prevailed at the lower court. We prevailed at the lower court.

Mr. DAVIS. I take that answer.

With respect to the governor of Alabama, the initial case against the former Democratic governor of Alabama dismissed by the 1st

District judge before the case went to trial on grounds of insufficient facts.

If I can finish the question, Mr. Chairman.

The second time, General Gonzales——

Mr. CONYERS. You have——

Mr. DAVIS. Permission to finish the question, sir?

Mr. CONYERS. Please, very briefly.

Mr. DAVIS. Thirty-four count indictment, 32 counts dismissed, evidence of jury misconduct based on e-mails that were obtained. The U.S. attorney's office who prosecuted the case declined to investigate the jury misconduct and, indeed, sought to exclude the e-mails from even being heard in an evidentiary hearing.

This is the question: Would you expect a U.S. attorney's office that had evidence of jury misconduct to investigate the misconduct or to try to exclude it from being heard in an evidentiary hearing? Which is the better practice, Mr. Gonzales?

Mr. GONZALES. As a general matter, the former. But I am not going to comment on this particular case without looking at the facts.

Mr. CONYERS. The Chair wishes to recognize Dan Lungren for a request.

Mr. LUNGREN. Mr. Chairman, I ask unanimous consent to include in the record three articles: two of them from the Albuquerque Journal, one from the Albuquerque Lawyer. The first one, April 15, 2007, entitled, "Iglesias Had Buried Critics During Career"; the second one, "Domenici Sought Iglesias Ouster," that is Sunday, April 15, 2007; and the third, from the Albuquerque Lawyer, March 15, 2007, "Iglesias Earns His Firing."

Mr. CONYERS. Without objection, so ordered.

[The articles follow:]

ARTICLES PUBLISHED IN VARIOUS SOURCES, SUBMITTED BY THE HONORABLE DANIEL E. LUNGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND MEMBER, COMMITTEE ON THE JUDICIARY

Albuquerque Journal (New Mexico)

April 15, 2007 Sunday
Correction Appended

Iglesias Had Varied Critics During Career;
Sheriff, DA, banker and party activists all complained to Domenici

BYLINE: Copyright © 2007 Albuquerque Journal BY MIKE GALLAGHER Journal Investigative Reporter

SECTION: FRONT PAGE; Pg. A1

LENGTH: 1778 words

In 2005, Doña Ana County District Attorney Susana Martinez had a nearly beheaded teenage corpse on a ditch bank.

In 2006, Bernalillo County Sheriff Darren White had a deputy dead in the East Mountains. Federal law enforcement agencies led by the FBI were there to help.

But Martinez and White said they had to kick and scream to get the attention of the U.S. Attorney's Office, run by fellow Republican David Iglesias.

Martinez threatened to go to the president of the United States to get help in her case. It worked, and federal prosecutors took over the drug-related kidnapping and homicide.

White's investigators wanted help from federal prosecutors in getting wiretaps in their investigation into the slaying of Deputy James McGrane. White said they threw up their hands and followed an assistant Bernalillo County prosecutor back to his office and spent the night typing wiretap affidavits for a state judge's signature.

Martinez took a laundry list of complaints about Iglesias to Sen. Pete Domenici, R-N.M. Iglesias was Domenici's "guy." Domenici walked Iglesias' nomination through the Senate. If Iglesias wouldn't listen, maybe Domenici would.

White had a laundry list, too. He not only took it to Domenici but carried it over to Iglesias' bosses at the U.S. Department of Justice.

Domenici began receiving complaints about Iglesias in 2003 and initially centered on the prosecutor's frequent absences.

John Ashcroft was U.S. attorney general at the time and had appointed Iglesias to numerous Justice Department committees that took him out of state. Also, Iglesias had active duty under his Naval Reserve commitments.

The complaints tended to come in bunches but increased in 2004 as the presidential election drew closer.

New Mexico Republicans were angry at what they thought was a lack of action by Iglesias in dealing with fraudulent voter registration forms turned in by some organizations that paid people to register new voters.

Domenici and his staff apparently believed Iglesias could handle the issue with news conferences and a few referrals to state prosecutors.

But state Republican leaders soured on Iglesias over the issue, and Domenici's staff began having doubts about whether he had the public relations skills they were counting on.

A spokesman for the U.S. Attorney's Office said the office was not going to comment about any perceived disputes with other law enforcement agencies.

Multiple complaints

As time passed, Domenici heard complaints about Iglesias from law enforcement officials, current and former assistant U.S. Attorneys, lawyers practicing in federal court, state Republican Party leaders and some crime victims.

One of the people complaining was White, another up-andcoming Republican.

While unhappy with Iglesias' handling of the voter registration problem, he was also upset about law enforcement issues.

In the spring of 2006, White took his complaints directly to the Department of Justice where he met with Attorney General Gonzales' chief of staff, Kyle Sampson and others.

"They loved David (Iglesias)," White said. "I started in on my complaints and they pulled out a sheet. They told me there couldn't be a problem. David had great numbers."

Having "great numbers" on immigration, narcotics and illegal firearms prosecutions was important at the upper echelon of the Justice Department, where Iglesias' stock was relatively high.

But critics say the numbers can be deceiving.

"It doesn't matter if the case is a complicated multi-defendant conspiracy or a mule (a person transporting) carrying marijuana across the border," one federal prosecutor told the Journal. "Those cases are essentially the same when reduced to the numbers."

The temptation is to take the simpler "mule" cases over those more difficult to prosecute but that might have significant impact on drug trafficking.

White had committed his investigators to a federal investigation involving multiple homicides connected to a group of drug dealers.

Federal prosecutors opted to take the narcotics cases but to White's chagrin they left the homicides to be prosecuted in state court, where penalties tend to be lighter.

"Everyone likes David personally, but it was getting to the point that every case had to be wrapped with a nice pretty bow before his office would take it," White said. "And I'm not alone. I know a lot of other law enforcement agencies felt the same way."

The U.S. Attorney's Office had spearheaded an investigation into the shooting deaths of three teens in the East Mountains, tied to the theory that the killings were part of a drug deal.

That investigation ended abruptly and White's investigators were left to pursue the investigation for years without help from federal prosecutors.

Sheriff's investigators finally made an arrest this year and a defendant is awaiting trial in state court.

White was also upset about what he viewed as lack of support after McGrane was shot and killed during a traffic stop in Tijeras.

Investigators wanted wiretaps to help track down their main suspect, Michael Astorga. White says the U.S. Attorney's Office was less than helpful, while the FBI threw its full weight behind the hunt.

"Basically, they gave all the reasons we couldn't get federal wiretaps," White said. "The (state) District Attorney's Office got them for us."

Astorga was eventually tracked down with the help of the wiretaps in Mexico and brought back to New Mexico to face charges in McGrane's shooting.

Trouble in Las Cruces

District Attorney Martinez has 24 prosecutors in her Las Cruces office, handling everything from DWIs to homicides.

There are 26 prosecutors in the U.S. Attorney's Office in Las Cruces, who for the most part process illegal immigration cases.

Federal prosecutors in Las Cruces have also complained to Domenici's staff and the Justice Department about Iglesias in recent years.

Justice Department reports show officials in Washington were concerned about low morale in Las Cruces. Prosecutors there complained they were "processing" large caseloads of immigration cases rather than prosecuting criminal cases.

Martinez said she got no response when she asked the U.S. Attorney's Office for help on a group of teenage immigrant smugglers operating below the federal prosecutors' radar.

"They had figured out what the federal threshold was for prosecution (the number of aliens a smuggler has to be caught with before the U.S. Attorney would take a case) so they would bring in fewer aliens than the feds would prosecute," Martinez said.

"I had complaints from Hatch and held a town meeting," she said. "The U.S. Attorney's Office didn't send a representative."

She also said she had to raise a stink before the U.S. Attorney's Office agreed to take over a drug/kidnapping/murder case that originated in Texas and ended in Doña Ana County.

"It shouldn't be a struggle to get them to prosecute," she said.

It got to the point Martinez said, "Where you don't even make the call because you know they won't respond."

Funds held up

New Mexico law enforcement agencies were expecting to get about $8 million this year from the U.S. Office of National Drug Policy.

That money was supposed to finance the New Mexico High Intensity Drug Trafficking Area, or HITDA, program, which pays for local narcotics agents' overtime, money for undercover operations, wiretaps and other costs for narcotics enforcement.

That money is being held up by the federal drug czar's office because of problems dating back to 2003 that haven't been corrected by the local executive board overseeing the program.

The U.S. Attorney's Office has a seat on that board, and past U.S. attorneys have served as chairmen.

"David Iglesias never came to the meetings," said Martinez. "He didn't send his number two or number three."

She said one of the "specific findings" that led to freezing the money was lack of participation by Iglesias or one of his top deputies.

The federal money pays for some of Martinez's prosecutors who handle the hundreds of drug cases the U.S. Attorney's Office hands off to state prosecutors.

Martinez said the program is operating with money from the last fiscal year and said the board consisting of prosecutors and representatives of state and federal law enforcement agencies is working to correct the situation.

"It has the potential to impact the entire state and didn't have to happen," Martinez said.

A Democratic prosecutor who didn't want her name involved concurred with Martinez's view of Iglesias' job performance.

'Justice denied'

Las Vegas, New Mexico, banker Robert Levenson doesn't normally deal with prosecutors. But in 2002 he believed the bank was being defrauded through a check kiting scheme involving a local company.

Millions of dollars were involved, but the case wasn't indicted until October 2004. It was plea bargained last year and probationary sentences were handed down.

Levenson took his complaints about the U.S. Attorney's Office to Domenici three years ago.

"I believe justice delayed is justice denied," Levenson said. "We have been advised to not specifically comment on the case as it remains unresolved after more than five long years."

He says he was happy Iglesias was fired.

Was he qualified?

In the end, David Iglesias was something of a favorite in the Justice Department while Domenici was a critic. That was a role reversal of sorts.

Before he was confirmed by the Senate in 2001, career Justice Department attorneys approached Domenici's staff and questioned whether Iglesias' prior experience prepared him for the job in what they considered a "tough border state."

Domenici had pushed Iglesias for the job, giving his name to the president. The senator's staff downplayed those concerns, concentrating on Iglesias' "political upside" including his military service, Hispanic heritage and religious beliefs.

Telegenic and poised in front of television cameras and able to give a good speech in front of an audience, he was seen as a natural for future political office.

They believed, according to several sources, that at the outset Iglesias would be the public face while the many veteran prosecutors in the office would give him time to learn the ropes.

But from Domenici's point of view, even those relatively low expectations went unfulfilled.

The office under Iglesias had one of the lowest media profiles in the country with a part-time media person, few press releases, no Web site and few public appearances.

This was part of a conscious decision within the office where the media was seen as an "enemy" and publicity could only hurt.

At his farewell news conference, Iglesias joked that he was often referred to as the "District Attorney" and that many New Mexicans were unfamiliar with what his position actually was.

Albuquerque Journal (New Mexico)

April 15, 2007 Sunday

Domenici Sought Iglesias Ouster;
Senator Appealed To White House

BYLINE: Copyright © 2007 Albuquerque Journal BY MIKE GALLAGHER Journal Investigative Reporter

SECTION: FRONT PAGE; Pg. A1

LENGTH: 1312 words

Former U.S. Attorney David Iglesias was fired after Sen. Pete Domenici, who had been unhappy with Iglesias for some time, made a personal appeal to the White House, the Journal has learned.

Domenici had complained about Iglesias before, at one point going to Attorney General Alberto Gonzales before taking his request to the president as a last resort.

The senior senator from New Mexico had listened to criticism of Iglesias going back to 2003 from sources ranging from law enforcement officials to Republican Party activists.

Domenici, who submitted Iglesias' name for the job and guided him through the confirmation process in 2001, had tried at various times to get more white-collar crime help for the U.S. Attorney's Office - even if Iglesias didn't want it.

At one point, the six-term Republican senator tried to get Iglesias moved to a Justice Department post in Washington, D.C., but Iglesias told Justice officials he wasn't interested.

In the spring of 2006, Domenici told Gonzales he wanted Iglesias out.

Gonzales refused. He told Domenici he would fire Iglesias only on orders from the president.

At some point after the election last Nov. 6, Domenici called Bush's senior political adviser, Karl Rove, and told him he wanted Iglesias out and asked Rove to take his request directly to the president.

Domenici and Bush subsequently had a telephone conversation about the issue.

The conversation between Bush and Domenici occurred sometime after the election but before the firings of Iglesias and six other U.S. attorneys were announced on Dec. 7.

Iglesias' name first showed up on a Nov. 15 list of federal prosecutors who would be asked to resign. It was not on a similar list prepared in October.

The Journal confirmed the sequence of events through a variety of sources familiar with the firing of Iglesias, including sources close to Domenici. The senator's office declined comment.

The House and Senate Judiciary committees are investigating Iglesias' firing as well as the dismissals of six other U.S. attorneys.

Gonzales, the embattled attorney general whose job is likely in the balance, is scheduled to testify Tuesday before the Senate Judiciary Committee.

Senate and House Democrats have focused on a telephone call Domenici made to Iglesias in October.

Iglesias testified before the congressional committees that Domenici called him at home and asked if indictments were imminent in a public corruption investigation of Albuquerque's Metropolitan Courthouse construction. Iglesias told him indictments were not expected anytime soon.

Iglesias testified that Domenici said, "I'm very sorry to hear that." And then hung up.

Iglesias said he felt "pressured" and "violated" by the telephone call but did not report it to Justice Department headquarters as required.

Domenici has admitted and apologized for making the call, but he denied pressuring Iglesias. He has also said he didn't mention the election.

Democrats have accused Domenici of attempting to influence the outcome of a tight congressional race between incumbent Republican Heather Wilson and former state Attorney General Patricia Madrid. Wilson won the election by fewer than 900 votes.

Iglesias could not be reached for comment. He was reportedly out of the country on Navy duty.

A spokesman for Domenici's office said they were not prepared to comment at this time.

Looking for

a paper trail

Exactly how Iglesias' name came to be included on a Nov. 15 list of U.S. attorneys to be fired has been a mystery House and Senate Democrats have been trying to unravel.

There are gaps in documents provided to Congress by the Justice Department about the firings and other records are severely redacted.

Gonzales' former chief of staff, Kyle Sampson, said he couldn't give a reason for Iglesias' firing during his testimony before Congress last month. He did say that if a U.S. attorney wasn't succeeding politically, he wasn't succeeding.

Documentation that has been turned over to Congress doesn't indicate problems with Iglesias' performance from the Department Justice point of view.

The documents reveal Domenici called Gonzales and his deputies on several occasions in 2005

and 2006.

In one undated memo, a Gonzales aide wrote, "Domenici says he doesn't move cases," in reference to Iglesias.

New Mexicans who complained directly to the Justice Department about Iglesias said they learned he was held in high regard by Gonzales and his staff.

At least one memo shows Iglesias was offered a job heading the Executive Office of U.S. Attorneys in Washington, D.C.

Iglesias turned the job down.

That job offer, according to several sources, was made at the prodding of Domenici.

According to sources, Iglesias was also considered for U.S. attorney for Washington, D.C., and other administrative posts at department headquarters.

Iglesias was apparently unaware that Domenici was unhappy with his job performance when he turned those jobs down.

White-collar crime

In September 2005, Iglesias announced the arrests of state Treasurer Robert Vigil and his predecessor, Michael Montoya, on extortion charges. Both are Democrats in a state where Democrats control the Legislature and most statewide offices.

Republicans who had complained about political corruption in the state for years saw an opportunity to do more than complain. And this was an issue with political traction.

The point man would be Iglesias.

During one of his few news conferences while U.S. attorney, Iglesias called political corruption "endemic" in New Mexico.

The FBI also put a high priority on public corruption, naming it its top priority behind terrorism.

According to Justice Department memos turned over to congressional investigators, Domenici approached Iglesias in late 2005 and asked if he needed additional prosecutors for corruption cases.

Iglesias, according to the memo, told Domenici he didn't need white-collar crime prosecutors. He needed prosecutors for immigration cases.

Domenici was disappointed in the response. After that conversation, Domenici decided he would try to get Iglesias help, whether Iglesias wanted it or not.

In 2006, Domenici asked Gonzales if he could find additional experienced white-collar crime

prosecutors to send to New Mexico. Gonzales had a number of prosecutors who were finishing the ENRON prosecutions and were quite experienced at complex white-collar crime cases.

None was sent here.

Within Iglesias' own office, prosecutors suggested moving more attorneys into the White Collar Crime-Public Corruption section in 2005 because the FBI was developing more cases and leads than the section could handle in a timely fashion.

Iglesias was initially enthusiastic about the idea but didn't follow through after consulting senior staff.

Treasurer's Office

scandal

Montoya and others pleaded guilty in the Treasurer's Office scandal. Vigil went to trial in April 2006. After more than five weeks, a mistrial was declared. Several jurors said one holdout prevented conviction on at least some charges.

The second trial in September ended in one conviction on attempted extortion and acquittal on 23 counts. Vigil has been sentenced to 37 months in prison.

After the first trial, then-Attorney General Madrid indicted key prosecution witnesses in the federal case based on their testimony. She said Iglesias hadn't been tough enough in cutting plea deals and hadn't worked out an agreement with her office.

As a result, one key witness refused to testify in the second trial.

During this time, the muchpublicized courthouse investigation was essentially put on the shelf. The lead prosecutor in the U.S. Attorney's Office was handling both the Vigil trials and the courthouse investigation.

Delays in the courthouse case led to frustration among Republicans who had tried to make Madrid's track record on ethics and corruption cases an issue in the Madrid-Wilson race.

Indictments in the courthouse case were announced last month.

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Sunday, March 18, 2007

Iglesias Earned His Firing

By Robert D. Taichert
Albuquerque Lawyer

John Kelly, who wrote the Journal commentary "Rushed Indictments Would Have Backfired," was a fine U.S. attorney for the district of New Mexico. He competently executed the duties of his office, managerial and prosecutorial.

But I disagree with his premise that refusal to bow to political pressure to rush indictments was U.S. Attorney David Iglesias' problem.

His problem was excessive delay in pursuing the public's business. It is erroneous to assume that Iglesias was being asked to rush anything. He was simply being called upon to fulfill his duties to the country in a timely fashion. Congressional delegations from any state routinely check on the performance of federal prosecutors in their districts and try to help that U.S. attorney to obtain additional resources if needed.

Kelly seems to have picked up the screed of Sen. Charles Schumer, D-N.Y., that there is something nefarious in Republicans Sen. Pete Domenici or Rep. Heather Wilson calling Iglesias to inquire about a case.

The reader will find illuminating Schumer's Jan. 22, 2004, letter to Deputy Attorney General James Comey in Washington requesting an update on the "Plame-gate" investigation that led to the conviction this month of I. Lewis "Scooter" Libby, former chief of staff to Vice President Dick Cheney.

Schumer's partisan zeal calls Domenici unethical for doing the same thing that Schumer did three years ago, something that is commonplace for members of Congress.

Sen. Barbara Boxer of California is the chair of the Senate

Lobo Minute (11-29-2007)

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Ethics Committee. That role raises a glaring conflict of interest for Boxer, who simultaneously serves as vice chair of the Democratic Party's Senatorial Campaign Committee dedicated to defeating Domenici. Schumer is chairman of the campaign committee.

Boxer should recuse herself from participating in the promised ethics committee hearing about the simultaneous firing of eight U.S. attorneys at the same time that she is pursuing a highly partisan agenda against Domenici. All that any senator can ask of the Senate Ethics Committee is fundamental fairness, with a chair and members capable of laying aside partisan agendas to get at the facts and render an honest judgment. Boxer cannot do both.

I have known Domenici closely for four decades. The reason that he has never been accused of ethical problems during 34 years in the Senate is that he has never done anything unethical.

Domenici and Sen. Jeff Bingaman, D-N.M., both live by the other card on President Truman's desk: "Always do right. This will gratify some people and astonish all the rest." Both are committed to the good of the country and their constituents and don't stoop to the craven conduct of the likes of Schumer and Boxer.

The truth will out. Iglesias was fired for not doing his job.

I am sure that the theatrical and politically ambitious Iglesias "felt pressured," because his terrible performance in office was, yet again, being called to account. The facts will show that Iglesias was often missing in action as a U.S. attorney. He was often not in his office, misused senior assistant U.S. attorneys' time and talents and failed to move prosecutions for political corruption in New Mexico in a timely fashion.

His failures of management are well known in the New Mexico legal community. He was repeatedly asked by Domenici if his office needed more resources, and didn't respond, although he now claims otherwise. The Senate Ethics Committee will discover that calls for his removal for failure of performance began as early as 2003.

U.S. Attorney General Alberto Gonzales, in keeping with the Bush administration's chronic ineptitude, finally fired eight U.S. attorneys in a fashion guaranteed to create a political firestorm.

$841K

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Mr. LUNGREN. Thank you.

Mr. CONYERS. May I commend the Attorney General on his endurance and patience during this very grueling day.

We have votes. I have two distinguished Members of this Committee that I cannot short-circuit. So I ask you to bear with us again.

But thank you, and the Committee stands in recess. We will resume immediately after the vote.

[Recess.]

Mr. CONYERS. We begin by, again, thanking the Attorney General for his continuing steadfastness with us. We know this has been more grueling on you than anybody else. It has been a long day for us all, and we admire your cooperation, sir.

The Chair recognizes Debbie Wasserman Schultz of Florida.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

General Gonzales, I can speak, I think, both for Mr. Ellison and myself. Thank you for your staying to the end for the end-of-the-benchers over here. We almost always are given an opportunity to ask questions, and we appreciate the full opportunity to do that.

Given that I am from a State that decided the closest presidential election in American history, you might imagine that I would have some concern and interest over voter fraud and voter suppression.

This is Merriam-Webster's dictionary, and I want read for you the definition in this dictionary of "fraud": "intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right."

Now, Mr. Lungren from California earlier today talked about the priorities of the Administration and the direction that was perhaps given to U.S. attorneys to pursue voter fraud as a priority of the Administration.

And I am going to assume for the record that that was a priority of the Administration and it was communicated to U.S. attorneys, as you have indicated in your testimony today.

Mr. GONZALES. The way I would characterize, it was important. I mean, it was important to the Administration.

Ms. WASSERMAN SCHULTZ. Okay, priorities are important, so I am assuming that in my line of questioning. So that having been said, generally I would expect that the pursuit of voter fraud would be along the lines of organized efforts to corrupt the election process.

And given the dictionary definition that I just read for you, I want you to tell me whether you think that pursuing a jewelry store owner who got into trouble after a clerk at the motor vehicles' office had given him a registration form to complete that he quickly filled out in line and was unaware that it was reserved just for United States citizens, a 68-year-old man named Mr. Ali, whether you think—and that is from *The New York Times* article of April 16—whether you think that that meets the definition of "fraud" as Merriam-Webster defines it, and also in terms of widespread voter corruption.

Before you answer, I want to give you two other examples. In Alaska, Rogelio Mejorada-Lopez managed a gasoline station. He received a voter registration form the mail. Before he had applied for

citizenship, he thought it was permissible to vote. He now might be deported to Mexico after 16 years in the United States. Does that meet the dictionary definition, or a definition of widespread voter fraud?

There is also an example of someone who was actually deported because they made an innocent mistake in filling out a voter registration application. Is that an example of the priorities or the importance that was given in terms of the instructions that you relayed to the United States attorneys in terms of pursuing voter fraud?

Mr. GONZALES. At one point, you described it as an innocent mistake. If, in fact, we are talking about innocent mistakes, mistakes happen. If you are talking about intentionally stealing votes, intentionally canceling out——

Ms. WASSERMAN SCHULTZ. No, I am not. I am talking about the examples that I just gave you.

Mr. GONZALES. Yes, I mean, those examples would not be ones that I would view as—and I don't think U.S. attorneys, quite frankly, would look at those cases as priorities.

Ms. WASSERMAN SCHULTZ. Those are all cases that were prosecuted by U.S. attorneys. All of them.

Mr. GONZALES. There are more egregious examples. And, again——

Ms. WASSERMAN SCHULTZ. Not that the department pursued.

Mr. GONZALES [continuing]. You are taking—well, I don't know all the facts here. And so, out of fairness to the decisions, if, in fact, there were decisions made by U.S. attorneys to prosecute these kinds of cases, I don't know whether or not there are additional facts that may have made a difference in moving forward with these kinds of prosecutions.

Ms. WASSERMAN SCHULTZ. General Gonzales, I have had a really hard time today figuring out what it is you do know. I have sat through this entire hearing, and most of your answers have been you don't know.

Now, you know what? I am 40 years old, and I am reaching a point where I have spottiness in my memory too. But something as significant as the lapses in memory that you seem to have had related to the firing of U.S. attorneys and something as significant as not knowing whether or not there has been widespread pursuit by your U.S. attorneys to investigate and pursue corruption and voter fraud, as opposed to individual cases—these are individual cases cited in a *New York Times* article, the headline of which is "In Five-Year Effort, Scant Evidence of Voter Fraud."

Here is serious——

Mr. GONZALES. Are you basing your questions based on a newspaper article?

Ms. WASSERMAN SCHULTZ. I am basing my questions based on U.S. attorneys quoted in this newspaper article. In Miami, an assistant United States attorney said many cases there involved what were apparently mistakes by immigrants, not fraud. The headline says "In Five-Year Effort, Scant Evidence of Voter Fraud."

So if this was a priority, how was it communicated to the U.S. attorneys and why were they not pursuing it in terms of wide-

spread corruption, as opposed to pursuing individual cases that apparently were mistakes?

Mr. GONZALES. Well, again——

Ms. WASSERMAN SCHULTZ. As opposed to——

Mr. CONYERS. Ten seconds remaining.

Mr. GONZALES. Well, of course, I mean, again these are decisions made by the United States attorneys in terms of what is appropriate. And, you know, I guess it may be easy to sit here and criticize the prosecutorial decisions made by the United States attorneys——

Ms. WASSERMAN SCHULTZ. But that is why they were fired.

Mr. GONZALES [continuing]. We have an obligation——

Ms. WASSERMAN SCHULTZ. That is why a number of them were fired—you did criticize them.

Mr. GONZALES [continuing]. To enforce the law, including voter fraud.

Mr. CONYERS. The time of the gentlelady has expired.

Ms. WASSERMAN SCHULTZ. Mr. Chairman, can I ask unanimous consent for 30 more seconds? I mean, we sat here the whole day, Mr. Chairman, and a number of other Members had that opportunity.

Mr. CONYERS. I am totally persuaded. [Laughter.]

Ms. WASSERMAN SCHULTZ. Thank you very much. I appreciate it.

General Gonzales, I just want to point out what you said on April 19th in response to a question by Senator Cardin, which was your opinion as you expressed it about voter fraud and it being a priority. You made a reference to your growing up in a poor neighborhood and that the 1 day you were equal to everyone else was on Election Day, and so you really appreciated how important the right to vote is.

"Voter fraud, to me," quoting you, "means you are stealing somebody's vote. And so I take this very, very seriously. Having said that, in enforcing or prosecuting voter fraud, we need to be careful that we don't discourage people or intimidate people from participating on Election Day."

You clearly have not struck the right balance. And your statements in Committee and your answers to questions here and the evidence that is clear from the U.S. attorneys under your control, pursuing innocent mistakes as opposed to widespread corruption are evident.

I yield back the balance of my time.

Mr. CONYERS. Do you care to respond?

Mr. GONZALES. No.

Mr. CONYERS. Our final speaker is an eminent Member of this Committee, done great work, from Minnesota, Mr. Keith Ellison.

Mr. ELLISON. Thank you, Mr. Chair.

And thank you for your endurance, Attorney General Gonzales.

I think it is fair to say that the eight people who were dismissed were—you stand by those dismissals because, in your view, there were questions about performance. Is that a fair statement?

Mr. GONZALES. Well, you know, I think that the problem about saying "performance" is that it means so many different things to different people.

Mr. ELLISON. Right. But in terms of your office's calculus, that is what you were thinking when the dismissal decision was made?

Mr. GONZALES. That was the whole purpose of this process.

Mr. ELLISON. Right. And so you are concerned about performance of U.S. attorneys, right?

Mr. GONZALES. I think we all should be.

Mr. ELLISON. Right, and that includes you?

Mr. GONZALES. Yes.

Mr. ELLISON. And do you know Rachel Palouse?

Mr. GONZALES. Yes, I do.

Mr. ELLISON. She worked for you directly, right?

Mr. GONZALES. She worked, yes, in the department, yes, in main Justice.

Mr. ELLISON. Right. And recently, well, I think, four senior members of her staff resigned because of her performance issues. Is she still on staff? Is she still a U.S. attorney after those—is she still on staff?

Mr. GONZALES. Yes, she is. And I am certainly aware of the problems in that office.

Mr. ELLISON. This is my question. So the people who took—they took voluntary demotions, right?

Mr. GONZALES. As I understand it, that is correct.

Mr. ELLISON. And also, with those voluntary demotions, they took pay cuts, right?

Mr. GONZALES. That I am not aware of.

Mr. ELLISON. And so, it was because of their objections to her performance, right?

Mr. GONZALES. As far as I understand, that is correct.

Mr. ELLISON. And this was a U.S. attorney who you know personally, right?

Mr. GONZALES. Yes, I do.

Mr. ELLISON. In fact, you sent Mr. John Kelly down there to investigate the situation, right?

Mr. GONZALES. Absolutely. We became aware of the problems in that office, and we sent a career prosecutor to make an evaluation and report back to us.

Mr. ELLISON. So that is a yes. That is a yes. And when did you do that? When did Mr. Kelly go down and talk to members of the staff?

Mr. GONZALES. I would say within the past 2 months. I think either shortly before or after these individuals left their management position in the office we sent someone down there, Mr. Kelly, to give us an evaluation of what was going on, because we were obviously very concerned about——

Mr. ELLISON. And Mr. Kelly talked with numerous people in the office, right?

Mr. GONZALES. That is what I understand.

Mr. ELLISON. And he took notes of what people said to him, right?

Mr. GONZALES. I don't know if he took notes, but he reported back what he learned.

Mr. ELLISON. So just to be clear, he took notes. Isn't that true?

Mr. GONZALES. Congressman, I don't know——

Mr. ELLISON. Is there a document that would summarize what he learned on his visit to Minnesota?

Mr. GONZALES. I am not aware that such a document exists. Such a document——

Mr. ELLISON. If such a document exists, would you provide it?

Mr. GONZALES. I am happy to take that request back, Congressman.

Mr. ELLISON. Okay.

Now, I sent you a letter earlier this week, isn't that right? Are you aware that I sent you a letter?

Mr. GONZALES. I am not aware of the letter, but I get lots of letters and I am sure at the appropriate——

Mr. ELLISON. Okay.

Mr. GONZALES. I mean, I am sure I will make myself aware of——

Mr. ELLISON. If I sent a letter to your office and if I got a response back that it had been received, I can expect a full answer to the letter. Would you agree with that?

Mr. GONZALES. We try to be as forthcoming as we can, in responding back to the Congress.

Mr. ELLISON. Now, Ms. Paulose, she was appointed after a gentleman named Mr. Thomas Heffelfinger. Is that right?

Mr. GONZALES. He was the U.S. attorney before Ms. Paulose?

Mr. ELLISON. And he had a good reputation, isn't that right?

Mr. GONZALES. As far as I know, that is correct.

Mr. ELLISON. And yet he appeared on a list to be fired that was in your office, that was pulled together by Mr. Sampson. Isn't that right?

Mr. GONZALES. My understanding is that his name appeared with all the other 93 United States attorneys, but the views of Mr. Sampson were reflected——

Mr. ELLISON. So that is one you don't—you don't know that one.

Mr. GONZALES. Well, my recollection is that he was identified as someone that perhaps there may be issues with.

Mr. ELLISON. Right. And yet, these issues didn't come from Minnesota, did they? These were not Minnesota concerns, to your knowledge.

Mr. GONZALES. Well, again, I don't know the source, why Mr. Sampson had that particular view——

Mr. ELLISON. So you don't know that one——

Mr. GONZALES. That is correct.

Mr. ELLISON. Okay. So here we have Mr. Heffelfinger, career prosecutor, and had prosecuted many cases, 58 years old, done the job for years. Ms. Paulose was, what, 34 when she was appointed. Is that right?

Mr. GONZALES. Relatively young. I am not sure her exact age.

Mr. ELLISON. Did she go through a Senate confirmation process?

Mr. CONYERS. Thirty seconds remaining.

Mr. GONZALES. Yes, she did. She was deemed——

Mr. ELLISON. There was a vote?

Mr. GONZALES. She was deemed—I don't know if it was a vote, but she was confirmed by the United States Senate as qualified to be the United States attorney in that district.

Mr. ELLISON. And did the Senate have a vote?

Mr. GONZALES. You mean——

Mr. ELLISON. A Committee vote, voting for her, or was it another kind of process?

Mr. GONZALES. What I know is that she was confirmed by the United States Senate.

Mr. ELLISON. Is she going to remain in her position, given the performance problems that have come to your personal attention?

Mr. GONZALES. Well, if things do not change, obviously that would be something we would——

Mr. CONYERS. Time of the gentleman has expired.

Mr. GONZALES [continuing]. We would have to consider. But we have expressed to Mr. Paulose our concerns. And so we are going to work with her——

Mr. ELLISON. Unanimous consent for one last question?

Mr. CONYERS. Go ahead.

Mr. ELLISON. Did any of the eight individuals who we know were fired for allegedly performance issues have people quitting and going back to line position in response to the difficulties that came about as a result of their leadership?

Mr. GONZALES. Not that I recall. Of course, the difference is, all eight of these individuals served their full 4-year term.

Mr. CONYERS. Thank you so much, sir. It has been a long day. We thought that our day here was longer than your visit in the Senate Judiciary a little while ago, but we appreciate your cooperation and your endurance.

Without objection, Members will have 5 legislative days to submit any additional written questions for you, which we will forward and ask you to return so that they may be made part of the record.

Without objection, the record will be open for 5 legislative days for the submission of these and any other material.

Mr. Attorney General, the matters we have been discussing today are of utmost importance, and I am concerned that we are still not getting the cooperation we need to get to the bottom of them. I am, frankly, disappointed that you are unable to answer the first and most basic question of who put these U.S. attorneys on the firing list and why?

Numerous times today, you have made the statements "I don't know" or you would have to go back and check, or you don't remember. It is clear to me that we, on this Committee, have a serious duty to press forward with our investigation and for meaningful information from the White House. The bread crumbs that we referred to earlier seem to be leading to 1600 Pennsylvania Avenue.

In the meantime, added to our other requests, we ask that you provide us with all documents, continue to provide us, and in unredacted form, relating in any way to the termination of the ninth terminated U.S. attorney, Mr. Todd Graves. Would you be able to do that?

Mr. GONZALES. Mr. Chairman, I will obviously take your request back. I am not in a position to guarantee that that can be done, but I understand your request.

Mr. CONYERS. Thank you.

With that, this hearing is adjourned.

[Whereupon, at 4:13 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, thank you for holding this very important hearing. In addition to holding the seat of my hero, role model, and predecessor, the incomparable Barbara Jordan, one of the reasons that I have been so proud to be a member of the Committee on the Judiciary throughout my seven terms in Congress is that this Committee has oversight jurisdiction over the Department of Justice, which I have always regarded as the crown jewel of the Executive Branch.

In recent years the reputation of that Department, which has done so much to advance the cause of justice and equality for all Americans through the years under the leadership of such great Attorney Generals as Robert Jackson, Robert F. Kennedy, Nicholas Katzenbach, Herbert Brownell, Harlan Fiske Stone, Francis Biddle, Tom C. Clark and his son Ramsey, and Elliot Richardson, has been tarnished. And that is putting it charitably. This Committee has no greater challenge and obligation to the nation than to help restore the Department of Justice to its former greatness. But before we can begin to set it right we have to get to the bottom as to how it went wrong.

It is in that spirit that I welcome our witness, the Attorney General of the United States and a fellow Texan, the Honorable Alberto Gonzalez. Welcome Mr. Attorney General.

Anyone who has observed this Committee over the years knows that I have a deep and abiding passion about the subjects within this Committee's jurisdiction: separation of powers, due process, equal justice, habeas corpus, juvenile justice, civil liberties, antitrust, and intellectual property. But Mr. Chairman, today I wish to focus on the record and performance of the Department of Justice in three areas: (1) the unceremonious firing of the 8 United States Attorneys, what some have referred to as the "December 7 Massacre"; (2) the Department's dismal record in the area criminal civil rights law enforcement; and (3) its performance in the area of justice and protection of juvenile offenders and others held in custody in the municipal jails of Texas and the rest of the country. Allow me to describe my substantial concerns and the responses I hope to hear from the Attorney General.

CIVIL RIGHTS ENFORCEMENT

Mr. Chairman, the Department of Justice is the nation's largest law enforcement agency and it is no exaggeration to state that its Civil Rights Division used to be the nation's largest civil rights legal organization. It wields the authority and the resources of the federal government on difficult and complex issues and has helped bring about some of the greatest global advances for civil rights. However, the Department's record under this Administration indicates that it is not living up to its tradition of fighting for equal justice under law and championing the rights of the powerless and vulnerable. The Civil Rights Division has simply neglected to bring challenging cases that could yield significant rulings and advance the cause of civil rights in our country.

The Bush administration has abdicated its responsibility to enforce the nation's most critical laws. For example, since January 20, 2001, the Bush Administration has filed 32 only Title VII cases, an average of approximately 5 cases per year. In contrast, the prior Administration filed 34 cases in its first two years in office alone, and 92 in all, for an average of more 11 cases per year.

Moreover, a close look at the types of cases reveals an even more disturbing fact, which is a failure to bring suits that allege discrimination against African-Americans. Of the 32 Title VII cases brought by the Bush Administration, 9 are pattern

or practice cases, 5 of which raise allegations of race discrimination but only one case—1 case—involved discrimination against African Americans. In contrast, the Clinton Administration filed 13 pattern or practice cases, 8 of which involved racial discrimination.

The record is not much better when it comes to the subject of voting rights enforcement. After six years, the Bush Administration has brought fewer Section 2 cases, and brought them at a significantly lower rate, than any other administration since 1982.

The Voting Section filed a total of 33 involving vote dilution and/or other types of Section 2 claims during the 77 months of the Reagan Administration that followed the 1982 amendment of Section 2. Eight (8) were filed during the 48 months of the Bush I Administration and 34 were filed during the 96 months of the Clinton Administration. Only 10 have been filed so far during the first six years of the Bush II Administration.

But the record is really bad when it comes to enforcement of the federal criminal civil rights law. According to an analysis of Justice Department data by the Seattle Post-Intelligencer, civil rights enforcement no longer appears to be a top departmental priority. An analysis of the data reveals that between 2001 and 2005, the number of federal investigations targeting abusive police officers declined by 66 percent and investigations of cross-burners and other purveyors of hate declined by 60 percent.

It appears that this downward trend accelerated after the 9/11 attacks. There has been a slight increase in enforcement related to human trafficking, which is counted under civil rights, but not enough to stop the overall slide.

I am very troubled by this trend. Hate-crimes are too dangerous to ignore, and there is social value in effective federal review of police misconduct. I am anxious to hear the Attorney General's responses to these serious problems.

Additionally, Mr. Chairman, most of the Department's major voting-related actions of the past five years have been beneficial to the Republican Party, including two in Georgia, one in Mississippi and the infamous redistricting plan in Texas, which the Supreme Court struck down in part. For years we have heard stories of current and former lawyers in the Civil Rights Division alleging that political appointees continually overruled their decisions and exerted undue political influence over voting rights cases. Indeed, one-third of the Civil Rights Division lawyers have left the department and the remaining lawyers have been barred from making recommendations in major voting rights cases.

As I indicated earlier, it appears the Justice Department has abandoned its mission in cases involving abusive police practices. The Department's Special Litigation Section is charged with handling cases under Police Pattern or Practice Litigation. These "police abuse" prosecution cases numbered about 20 nationwide as of 2006, according to a leading scholar on the subject, Professor Sam Walker at the University of Nebraska at Omaha. Very few, if any, consent decrees have been entered into under the Bush Administration. While the Bush Administration has entered into several memorandum-of-agreement settlements, there has been no effort to address the on-going problems of the most problematic agencies. Progress has ground to a halt and the special litigation section hasn't initiated any new cases in years. As recent cases in New York, Atlanta and Los Angeles make all too clear, police abuse is still alive and well in America.

U.S. ATTORNEY FIRINGS

Mr. Chairman, excluding changes in Administration, it is rare for a United States Attorney to not complete his or her four-year term of appointment. According to the Congressional Research Service, only 54 United States Attorneys between 1981 and 2006 did not complete their four-year terms. Of these, 30 obtained other public sector positions or sought elective office, 15 entered or returned to private practice, and one died. Of the remaining eight United States Attorneys, two were apparently dismissed by the President, and three apparently resigned after news reports indicated they had engaged in questionable personal actions.

Mr. Chairman, in the past few months disturbing stories appeared in the news media reporting that several United States Attorneys had been asked to resign by the Justice Department. It has now been confirmed that at least seven United States Attorneys were asked to resign on December 7, 2006. An eighth United States Attorney was subsequently asked to resign. They include the following:

- H.E. Cummins, III, U.S. Attorney (E.D. Ark.);
- John McKay, U.S. Attorney (W.D. Wash.);
- David Iglesias, U.S. Attorney (D. N.M.);

- Paul K. Charlton, U.S. Attorney (D. Ariz.);
- Carol Lam, U.S. Attorney (S.D. Calif.);
- Daniel Bogden, U.S. Attorney (D. Nev.);
- Kevin Ryan, (N.D. Calif.); and
- Margaret Chiara, (W.D. Mich.).

On March 6, 2007, the Subcommittee on Commercial and Administrative Law held a hearing entitled, "H.R. 580, Restoring Checks and Balances in the Confirmation Process of United States Attorneys." Witnesses at the hearing included six of the eight former United States Attorneys and William Moschella, Principal Associate Deputy Attorney General, among other witnesses.

Six of the six former United States Attorneys testified at the hearing and each testified that he or she was not told in advance why he or she was being asked to resign. Upon further inquiry, however, Messrs. Charlton and Bogden were advised by the then Acting Assistant Attorney General William Mercer that they were terminated essentially to make way for other Republicans to enhance their credential and pad their resumes. In addition, Messrs. Iglesias and McKay testified about inappropriate inquiries they received from Members of Congress concerning pending investigation, which they surmised may have led to their forced resignations.

It is now clear that the manifest intention of the proponents of the provision in the USA PATRIOT Act Reauthorization regarding the appointment of interim U.S. Attorneys was to allow interim appointees to serve indefinitely and to circumvent Senate confirmation. We know now, for example, that in a September 13, 2006 e-mail to former White House Counsel, Harriet Miers, Attorney General Chief of Staff, Kyle Sampson wrote:

> "I strongly recommend that, as a matter of Administration policy, we utilize the new statutory provisions that authorize the Attorney General to make U.S. Attorney appointments."

Mr. Sampson further said that by using the new provision, DOJ could "give far less deference to home-State Senators and thereby get (1) our preferred person appointed and (2) do it far faster and more efficiently, at less political cost to the White House."

Regarding the interim appointment of Tim Griffin at the request of Karl Rove and Harriet Miers, Mr. Sampson wrote to Monica Goodling, Senior Counsel to the White House and Liaison to the White House on December 19, 2006 the following:

> "I think we should gum this to death: ask the Senators to give Tim a chance, meet with him, give him some time in office to see how he performs, etc. If they ultimately say, 'no never' (and the longer we can forestall that, the better), then we can tell them we'll look for other candidates, and **otherwise run out the clock**. All of this should be done in 'good faith,' of course."

We now know that after gaining this increased authority to appoint interim U.S. Attorneys indefinitely, the Administration has exploited the provision to fire U.S. Attorneys for political reasons. A mass purge of this sort is unprecedented in recent history. The Department of Justice and the White House coordinated this purge. According to an Administration "hit list" released on Tuesday, U.S. Attorneys were targets for the purge based on their rankings. The ranking relied in large part on whether the U.S. Attorney "exhibit[ed] loyalty to the President and Attorney General."

Mr. Chairman, until exposed by this unfortunate episode, United States Attorneys were expected to, and in fact did exercise, wide discretion in the use of resources to further the priorities of their districts. Largely a result of its origins as a distinct prosecutorial branch of the federal government, the office of the United States Attorney traditionally operated with an unusual level of independence from the Justice Department in a broad range of daily activities. That practice served the nation well for more than 200 years. The practice that was in place for less than two years served the nation poorly. It needed to end. That is why I was proud to have voted for its repeal and the restoration of the status quo ante.

Mr. Chairman, I believe the Attorney General has a heavy burden in defending what appears to be indefensible conduct. But I am willing to listen and keep an open mind.

TEXAS JUVENILE AND OTHER CORRECTIONS FACILITIES

Mr. Chairman, the third and final area I wish to discuss concern the care and protection of juvenile offenders in state correctional facilities and the care and safety

of those being held in custody in county and municipal jails in Texas and around the country.

In my home state of Texas, certain administrators and officials, past and maybe current, of the Texas Youth Commission (TYC) have obviously neglected their duties. According to published reports and investigations, several TYC administrators abused their authority by pulling young boys out of their dorm rooms and classrooms and sexually molesting them. The allegations of abuse have been a matter of public record since 2000. In 2005, an investigation conducted by the Texas Rangers revealed that employees of the juvenile facility in Pyote, Texas, had repeated sexual contact with juvenile inmates.

Additionally, several members of the TYC board, who are responsible for the oversight of TYC facilities, admit that they were aware of the finding in the report prepared by Texas Rangers but took no corrective action. The current scandal surrounding TYC is scandalous and outrageous; quite frankly it sickens me. The situation within the TYC disregards every notion of justice and will contribute to the rise of recidivism rates if it is not arrested immediately.

Let me turn to another horrifying area of inmate abuse. Between January 2001 and January 2006, at least 101 persons, an average of about 17 a year, have died while in the custody of the Harris County Jail, located in Houston, Texas. In 2006 alone there were 22 deaths. I find it especially disturbing that of the 101 deaths, at least 72 of the inmates were awaiting court hearings and had yet to be convicted of the crimes for which they were taken into custody.

In our system every accused person is entitled to life, liberty, and the pursuit of happiness, and a presumption of innocence. These 72 individuals, however, were deprived of their life without the due process guaranteed by the Constitution. They will not ever receive their day in court to be judged by their peers because of the irresponsibility, incompetence, indifference, and perhaps the criminal neglect, of the jail officials to whose care they were entrusted.

I believe the situation in the Harris County Jail System requires national attention. When it is alleged that inmates are sleeping on the floor next to toilets and denied basic medical care, something must be done. The conditions at these jails border on cruel and unusual punishment. Should fault or wrongdoing be found, the persons responsible should be held accountable. Seeing that such authorities are held accountable is ultimately the responsibility of the United States Department of Justice. I am interested to hear the Attorney General's views on these matters.

Again, thank you Mr. Chairman for holding this hearing. I yield the remainder of my time.

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you for yielding me the time, Mr. Chairman.

Mr. Gonzales, thank you for coming up here today to testify before this committee. You will face a number of questions, some may be fair and go to the purpose of the hearing, which is oversight of the Department of Justice. Other questions may be less than fair and focus on politics, instead of the operation of the Justice Department.

I appreciate your efforts to keep our country save from another terrorist attack. As the recent arrests in New Jersey demonstrate, national security must be our first priority. An important lesson from the recent arrests this week is that improved immigration enforcement is a key element of an effective counter-terrorism policy.

I do want to commend you for increased enforcement of our immigration laws, but as you know, we have a long way to go. Too many illegal immigrants, drug smugglers and human traffickers are still able to illegally cross our borders and flout our immigration laws.

I look forward to hearing your testimony and I will have questions at the appropriate time. I yield back the balance of my time.

Mr. Gonzales, the Washington Post reported this morning that at least two members of the alleged terrorist cell in New Jersey were illegal aliens and had been stopped by police repeatedly for traffic violations. This is eerily similar to the case of Mohammed Atta, who was here illegally, was pulled over by the Florida state patrol for a traffic violation—a mere month before flying a plane into the World Trade Center. What steps is the Department of Justice taking to ensure that illegal aliens who are stopped for traffic violations or other crimes are identified and deported?

Mr. Gonzales, in the last 18 months of your term, what steps are you planning to take to improve the process of prosecuting those who violate our immigration laws, particularly drug smugglers and human traffickers.

POST-HEARING QUESTIONS FROM THE HONORABLE JOHN CONYERS, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY AND COMMITTEE MEMBERS ROBERT C. SCOTT, SHEILA JACKSON LEE, TAMMY BALDWIN, LUIS V. GUITERREZ, AND BRAD SHERMAN

Questions Submitted By The Honorable John Conyers, Jr.
Chairman of the House Committee on the Judiciary

Testimony of Monica Goodling Before the House Committee on the Judiciary and Monica Goodling's Role in Assistant U.S. Attorney Hiring and General Hiring Practices Within the Department

1. At a hearing before this Committee on May 23, 2007, your former Senior Counsel Monica Goodling stated that, several days before she took leave, she met with you in your office. Ms. Goodling testified that she raised the issue of transferring out of your office, and that you discussed with her your recollection of events related to the recent forced resignations of U.S. Attorneys.
   a. Please describe the duration and full content of this discussion between you and Ms. Goodling.
   b. Other than at the November 27, 2006, meeting, and the discussion described in (a), did you have any other discussion with Ms. Goodling about asking any U.S. Attorney to resign, or about any general plan or process for asking U.S. Attorneys to resign? Please describe each such conversation.
   c. Have you had a discussion with anyone other than Ms. Goodling about any of the events related to the U.S. Attorney terminations, or to the plan or process under which those terminations were carried out, since March 8, 2007? If so, please provide the date, time, location, participants, length, and contents of each such discussion.

2. Ms. Goodling further testified that she was concerned about inaccuracies in Paul McNulty's February 6, 2007, Senate testimony regarding the U.S. Attorney controversy.
   a. Did you ever have any concerns about possible inaccuracies in Mr. McNulty's testimony? If so, which portions of that testimony concerned you, and why?
   b. Did you ever hear from Ms. Goodling or anyone else that they had concerns about possible inaccuracies in Mr. McNulty's testimony? Which portions of that testimony were of concern to them, and why?
   c. If you had concerns about possible inaccuracies in Mr. McNulty's tesimony, did you ever communicate those concerns to anyone? If so, to whom, on what date, and at what time? And what was their response?
   d. Ms. Goodling testified that she had provided information to Mr. McNulty concerning the involvement of Tim Griffin in "caging" activities relating to the 2004 election. Please describe all information and knowledge you have on that subject and from where you received it.

3. Ms. Goodling also told the Committee that on numerous occasions she had "crossed the line" and improperly, and apparently unlawfully, taken partisan political considerations into account in relation to selecting career DOJ employees for hire, including immigration judges and Assistant United States Attorneys. She indicated that Kyle Sampson had

explained to her that there was an opinion that the Department could take political affiliation, party loyalty, party donations and other similar considerations into account when hiring immigration judges. She also said that the Department's Civil Division later contradicted this opinion due to "litigation." In addition, Ms. Goodling explained that the Department placed a freeze on immigration judge hiring for a period of time.

a. Did you ever have any knowledge before May 23, 2007, that Ms. Goodling may have improperly taken partisan political considerations–such as political affiliation, party loyalty, party donations, or other similar factors–into account in relation to selecting for hire any career DOJ employee? If so, please describe fully what knowledge you had, when you first acquired it, and how you acquired it.

b. Did you ever hear or otherwise receive any indications of any complaints or concerns that career DOJ employee hiring decisions might be being influenced by partisan political considerations, at any time, whether specifically referencing Ms. Goodling or not? If so, please describe any such complaint or concern that came to your attention, when it came to your attention, and how it came to your attention.

c. Did you or any of your subordinates ever give Ms. Goodling any indication, in any way, that you approved the practice of taking partisan political considerations into account in selecting immigration judges, Assistant U.S. Attorneys, or any career DOJ employee? If so, please provide, for each instance, when it occurred, how you so indicated, and on what authority you relied, if any.

d. Did anyone in the White House or anywhere else ever encourage you, or indicate to you in any way that it was permissible, to take partisan political considerations into account in selecting immigration judges, Assistant U.S. Attorneys, or any career DOJ employee? If so, please provide, for each instance, who so encouraged you or so indicated to you, when they did so, and how they did so.

e. Did you or any of your subordinates ever inform Ms. Goodling that she should not consider political loyalties in hiring or approving the hiring of Assistant United States Attorneys, immigration judges, or other career DOJ employees? If so, please provide for each instance, when it occurred and how you so informed her.

f. To your knowledge, has any other Department official or employee besides Ms. Goodling taken partisan political considerations into account in selecting an immigration judge, Assistant U.S. Attorney, member of the Board of Immigration Appeals, or other career DOJ employee for hire during your tenure as Attorney General? If so, please provide the name of each such official or employee, when you first learned that such official was doing or had done this, approximately when they did it, what steps you have taken to stop it, to discourage it, or to encourage it, and when you took such steps.

g. To your knowledge, has any Department official or employee ever, in any way, taken partisan political considerations into account in connection with the decision to retain, reassign or remove from office any immigration judge or any member of the Board of Immigration Appeals? If so, please provide the name of

each such official or employee, when you first learned that such official was doing or had done this, approximately when they did it, what steps you have taken to stop it, to discourage it, or to encourage it, and when you took such steps.

h. Please describe the nature and substance of any guidance or opinion, whether made verbally, in writing, or otherwise, issued by the Department or any of its employees at any time, to the effect that immigration judge hiring decisions were not subject to ordinary civil service rules or that the Department could take political affiliation, party loyalty, party donations or other partisan political considerations into account when making hiring decisions for immigration judge positions.

i. Did the Department, at any time, place a freeze on the hiring of immigration judges? If so, for what reason or reasons did the Department do so, and for what period was the freeze in effect? Please describe any and all policy changes the Department made with respect to the hiring of immigration judges during and following the freeze on hiring.

j. How many immigration judges has the Department hired during your tenure? Please list the name and date of each such hire and how many lacked experience practicing immigration law at the time of hire?

k. To your knowledge, of the individuals who have applied for immigration judge positions during your tenure, have any been rejected based in whole or in part on political affiliation, party loyalty, party donations or other partisan poitical considerations? If so, please describe each such instance, giving the name, approximate date, and a description of the partisan political considerations involved.

l. During your tenure, did the Department ever hire an immigration judge for a position that the Department did not post or advertise? If so, please describe each such instance, giving the name of the individual hired, the approximate date hired, and the reasons the position was not posted or advertised.

4. A recent *Newsweek* article reported that the Department's inquiry into this matter began after Jeff Taylor, the interim U.S. Attorney for the District of Columbia, complained that Ms. Goodling attempted to block the hiring of an Assistant U.S. Attorney in his office for being a "liberal Democratic type." Isikoff, "Justice Flap: The Loyalty Enforcer," *Newsweek*, May 14, 2007.

a. Were you aware of this complaint from interim U.S. Attorney Jeff Taylor? If so, when did you become aware?

b. If you were aware, what did you do in response to Mr. Taylor's complaint, and when did you do it?

c. What is your current understanding of the circumstances about which Mr. Taylor complained?

d. Please explain your understanding of how Ms. Goodling was able to, and on what actual or apparent authority she was able to, interfere with Mr. Taylor's ability to hire an Assistant U.S. Attorney applicant.

e. Are you aware of any other complaint received by anyone in the Department from a U.S. Attorney or an interim U.S. Attorney that Ms. Goodling had interfered with the hiring of an Assistant U.S. Attorney? If so, please describe each complaint, and state which U.S. Attorney or interim U.S. Attorney made the complaint, when the complaint was made, and when you first became aware of the complaint.

f. Please describe fully the procedure for hiring an Assistant U.S. Attorney that should be followed in a U.S. Attorney's Office that is headed by an interim U.S. Attorney.

5. Please list every White House official or employee who, to your knowledge, was or may have been aware of Ms. Goodling's involvement in personnel decisions. For each such individual, please describe what you know about their awareness of Ms. Goodling's involvement, how and when they became so aware, and how and when you came to know of that awareness.

6. Was Ms. Goodling involved in the approval process for any career Honors Program personnel? If so, under what authority, or under whose authorization, and with whose knowledge, was she involved and explain her involvement.

7. Are you aware of any indication that any Justice Department official or employee, other than Ms. Goodling, with any influence over or role in hiring or other personnel decisions has taken religious belief, political affiliation, or political loyalty into account in making or recommending any personnel action for any applicant for or employee in an Assistant U.S. Attorney, Honors Program, or Senior Executive Service (SES) position? If so, please (1) provide the name of the official or employee, (2) describe the factor or factors taken into account and how they were taken into account, to the best of your knowledge, (3) provide the approximate date on or period during which the official or employee took the factor or factors into account, (4) provide the date on which you first became aware of the indication, and (5) describe anything you did, and when, to stop, discourage, or encourage the taking of the factor or factors into account.

8. When did Ms. Goodling start in her role as Senior Counsel to you? When did she start in her role as White House Liaison?

a. For each position, please name every individual you are aware of who was involved in recommending her for or otherwise helping her obtain the position, and describe the role of each such individual.

b. For each position, please give the name of ever Justice Department or White House official to whom Ms. Goodling reported.

c. Please provide the name of every Department or White House official involved in assigning or delegating work to Ms. Goodling.

d. Did Ms. Goodling receive any bonus or salary increase when she worked for you? If so, with respect to each bonus or salary increase, please provide the name of each individual involved in nominating or recommending her for it; each

individual involved in approving it; any memorandum or other record justifying or explaining it; and its amount.

9. In your testimony to the Committee, you stated that you thought Ms. Goodling did have some role in hiring career Assistant U.S. Attorneys in her positions as Senior Counsel to the Attorney General and White House Liaison.
   a. Please describe in detail everything you know about the specific role that Ms. Goodling played regarding the hiring of career Assistant U.S. Attorneys in her positions as Senior Counsel and White House Liaison, including without limitation on what authority, or on whose authorization, and with whose knowledge, she was so involved.
   b. Who within the Department assigned that job to Ms. Goodling in her positions as Senior Counsel and White House Liaison?
   c. Please provide any documents that relate to Ms. Goodling's authority to participate in the hiring of career Assistant U.S. Attorneys in her positions as Senior Counsel and White House Liaison.
   d. What criteria was she provided for assessing Assistant U.S. Attorney candidates? Please name every individual you know or believe to have been involved in providing those criteria to Ms. Goodling.
   e. Please describe fully any role Ms. Goodling had, when she served in the Executive Office for United States Attorneys, in connection with personnel decisions involving Department career personnel, including, but not limited to, Assistant U.S. Attorneys (e.g., hiring, promotion, transfers). Please name each individual involved in assigning her the task of being involved in these personnel decisions.

U.S. Attorney Responses to the Subcommittee's Questions for the Record

10. In their written responses to questions from our Commercial and Administrative Law subcommittee, at least three of the terminated U.S. Attorneys reported receiving what they believed were threats or intimidation from Michael Elston, Chief of Staff to the Deputy Attorney General, during telephone conversations with him. Bud Cummins noted that Mr. Elston "reacted quite a bit to the idea of anyone voluntarily testifying [before Congress] and it seemed clear that [the Department] would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation [against the fired U.S. Attorneys]." Both Paul Charlton and John McKay explained that, during their telephone conversations with Mr. Elston, Mr. Elston offered them what they believed to be a quid pro quo agreement: their silence in exchange for the Attorney General's silence about them during his January 18, 2007 Senate hearing testimony.
    a. Are you aware of any of these telephone conversations? If so, when did you become aware of them, or any of them?

b. Has there been any investigation within the Department regarding the concerns that Mr. Elston was threatening the terminated U.S. Attorneys? If so, has any action been taken within the Department as a result of the investigation?
c. Did you have any involvement in approving or encouraging any of the calls by Mr. Elston?
d. Do you know that, or do you believe that, the Deputy Attorney General approved these calls? If so, please state when you came to have this knowledge or belief, how you came to have it, what you have done in response, and when you did it.

11. In their written responses to questions from our Commercial and Administrative Law Subcommittee, many of the terminated U.S. Attorneys raised concerns about the firing process and the chilling effects of their terminations on the U.S. Attorney community. For example:

- Bud Cummins mentioned that "whoever was pulling the strings in this particular plan had no regard or concern whatsoever for the people in the positions aside from getting them removed."
- David Iglesias, John McKay, and Daniel Bogden specifically mentioned that no one at the Department ever told them that they were not complying with the priorities of the Administration.
- All of the dismissed U.S. Attorneys noted that they did not receive any explanations for their terminations.
- Daniel Bogden noted that "the [Senate] testimony of Alberto Gonzales . . . the disclosed information from the interviews of several Justice Department officials . . . [and] the testimony of Kyle Sampson before the Senate Judiciary Committee, have offered no reasonable, believable explanation for the request [for me to resign] and only offered a number of contradictions."
- Most of the terminated U.S. Attorneys explained that you had denied requests for additional resources to advance the Administration's priorities.
- Carol Lam noted that the "unexpected removal [of a U.S. Attorney] without explanation damages the delicate balance . . . whereby U.S. Attorneys, barring misconduct, were afforded job security until the end of the President's term. . . . Because that balance has now been upset, a new atmosphere of second-guessing has descended on the U.S. Attorney community."
- Daniel Bogden explained that the abrupt firings "undoubtedly has to have an impact on the morale in the office and quite possibly the productivity of such an office."

a. How do you respond to these statements?
b. Please describe what you have done, or will do, and when, to address the concerns raised in these statements.

12. A March *McClatchy* article reported that Justice Department officials denied that Mr. Elston ever made the telephone call to Bud Cummins in which he told Cummins that the

dismissed U.S. Attorneys should remain quiet about the controversy. The same article noted that Department spokesperson Brian Roehrkasse criticized McClatchy for running the story, stating "It is unfortunate that the press would choose to run an allegation from an anonymous source from a conversation that never took place." Taylor, "U.S. Attorney Worried 'Gloves Would Come Off' Over Criticism of Ouster," *McClatchy*, March 5, 2007.

a. Please name all of the Justice Department officials to whom the article referred.
b. Please name every Department of Justice official or employee who told Mr. Roehrkasse that no such conversation had occurred.
c. Did Mr. Elston mislead Mr. Roehrkasse? If so, please describe what, if any, action has been taken against him in response.
d. Did any other Department official mislead Mr. Roehrkasse as to whether this conversation took place? If so, please name each such official. For each such official, please state whether any disciplinary action has been taken against the official for doing so.

Delegation Order - *Also Submitted by The Honorable Hank Johnson (GA-4)*

13. Please describe the circumstances that led to your issuing the March 1, 2006, Order No. 2808-2006, titled "Delegation of Certain Personnel Authorities to The Chief of Staff To the Attorney General And the White House Liaison of the Department of Justice." In particular, please address:
    a. Who had the initial idea to reconcentrate personnel management authority in the Office of the Attorney General and then to delegate that authority to the Chief of Staff and the White House Liaison, and who else was involved in the development and implementation of the plan?
    b. The February 24, 2006, Memorandum to you from Assistant Attorney General for Administration Paul Corts states that "the Attorney General's staff requested that I prepare a delegation from the Attorney General to the Chief of Staff and the White House Liaison". Who on your staff made this request?
    c. Why was the Chief of Staff selected to wield that authority?
    d. Why was the White House Liaison selected to wield that authority?
    e. When you approved this Order in March 2006, was Monica Goodling already serving as White House Liaison or did you know that she would soon assume those duties?
    f. What was the reason for removing personnel management authority from your subordinate offices and then delegating that authority to the Chief of Staff and the White House Liaison, particularly in light of their relative inexperience?
    g. Did any concerns or problems exist with the prior system of personnel management and how does this Order (and the actions taken to implement it) address them?
    h. Give a full and detailed report of any and all actions undertaken by Monica Goodling and D. Kyle Sampson pursuant to Office Of The Attorney General

Internal Order No. 2808-2006, in connection with personnel decisions involving DOJ career and non-career personnel.

i. Were Ms. Goodling or Mr. Sampson involved in the approval process for any career Senior Executive Service positions such as Section Chiefs in the Criminal Division? If so, how did each get involved, why, and what did each do?

j. Did the White House know of the involvement of Ms. Goodling and Mr. Sampson in personnel decisions pursuant to the Order?

14. An April 30, 2007, *National Journal* article on the delegation order reports that an original version of the memo would have delegated even final decision authority regarding constitutional "inferior officers" to your Chief of Staff and the White House Liaison. *See* Waas, "Secret Order By Gonzales Delegated Extraordinary Powers to Aides," *National Journal*, April 30, 2007.

a. Is it correct that there was an original draft order that would have delegated even the broader authority to make final decisions regarding constitutional "inferior officers" to the Chief of Staff and the White House counsel?

b. Do you agree with Professor Laurie Levenson's February 6, 2007, testimony to the Senate Judiciary Committee that United States Attorneys are constitutional "inferior officers"? *See also United States v. Hilario*, No. 00-1406 (1st Cir. July 17, 2000) (holding that United States Attorneys are constitutional "inferior officers").

c. Please list (by position) all constitutional "inferior officers" employed by the Department of Justice.

d. Did Office Of The Attorney General Internal Order No. 2808-2006 designate to the Chief of Staff to the Attorney General and to the White House Liaison the power to appoint interim U.S. attorneys? State the name of each and every person who recommended to the Chief of Staff to the Attorney General and/or to the White House Liason candidates for appointment to the position of interim U.S. Attorney during the period between March 1, 2006 through May 1, 2007, and for said period provide the names of each and every candidate for appointment and the district to which each was recommended for appointment.

15. Please explain how you interpret the scope and operation of this delegation of personnel authority. In addition to offering your overall explanation, please be sure to address the following questions:

a. As discussed above, appointments or removals of constitutional "inferior officers" must be presented to you for approval. May the other personnel actions covered by this order be taken entirely by the Chief of Staff and White House Liaison without any consultation or approval by you?

b. What does the first sentence of the order mean when it says that you delegate the authority to take final action on listed personnel matters "with the approval of the Attorney General"? Under this order, did you retain any authority to approve or disapprove of personnel managements actions over the listed employees by the

Chief of Staff and White House Liaison? If so, did you actively exercise this authority in reviewing any of those actions? If so, please explain how you did so.

c. Please state as close an approximation as you can of the number of employees for whom personnel management decisions were handed over to the Chief of Staff and White House Liaison under this order, and provide a list by office and title of all affected positions (you may group employees or provide job category descriptions if the overall number of employees is too numerous to be individually listed).

d. Are any of the employees for whom personnel management decisions were handed over to the Chief of Staff and White House Liaison under this order career employees of the Department of Justice or non-political appointees? If so, please list them, or if they are too numerous to be individually listed, please describe each affected position and give your best approximation for the number of employees affected in each position.

e. What guidance did you give your Chief of Staff and White House Liaison as to how to exercise their personnel authority, what standards they should apply in evaluating employees or making personnel decisions, and what process they should use?

f. Please provide copies of all records in the Department documenting the exercise of the authority delegated under this order and state how many people were hired or fired under Office Of The Attorney General Internal Order No. 2808-2006, and state the names and job titles of each person hired and fired thereunder.

g. The order states that it is not to be published in the Federal Register. Given that this order delegates authority that had only been reconcentrated in your office one month prior through published regulations, why was it decided not to publish this further action regarding that same authority?

h. Since this order was issued, your Chief of Staff and White House Liaison have both resigned. Does the order remain in effect? Do your current Chief of Staff and White House Liaison now hold the delegated authority?

16. The Executive Secretariat Control Sheet for this Order states "Per instructions received from JMD, ODAG is to be bypassed on this package."

a. Were you involved in any way in the decision to instruct that the Office of the Deputy Attorney General be bypassed? Please provide the name and title of each individual who was involved in that decision, and state, for each such individual, when you first knew of that individual's involvement.

b. Is it true, as appears to be the case, that the Office of the Deputy Attorney General was to be bypassed on this order even as to the delegation of authority to your Chief of Staff and Senior Counsel/ White House liaison to hire, terminate, and take other personnel actions with respect to the Deputy Attorney General's own staff?

c. You testified to the Committee that you believed someone had informed the Deputy Attorney General about the delegation order. Please state who, or who

you believe, so informed the Deputy Attorney General, your best estimate of when they did so, and your understanding of what they said. When did you first come to know, or believe, that the Deputy Attorney General had been so informed?

d. If the Deputy was to be given informal notice of the order, why was he not circulated a formal copy of the order?

e. State the date that you or someone at your direction first notified Associate Attorney General William W. Mercer of the existence of Office Of The Attorney General Internal Order No. 2808-2006, and identify the person directed by you to give such notification, and identify each and every document evidencing said notification.

17. On the "OAG Routing and Transmittal Slip" provided to the Committee as the seventh page of the package of documents produced on this issue on May 8, 2007, handwritten notes state: "AG /s/ 3-1-06 (OAG/Sampson approved autopen)".

a. Do you know what those handwritten notes mean?

b. Did you actually sign this order, or was the signature affixed by your autopen?

c. Did you personally approve the use of your autopen for this order, or did Kyle Sampson approve it as this note suggests, or did someone else? If someone else, please give the person's name.

d. If you did not personally approve the use of the autopen for affixing your signature to this order, when did you first learn that your signature had been affixed to the order? When did you first learn about the order?

Scottsdale Meeting

18 In a recent interview with the *Seattle Times*, fired U.S. Attorney for the Western District of Washington John McKay described an address you gave at the 2005 U.S. Attorneys Conference in Scottsdale, Arizona. McKay is quoted as saying "[The Attorney General's] first speech to us was a 'you work for the White House' speech." McKay also reported you saying "I work for the White House, you work for the White House." Bowermaster, "Charges May Result From Firings, Say Two Former U.S. Attorneys," *Seattle Times*, May 9, 2007. McKay told the *Seattle Times* that he felt this speech was not consistent with "the traditional independence of U.S. Attorneys" and that his colleagues at the meeting were "stunned."

a. Did you in fact address a group of assembled U.S. Attorneys in early 2005 in Scottsdale Arizona? Please provide us with background materials regarding this meeting including the date and time of all meeting sessions you attended.

b. Does any recording of the audio or video of your address exist and, if so, please provide it to the Committee. Please describe the subject and contents of your Scottsdale address and please provide a copy of your prepared remarks and a transcript, if any exists.

c. Is Mr. Mckay's recollection of your statement regarding the Attorney General and the U.S. Attorneys working for the White House accurate? Did any attendee

discuss your comments with you during or after that meeting?

d. What is your response to the concerns expressed by Mr. McKay and others as reported in the cited article?

Paul Charlton

19. According to recent press reports, including a *Wall Street Journal* article citing an unidentified "Washington law-enforcement official," sometime in mid-2005, the United States Attorney's Office for the District of Arizona opened an investigation into certain financial dealings of Congressman Rick Renzi. *See* Wilke & Perez, "Delays in Renzi Case Raise More Gonzales Questions," *Wall Street Journal*, April 25, 2007 at A2. Mr. Charlton has told the House Judiciary Committee staff that, after word of the investigation was leaked in October 2006, Congressman Renzi's Chief of Staff called one of Charlton's aides and asked about the investigation. *See also* Goldstein and Eggen, "Renzi Aide Called U.S. Attorney to Ask About Probe," *Washington Post*, April 26, 2007 at A4 (noting that Renzi's Chief of Staff has acknowledged making the call). Charlton also stated that, per Department policy, he reported that contact to Main Justice.
    a. When did you first become aware of any federal investigation involving Congressman Renzi?
    b. Did you know of that investigation in November 2006 when you approved the firing of Mr. Charlton?
    c. Please list all individuals within the Attorney General's office, the Deputy Attorney General's office, or the Executive Office of United States Attorneys who would have known if such an investigation had been launched. In addition, please specifically state whether Kyle Sampson or Monica Goodling could have had access to that information
    d. Were you aware of the contact described above when you approved the forced resignation of Paul Charlton?

20. You have testified that your former Chief of Staff Kyle Sampson had responsibility for developing the list of U.S. Attorneys to be fired.
    a. Did you ever discuss with Mr. Sampson whether Mr. Charlton should be considered for forced resignation?
    b. Do you know or have any information who suggested to Mr. Sampson that Mr. Charlton be placed on the list?
    c. Did you ever discuss the Renzi investigation with Mr. Sampson at any time?
    d. Do you know if Mr. Sampson knew at any time of the contact from Renzi's office to Mr. Charlton's staff?
    e. Do you know one way or another whether Kyle Sampson knew that Charlton was investigating a sitting Republican Congressman at the same time Sampson was recommending Charlton be forced out and replaced?
    f. What involvement, if any, did Karl Rove or Harriet Miers have in the decision to terminate Mr. Charlton or any other U.S. Attorney in 2006?

21. The *Wall Street Journal* also reported that Charlton's office sought clearance from Main Justice to use a wiretap and other investigative tools and that it took a year to get permission.
    a. Do you know if that report is true? If so, what was the reason for the delay?
    b. What office(s) and individual(s) within Main Justice ordinarily would be responsible for providing that clearance? Were those the office(s) and individual(s) in fact involved in clearing this particular request, and was anyone else wihin Main Justice involved?
    c. Is one year that an appropriate period of time to process such a request?
    e. Are you aware of other cases where a wiretap requested by field prosecutors was delayed more than six months during the approval process at Main Justice.

Contacts Policy

22. We understand that, from September 1994 until April 2002, contacts regarding pending Department investigations or criminal or civil matters were governed by a policy set forth in a letter from Janet Reno to Lloyd Cutler stating that initial communications on such matters should involve only the President, the Vice President, the White House Counsel, or the Deputy White House Counsel, on the one hand, and the Attorney General, the Deputy Attorney General, or the Associate Attorney General on the other. In other words, contacts were controlled so that four persons in the White House were authorized to speak to three persons in the Department.
    a. We further understand that, in a memorandum dated April 15, 2002, Attorney General John Ashcroft changed that policy, stating that, notwithstanding any such limitations, "the Attorney General may communicate directly with the President, Vice President, Counsel to the President, Assistant to the President for National Security Affairs, or Assistant to the President for Homeland Security regarding any matters within the jurisdiction of the Department of Justice." In addition to this expansion, the Ashcroft memorandum further states that "Staff members of the Office of the Attorney General, if so designated by the Attorney General, may communicate directly with officials and staff of the Office of the President, Office of the Vice President, Office of the Counsel to the President, the National Security Council, and the Office of Homeland Security."
    b. Does the 2002 Ashcroft Memorandum still govern contacts between White House officials and Justice Department officials regarding pending Department matters and investigations?
    c. If the policy has been changed, when did it change, what were the reasons for changing it, and what is the new policy?
    d. The Ashcroft Memorandum allows "staff members of the Office of the Attorney General, if so designated by the Attorney General" to communicate directly with a group of White House Officials. Have you designated any individuals to have such communications and, if so, who are they? Are any such delegations made by Attorney General Ashcroft still in force?

e. How many individuals are included in the group "officials and staff of the Office of the President, Office of the Vice President, Office of the Counsel to the President, the National Security Council, and the Office of Homeland Security"?
f. Do you have any plans to review or revise the current contacts policy?

Sen. Domenici's Calls Regarding David Iglesias

23. You have testified that you had conversations with Senator Domenici regarding David Iglesias in September 2005 and January and April 2006.
    a. Did you have any other conversation about David Iglesias with Senator Domenici? If so, please provide your best approximation of the date of each such conversation and the content of each such conversation.
    b. Did you have any conversation with Senator Domenici about David Iglesias or the District of New Mexico in October or November 2006? If so, what did he say to you and what actions, if any, did you take in response to this conversation.
    c. Who was present with you during each of these conversations? If by telephone, please state for each each person whether they heard both sides of the call or only your side.
    d. Other than during your recent Congressional testimony, did you ever describe the contents of any of these calls to any other person? To whom? Did you make any notes or memorialize in any way the things that Senator Domenici told you about David Iglesias?
    e. What did you tell Brian Roerhkasse in February or March 2007 about your conversations with Senator Domenici regarding David Iglesias?

24. You have previously testified that, over the course of some of these calls, Senator Domenici conveyed to you that Mr. Iglesias was in over his head and did not have sufficient resources dedicated to public corruption cases. You also testified at our hearing on May 10 that one of these calls involved vote fraud cases.
    a. What steps did you take to determine whether the concerns you say that Senator Domenici expressed were justified?
    b. Did you review the most recent EARS report for the District of New Mexico? Did you request that a special EARS review be conducted?
    c. Did you discuss these calls with anyone in the Deputy Attorney General's office, including David Margolis, who had experience with U.S. Attorney performance issues?
    d. Did you discuss these calls with anyone in the Executive Office of the United States Attorneys that oversees the day to day aspects of U.S. Attorney office management?
    e. Did you discuss these calls with anyone in the Public Integrity Section since Senator Domenici had mentioned public corruption and vote fraud cases?
    f. Did you suggest that David Iglesias be considered for Kyle Sampson's removal list after having heard these concerns? If not, why not?

g. Please identify any documents or records of the Department that reflect or relate to the concerns expressed by Senator Domenici to you about David Iglesias and provide a copy of each such document to the Committee.
h. Did you at any time report back to Senator Domenici on what you had done in response to his concerns?
i. Have you discussed David Iglesias with Senator Domenici since January 2007? If so, please describe the each such conversation and when it took place.
j. Why did you not mention Senator Domenici's concern about vote fraud cases during your recent testimony on the U.S. Attorney controversy before the Senate Judiciary Committee?
k. Between October 2006 and February 2007, did you make any inquiries of anyone concerning the prosecution brought by the New Mexico U.S. Attorney's Office against Democratic officeholders in that state in early 2007? If so, who did you ask and what were you told?
l. Did you meet David Iglesias' First Assistant Larry Gomez before he was named interim U.S. Attorney in New Mexico? If so, did you discuss David Iglesias? If so, what was discussed about David Iglesias? Did you have any discussion with Mr. Gomez of the Department's priorities for the New Mexico U.S. Attorney's office?
m. What do you understand to be the basis for the claim by your colleagues that Mr. Iglesias was an "absentee landlord"? To your knowledge, who at the Department described Mr. Iglesias as an "absentee landlord" prior to December 7, 2006?
n. Please provide a copy of the Department's response to the complaint filed by Mr. Iglesias before the Office of Special Counsel.

25. Deputy Attorney General Paul McNulty stated that he received a call from Sen. Domenici about Mr. Iglesias in October 2006.
    a. Did Deputy Attorney General McNulty discuss with you his call from Senator Domenici in October 2006? If so, please describe the conversation.
    b. Have you ever discussed with Mr. McNulty whether to include David Iglesias on the replacement list, or when Mr. Iglesias was in fact placed on that list?
    c. Have you received any explanation why Mr. Iglesias, who was not on any list to be fired from February 2005 through October 17, 2006, suddenly appears on the list by November 7, 2006, and was in fact fired on December 7, 2006? If so, please give the name of each person involved in providing that explanation to you, and the substance of that explanation.

Todd Graves

26. The day before your appearance before the Committee, former U.S. Attorney for the Western District of Missouri Todd Graves confirmed that he had been forced to resign by the Department in January 2006.

a. You testified that you considered your prior statements that only 8 U.S. Attorneys had been forced to resign accurate because you did not understand Mr. Graves' firing to be part of the same process as the other U.S. Attorneys. Please explain the basis for that distinction, particularly in light of the fact that Mr. Graves appeared on the removal list circulated in January 2006, the same month Mr. Graves was asked to resign.

b. Who at the Department of Justice participated in making the decision to ask Mr. Graves to resign? Who at the White House participated in making the decision to ask Mr. Graves to resign? Who made the final decision? Please describe the decision-making process as fully as you can.

c. Why was Mr. Graves asked to resign? Please identify and describe all relevant factors.

d. When did you become aware that Mr. Graves had declined to support a lawsuit against the State of Missouri and some of its elected officials regarding its maintenance of its voter rolls? Did you ever discuss that case with anyone in the Department, the White House, or elsewhere and, if so, please describe those discussions?

e. Did you ever discuss Mr. Graves with Monica Goodling, Kyle Sampson, Paul McNulty, or Mike Battle? If so, please describe each such discussion, including its time and place, its participants, and its contents.

f. Did you ever discuss Mr. Graves with President Bush, Karl Rove, Harriet Miers, or anyone working for the White House? If so, please describe each such discussion, including its time and place, its participants, and its contents.

g. How and why was Brad Schlozman selected to be the interim replacement for Todd Graves? Who first identified Mr. Schlozman as a candidate to be an interim U.S. Attorney, and who participated in the decisionmaking process that led to his appointment? Were any candidates considered for appointment to this position other than Mr. Schlozman?

h. When was Mr. Schlozman first identified as a candidate to replace Mr. Graves? Had he been selected as the interim replacement for Mr. Graves before Mr. Graves was asked to resign? Was he ever considered for appointment to any other interim U.S. Attorney position before being appointed to the Western District of Missouri?

i. When you appointed Mr. Schlozman to this position on an interim basis did you have any understanding whether or not the President would nominate him for Senate confirmation as a full term U.S. Attorney? If so, what was that understanding? Did you ever talk to President Bush, Karl Rove, or anyone working for the White House about the possibility of Mr. Schlozman serving as an interim or Senate confirmed U.S. Attorney? If so, please describe each such discussion, including its time and place, its participants, and its contents.

Questions asked by Members of the Committee During the May 10 Hearing

27. With respect to a number of questions at the hearing, you indicated that you would have to check and get back to the Committee in writing. A partial list of the questions is reprinted below. Please provide written answers to each of these questions, and to any other matters you indicated you would get back to the Committee concerning.
    a. *From Rep. Scott*: Now, in light of the fact that some people have been designated as loyal Bushies, we know that some of the U.S. Attorneys got telephone calls from political figures and were fired. Are you aware of any that got political phone calls, with attempts to apply political pressure, that were not fired?
    b. *From Rep. Lofgren*: ...I would just like the Attorney General...to spend some time attending to the dreadful situation of the FBI name check. As of May 4th of this month, USCIS had sent and had pending 300,000-plus names to the FBI; 155,000 of those name checks have been pending for more than six months. And we know, historically, that far less than 1 percent ever have any problem....so I don't want you to answer now, but I do hope that you will get back to this Committee, because it is an outrageous situation.
    c. *From Rep. Lofgren*: Well, I don't want to be rude, Mr. Gonzales, but the bells are ringing and I just have one more second to read very briefly the quotes in the Boston Globe that says–and I quote–"Schlozman was reshaping the Civil Rights Division said Joe Rich, who was chief of the Voting Rights Section until 2005. In an interview he said, quote, 'Schlozman didn't know anything about voting law. All he knew was he wanted to make sure that Republicans were going to win.'" And that was from the career guy who got pushed out from the Department. I would like your comments on that, in writing, later.
    d. *From Rep. Watt*: So are you aware of any legitimate reason that John McKay should have been forced out as a U.S. Attorney in March of 2005, as opposed to the things you had talked about that occurred in 2006?
    e. *From Rep. Delahunt:* Why have you not taken steps to designate Luis Posada Carriles as ... a terrorist, given the overwhelming information that exists in the public domain today?
    f. *From Rep. Issa:* General Gonzales, I would ask that you follow up for the record with some of the steps you're going to take to provide better guidance to 93 U.S. Attorneys.

Questions Submitted by The Honorable Bobby Scott (VA-3)

1. In 2006, the Department of Justice dismissed and/or forced the resignation of eight (8) U.S. Attorneys, and possibly two (2) others in 2007 in Todd Graves and Debra Wong Yang, under suspect circumstances. Can you name any other U.S. Attorneys in the last twenty-five (25) years who were dismissed and/or forced to resign outside of the customary dismissal and re-appointment of some or all U.S. Attorneys immediately following a change in Presidential Administration and other than those who resigned of their own accord as a result of scandal?

2. Were any of the dismissed U.S. Attorneys forced out because, or due in part to, his or her investigation of a case that had partisan political implications?

3. In response to several questions at the May 10, 2007 hearing, you stated that, to the best of your knowledge, the White House never requested the removal of a U.S. Attorney for failing to accede to political pressure. During your tenure as Attorney General, did the White House ever request the removal of any U.S. Attorney, and, if so, whom? What was the reason the White House gave for requesting the removal?

4. Several of the dismissed U.S. Attorneys have stated that they received telephone calls from Republican politicians regarding cases being investigated within their respective offices. Have you made an inquiry into these U.S. Attorneys' claims in contemplation of Obstruction of Justice charges? In light of the claims, have you inquired of all U.S. Attorneys whether they have received telephone calls from politicians regarding pending cases in their districts?

5. Please respond to the allegations concerning Debra Wong Yang in the New York Times article, dated May 4, 2007, entitled "The U.S. Attorney, the G.O.P. Congressman and the Timely Job Offer"?

6. Given your statement during the hearing that you were told that Debra Wong Yang was experiencing financial hardship, has the Department of Justice ascertained whether or not Debra Wong Yang was offered money by the law firm representing Rep. Jerry Lewis while she was still the U.S. Attorney in Los Angeles?

7. How many African American attorneys were in the Civil Rights Division of the Department of Justice on January 20, 2001? Since January 20, 2001, how many African American attorneys have been hired into the Civil Rights Division? How many African American attorneys are currently in the Civil Rights Division?

8. Since January 20, 2001, how many attorneys have been hired into the Civil Rights Division of the Department of Justice who had significant experience in civil rights

litigation prior to joining the Division? Did any of these attorneys have experience in representing minorities in discrimination cases prior to joining the Civil Rights Division?

9. Does the Department of Justice intend to initiate its own independent investigation of LAPD Officers' use of force during the immigration rally in MacArthur Park in Los Angeles, CA on May 1, 2007 for possible civil rights violations?

10. Under the Identity Theft Penalty Enhancement Act of 2004, a total of $10 million was appropriated to the Department of Justice for "the investigation and prosecution of identity theft and related credit card and other fraud cases." Please describe how these funds have been used to combat identity theft and related financial fraud.

11. Representative Wolf, Representative Maloney, and I wrote you a letter a few months ago, recommending and requesting that you make better use of the tough measures in the PROTECT Act and the Adam Walsh Act to go after domestic traffickers of humans in this country, rather than prosecuting cases only where force, fraud, and coercion is involved. The bills we passed make it much easier to prosecute cases involving the notorious and brutal system of domestic prostitution. Why are you not prosecuting more cases based on the easier to prove provisions and enhanced punishments in the PROTECT Act and the Adam Walsh Act?

Questions Submitted by The Honorable Sheila Jackson-Lee (TX-18)

Texas Youth Commission Scandal

Mr. Gonzalez, I am in receipt of your letter dated May 9, 2007, in response to my letter to you regarding the numerous allegations of sexual abuse at various Texas Youth Commission facilities. Among other things, your response stated that in 2005 career prosecutors from the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Western District of Texas conducted their own investigation of sexual abuses at TYC facilities in 2005 and concluded there was not enough evidence to prosecute anyone for violations of federal criminal civil rights laws.

1. I want to explore this conclusion with you.
   a. Were those career attorneys aware of a 2005 investigation and report by the state's Texas Rangers that detailed allegations of wide-spread sexual abuse of juvenile inmates?
   b. Which facilities were investigated?
   c. If allegations of wide-spread sexual abuse of juvenile inmates by corrections officials are insufficient to launch a federal investigation, what legislative response can and should the Congress provide to ensure the Department of Justice has the authority to act on these allegations?

2. In your May 9, 2007 response to my letter regarding the Texas Youth Commission, you reference a report prepared by the Department regarding the inquiry into TYC's Evins facility. On page 4 of the report, it states that "the rate of assaults found at the Evins facility is approximately five times the national average." Has a similar nationwide study been conducted regarding the incidence of sexual abuse at juvenile facilities? If so, what were the results? If not, why?

Harris County Jail

Mr. Gonzalez, May, 9, 2007, you also responded to my letter which detailed the horrific incidents that have occurred at the Harris County Jail in Houston, Texas. Specifically, 101 inmates died in custody between January 2001 and January 2006.

As tragic as this is, I must point out that if present trends continue, the number of deaths in 2007 will double the 22 deaths occurring in 2006. In your response you stated that your office will continue to gather information. But that will not end the string of needless and preventable deaths.

An article published in the *Houston Chronicle* in 2005 that cites the fact that the Harris County Jail was decertified for two consecutive years by the Texas Commission on Jail Standards for unsanitary conditions due to overcrowding.

1. How can I assist you in ensuring that this matter receives immediate attention from the Department?

Civil Rights Enforcement

Mr. Attorney General, I am very troubled by what the Department's terrible record when it comes to enforcement of the civil rights laws. For example, I note for the record that since January 20, 2001, the Bush Administration has filed 32 only Title VII cases, an average of approximately 5 cases per year. In contrast, the prior Administration filed 34 cases in its first two years in office alone, and 92 in all, for an average of more 11 cases per year.

Moreover, a close look at the types of cases reveals an even more disturbing fact, which is a failure to bring suits that allege discrimination against African-Americans. Of the 32 Title VII cases brought by the Bush Administration, 9 are pattern or practice cases, 5 of which raise allegations of race discrimination but only one case – 1 case – involved discrimination against African Americans. In contrast, the Clinton Administration filed 13 pattern or practice cases, 8 of which involved racial discrimination.

The record is not much better when it comes to the subject of voting rights enforcement. After six years, the Bush Administration has brought fewer Section 2 cases, and brought them at a significantly lower rate, than any other administration since 1982.

The Voting Section filed a total of 33 involving vote dilution and/or other types of Section 2 claims during the 77 months of the Reagan Administration that followed the 1982 amendment of Section 2. Eight (8) were filed during the 48 months of the Bush I Administration and 34 were filed during the 96 months of the Clinton Administration. Only 10 have been filed so far during the first six years of the Bush II Administration.

But what I want to discuss with you now is the Department's disturbing record when it comes to enforcement of the federal criminal civil rights law. According to an analysis of Justice Department data by the *Seattle Post-Intelligencer*, civil rights enforcement no longer appears to be a top departmental priority. An analysis of the data reveals that between 2001 and 2005, the number of federal investigations targeting abusive police officers declined by 66 percent and investigations of cross-burners and other purveyors of hate declined by 60 percent.

It appears that this downward trend accelerated after the 9/11 attacks. There has been a slight increase in enforcement related to human trafficking, which is counted under civil rights, but not enough to stop the overall slide.

I am very troubled by this trend. Hate-crimes are too dangerous to ignore, and there is social value in effective federal review of police misconduct.

1. Is it true that the Department of Justice and FBI responded to pressure from the Bush administration to focus on counterterrorism ranks by pulling FBI agents off civil rights enforcement and slashing the number of criminal investigations conducted nationwide?

2. Mr. Attorney General, isn't it also true that senior Justice Department and FBI civil rights officials were aware – indeed encouraged – this major decline in investigations by adopting tighter case-opening criteria that effectively excluded all but the most serious cases? It is reported that a retired authoritative source is quoted as saying: "Where there was a huge impact or a cry for a perceived impartial investigation, we had to open them up, and we did. But we didn't try to open the routine (police) shooting investigation, whereas before we would."

Signing Statements

1. In 2006, the American Bar Association blue ribbon task force report on Presidential signing statements states, "From the inception of the Republic until 2000, Presidents produced fewer than 600 signing statements taking issue with the bills they signed. According to the most recent update, in his one-and-a-half terms so far, President George Walker Bush ... has produced more than 800." Do you know of any specific examples where the President's execution and adherence to a bill he has signed into law has been altered by a signing statement?

Guantánamo

1. Do you have any rough estimates on the percentage or number of detainees held in Guantanamo or held outside the U.S. that were brought to U.S. forces in exchange for large bounties? How many of the total number of detainees were brought to U.S. forces by foreign forces?

Detainees

1. Are you familiar with the report released in February 2006 by Seton Hall Law Professor Mark Denbeaux and attorney Joshua Denbeaux that found a large percentage of the detainees held in Guantanamo Bay were arrested by either Pakistan or the Northern Alliance and turned over to the U.S. during a time when the U.S. offered large bounties in exchange for suspected enemies – as much as 86% according to the report. In determining a foreign detainee's enemy combatant status, how can the United States reasonably rely on information obtained from bounty hunters who deliver foreign detainees to the United States solely in exchange for money?

National Security Letters

1. In March of this year, the Inspector General of the Department of Justice released a 199-page report which found that the FBI engaged in widespread and serious misuse of its authority to issue National Security Letters (NSLs). These abuses resulted in the illegal collection of vast amounts of data on thousands of American citizens and foreign nationals. Given these findings, why should the FBI be trusted to continue using this law enforcement mechanism as expanded under the Patriot Act?

2. Considering that you responded "I don't recall" over 50 times to the Senate Judiciary Committee when questioned about things from the political influences of the firing of 8 U.S. attorneys, to the internal review process of DOJ attorneys and the management, why shouldn't you be held to the same standards most managers across the country are held to when they lose control and fail to take responsibility for their departmental actions – and resign? Wouldn't this set a better standard than stubbornly remaining as the Attorney General who doesn't know what goes on in his own Department?

Voter Fraud

1. On September 30, 2005, thirty of my colleagues wrote to you expressing concerns that states were not complying with the public agency requirements of the National Voter Registration Act's Section 7. They asked you to respond with the Department's plan to enforce this provision. To date there has been no response. Instead, we learned recently that the Department has a "nationwide effort to assess compliance" with the voter purge provisions of the NVRA. A lawsuit in Missouri resulting from this program was recently

dismissed. Can you explain to the Committee the decision-making process to make a national effort to investigate states' compliance with the voter purge provisions of the NVRA and not investigate states' compliance with Section 7?

2. Administration officials, including Justice Dept. officials, have been on record supporting requirements that voters show photo ID in order to cast their ballots and in August 2005, the Department pre-cleared Georgia's voter ID law over the objections of 4 of 5 career staff. Can you please describe any efforts by the Justice Dept. to support state legislative efforts to enact voter ID requirements or ensuing court cases?

3. Did anyone in the White House or any other federal employee outside the Justice department communicate with you in any manner about the Justice Department opening an investigating or looking into organizations that historically have engaged in minority voter registration activities? Or did anyone from the White or other federal employee communicate with you regarding litigation brought by private parties against such organizations?

4. Bradley Scholzman, while a U.S. Attorney, indicted four people in Kansas City for putting false information on voter registration applications. He issued the indictment days before the election and says his superiors approved the indictments. The Boston Globe reported has a policy that "federal prosecutors . . . should be extremely careful not to conduct overt investigations during the preelection period" to avoid "chilling legitimate voting and campaign activities" and causing "the investigation itself to become a campaign issue." And that it "interprets the policy as having an unwritten exception for voter registration fraud." Were you aware of the unwritten rule? When did it go into effect and was anyone in the White House part of the creating it?

Questions Submitted By The Honorable Tammy Baldwin (WI-2)

1. Mr. Gonzales, since your appearance before the Senate Judiciary Committee, I am sure you have taken additional steps to 'refresh your memory' on the subject matters that you could not recall during that hearing. So let me ask you again, are you aware (or do you recall) that Mr. Biskupic was on the first known version of the list compiled by your chief of staff, Mr. Sampson, dating March 2, 2005, recommending the names of the U.S. Attorneys to be fired? In addition:
   a. Do you know why Mr. Biskupic was placed on the list? Did you have any concerns about the performance of Mr. Biskupic in early 2005?
   b. Mr. Biskupic was removed from the next list we have, which is dated January 9, 2006? Do you know why? I understand from your testimony before the Senate Judiciary Committee, that you had, and I quote, no transparency, into the process with respect to why Mr. Biskupic was placed on and subsequently removed from

the list, do you find that surprising that you were never consulted, by your own chief of staff, regarding who to be on or off that list of U.S. attorneys?

2. What concerns me is that many press reports -- and the documents produced by your Justice department -- show that Wisconsin Republican operatives were actively complaining about the need for more vote fraud enforcement in Milwaukee in late 2004 and early 2005, right before Mr. Biskupic was placed on the list. The documents produced by your Department indicate that Karl Rove was looking at a Milwaukee Journal Sentinel Article on alleged voting irregularities on February 2, 2005, just one month before Mr. Biskupic was placed on the list. Do you know whether Mr. Rove's or anyone else's concerns about vote fraud enforcement played a role in Mr. Biskupic being placed on the list?
3. I understand that in his interview with our staff, Mr. Sampson described a conversation with Deputy Attorney General Paul McNulty regarding whether Mr. Biskupic should remain on the list of USAs to be fired. Apparently, Mr. McNulty suggested that since Mr. Biskupic was recommended by Mr. Sensenbrenner, then chairman of this Committee, and that identifying Mr. Biskupic as someone to resign would perhaps not be a wise thing to do politically if it brings the ire of Chairman Sensenbrenner.
   a. Did you have any knowledge of this conversation between Mr. Sampson and Mr. McNulty?
   b. Don't you find it disturbing that the potential of angering a member of Congress could have dictated whether Mr. Biskupic stayed on the list? If Mr. Biskupic was truly performing poorly in his job, then a casual conversation regarding what a Member of Congress might have reacted to his firing should not have made a difference; doesn't it further suggest that the process is completely political? Either Mr. Biskupic is on the list for poor performance, or he should not be on the list at all.

4. I am also concerned that it appears that Mr. Biskupic was removed from the list only after he had launched what have proved to be some controversial vote fraud prosecutions, and after he initiated the investigation into state official Georgia Thompson that became a major issue in my state. Now, I am not at all suggesting that Mr. Biskupic took these action for anything other than proper reasons and his honest exercise of prosecutorial judgment, but the implication that someone like Kyle Sampson was looking over a U.S. Attorney's shoulder and perhaps placing him on a list or taking him off a list based on whether he had somehow done "enough" on these political issues is very disturbing. Do you agree?

5. Mr. James Comey, the former Deputy Attorney General, testified before the Committee and strongly defended Mr. Biskupic's job performance and personal character. He stated that Mr. Biskupic is an "absolutely straight guy" and that he is a person of "great integrity."
   a. Are you familiar with Mr. Biskupic's job performance yourself?

b. What is your personal view of his performance?
c. Wouldn't you agree that your handling of the controversy over the firing of U.S. Attorneys has been harmful to not only the DOJ, but also to U.S. Attoney's offices like the one overseen by Mr. Biskupic, creating a no-win situation for U.S. Attorneys like Mr. Biskupic where everything he does, everything that the Eastern District of Wisconsin pursues, will be closely scrutinized for political purposes?

Questions Submitted by The Honorable Luis V. Gutierrez (IL-4)

Mr. Attorney General, on April 24 of this year, heavily armed guards from several Federal agencies conducted a law enforcement operation at the Little Village Discount Mall in my district in Chicago. According to U.S. Attorney's Patrick Fitzgerald's Office, the raid was part of a probe of identification fraud, targeting sellers of phony Social Security and green cards. FBI spokesman Ross Rice said it was an ICE-led investigation with assistance from the FBI. And Secretary Chertoff of DHS told me personally that, in fact, it was a DOJ operation.

According to witnesses, a lockdown of the mall and searches started shortly before 2 p.m. Mall patrons were detained en masse while searching for members of the document fraud ring. Some 200 to 250 people were said to be working and shopping there, including women and children.

According to one business owner in the mall, "the police closed all the doors and came through calling for people on a list. They made everyone sit on the floor and put the plastic handcuffs on some people. The rest were just quiet and scared." Others also said they saw heavily armed agents yelling at and handcuffing people, then rounding them up into vans before releasing all but a handful. Constituents I have spoken to described a war zone, a massive use of force against families who were doing nothing more than shopping in their community when they were detained in the mall or taken for questioning. We have been told of the fear, intimidation and disrespect that law-abiding residents of Chicago felt from federal law enforcement agents who were involved in this operation.

We have received contradictory answers from administration officials as to who was in charge of this operation. Mr. Attorney General, what agency was leading this operation? Was the Department of Justice through the U.S. Attorney's office in charge? Was the Department of Homeland Security and ICE responsible for leading the operation?

I fully support taking action to crack down on sellers and manufacturers of fraudulent documents. Yet, I have grave concerns about how this operation appears to have been conducted. Could you please give a full report of the enforcement action?

Please include in your report:

1. Who was overseeing the operation on the ground? The FBI, the U.S. Attorneys Office or ICE? Who was in charge of ensuring that innocent people would not be harmed during this operation?

2. Why did the FBI choose the enforcement action it did, given that it was in the middle of the afternoon, at the height of innocent mall pedestrian traffic with children present, as opposed to a different action?

3. Please give us examples, within the last 5 years, when operations like this were conducted in a busy commercial or business center, resulting in the detainment of many innocent bystanders.

4. Could you please let us know how many people were detained, even just for questioning, and how officers on the ground determined who would be detained and/or questioned and who would not be? Is it common practice to specifically detain individuals based on their gender, race and ethnicity, which by all accounts is what occurred during this operation?

Questions Submitted by The Honorable Brad Sherman (CA-27)

The administration has put forth various theories under which anyone, even American citizens, could be arrested without being charged with a crime. One of these is the theory that you could be classified as an "enemy combatant."

1. Are there any American citizens being held today, for over a month, who have been denied habeas corpus or access to an attorney?

If the answer to this question is "yes," please answer the following questions:

   a. How many such persons are being held?
   b. At what location (city, state or city, country) is each such person being held?
   c. For how long has each such person been held?

2. Are there any U.S. citizens being held now by foreign governments or foreign organizations, without access to attorneys, as a result of rendition, where agents of the administration have taken people into custody and then given them up to foreign officials?

If the answer to this question is "yes," please answer the following questions:

   a. How many such persons are being held?

b. At what location (city, state or city, country) is each such person being held?
c. For how long has each such person been held?

POST-HEARING QUESTIONS FROM THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

OVERSIGHT HEARING ON THE U.S. DEPARTMENT OF JUSTICE

Committee on the Judiciary
May 10, 2007

Questions for the Record
Ranking Republican Member Lamar Smith
Submitted on May 18, 2007

RECENT DISMISSAL OF UNITED STATES ATTORNEYS

1. Given the Department's role as the lead federal law enforcement agency, if the White House has a concern or learns of concerns about whether a U.S. Attorney's office or any other part of the Department is enforcing laws efficiently and effectively or otherwise failing to execute its duties, what is the appropriate manner for it to inform you and your staff about those concerns?

2. What negative consequences could occur if the White House *did not* share such concerns with you?

3. The following questions relate to former United States Attorney Carol Lam:

   a. To the extent you have not already done so, please explain the performance reasons related to immigration enforcement that led to your request for Carol Lam's resignation.

   b. To the extent you have not already done so, please explain the performance reasons related to gun crime enforcement that led to your request for Carol Lam's resignation.

   c. Did these issues have any impact on Ms. Lam's district's relations with other enforcement agencies?

   d. Were there any other reasons for your request for Carol Lam's resignation? For example, were there other reasons staff considered in reaching their recommendation to you?

   e. Why do you think your grounds for requesting Carol Lam's resignation were sufficient?

4. The following questions relate to former United States Attorney Paul Charlton:

a. To the extent you have not already done so, please explain the performance reasons related to the death penalty that led to your request for Paul Charlton's resignation.

b. To the extent you have not already done so, please explain the performance reasons related to witness interview taping that led to your request for Paul Charlton's resignation.

c. Did this issue have any impact on Mr. Charlton's districts relations with other enforcement agencies?

d. Were there any other reasons for your request for Paul Charlton's resignation? For example, were there other reasons staff considered in reaching their recommendation to you?

e. Why do you think your grounds for requesting Paul Charlton's resignation were sufficient?

5. The following questions relate to former United States Attorney John McKay:

a. To the extent you have not already done so, please explain the performance reasons related to information sharing that led to your request for John McKay's resignation.

b. To the extent you have not already done so, please explain the performance reasons related to sentencing that led to your request for John McKay's resignation.

c. Were there any other reasons for your request for John McKay's resignation? For example, were there other reasons staff considered in reaching their recommendation to you?

d. Why do you think your grounds for requesting John McKay's resignation were sufficient?

6. The following questions relate to former United States Attorney David Iglesias:

a. To the extent you have not already done so, please explain the performance reasons related to lack of aggressive leadership or hands-on management that led to your request for David Iglesias' resignation.

b. To the extent you have not already done so, please explain the information you had from Senator Domenici and the White House concerning whether David Iglesias was, in general, up to the job of being U.S. Attorney.

c. Were there any other reasons for your request for David Iglesias' resignation? For example, were there other reasons staff considered in reaching their recommendation to you?

d. Why do you think your grounds for requesting David Iglesias' resignation were sufficient?

7. The following questions relate to former United States Attorney Daniel Bogden:

a. To the extent you have not already done so, please explain the performance reasons you had related that led to your request for Daniel Bogden's resignation.

b. Why do you think your grounds for requesting Mr. Bogden's resignation were sufficient?

8. The following questions relate to former United States Attorney Bud Cummins:

a. There has been a suggestion that Mr. Cummins' resignation was in part related to performance. What performance issue did he present?

b. Was that performance issue the leading reason he was asked to resign, or was the leading reason to make room for Tim Griffin, whom the Department thought was another well-qualified candidate?

c. Did the Department have any reason to believe Mr. Cummins was planning to resign his position? If so, what was the basis for this knowledge and did this knowledge affect the Department's decision-making process with regard to Mr. Cummins?

9. The following questions relate to former United States Attorney Margaret Chiara:

a. To the extent you have not already done so, please explain the performance reasons related to office management that led to your request for Margaret Chiara's resignation.

b. Were there any other reasons for your request for Margaret Chiara's resignation? For example, were there other reasons staff considered in reaching their recommendation to you?

c. Why do you think your grounds for requesting Margaret Chiara's resignation were sufficient?

10. The following questions relate to former United States Attorney Kevin Ryan:

a. To the extent you have not already done so, please explain the performance reasons related to office management that led to your request for Kevin Ryan's resignation.

b. Were there any other reasons for your request for Kevin Ryan's resignation? For example, were there other reasons staff considered in reaching their recommendation to you?

c. Why do you think your grounds for requesting Kevin Ryan's resignation were sufficient?

11. You testified before the Senate that given the controversy created by having sought the resignation of the eight United States Attorneys you have revisited each of your decisions, reviewed the performance-related information concerning each of the eight U.S. Attorneys, and concluded in every case that your requests for seeking their resignations were justified.

a. Please explain how you came to that conclusion.

b. Please explain whether and why Deputy Attorney General McNulty shared that conclusion.

12. Is their any merit to any of the alternative theories for these resignation requests, such as whether John McKay was retaliated against for efforts in seeking more Department resources to examine the death of one of his Assistant United States Attorneys in the Western District of Washington?

13. To the extent you have not already done so, please explain the relative importance to the Department of effectively achieving the Department's goals on:

a. Immigration enforcement

b. Gun crime enforcement

c. Sentencing

d. Obscenity enforcement

e. Public corruption enforcement, and ensuring that related enforcement activities are conducted in a non-partisan manor

f. Vote fraud enforcement

14. To the extent you have not already done so, please explain the relative importance to the Department of preventing or effectively responding to:

a. Insubordination

b. Intra-agency disputes or disputes with other federal, state or local law enforcement agencies

c. Ineffective management within the U.S. Attorney's offices, such as management that leads to fractiousness, dissension, low morale, etc.

15. To the extent you have not already done so, please explain the relative importance to the Department of assuring aggressive, hands-on leadership of U.S. Attorneys Offices by the U.S. Attorneys?

16. To the extent you have not already done so, please explain the relative importance to the Department and the nation of assuring that U.S. Attorneys can effectively be made accountable to the people, by being made politically accountable to the President?

17. Do you have sufficient information yet in any of the districts from which the above U.S. Attorneys resigned to tell whether there has been an improvement because of the change in U.S. Attorney?

18. If the answer to the previous question is yes, please describe what improvements have occurred in the:

a. Southern District of California

b. District of Arizona

c. Western District of Washington

d. District of New Mexico

e. District of Nevada

f. Eastern District of Arkansas

g. Western District of Michigan

h. Northern District of California

19. There appears to be some inconsistency between Mr. Sampson's statements and yours concerning the degree of your involvement in the process of reviewing U.S. Attorneys and seeking their resignations. Can those inconsistencies be reconciled?

20. If the answer to the previous question is yes, please explain how with regard to:

a. The number, frequency and nature of your discussions with Mr. Sampson about this process.

b. Whether there was any connection in your mind between any involvement you had in any of the eight U.S. Attorneys' performance issues – such as Ms. Lam's immigration issue – and the process of reviewing all U.S. Attorneys.

c. Your explanation in your March 7th USA Today editorial and your press conference after Mr. Sampson's resignation.

21. What steps have you taken to make sure that we have all the access we need to witnesses in the investigation of the eight U.S. Attorneys' resignations?

22. What steps have you taken to make sure we have all of the access we need to documents relevant to the resignations?

23. When the Department has withheld witnesses or information, has it been for reasons concerning Department law enforcement interests or other important Department interests? If so, what were they?

24. What steps have you taken to make sure that you and other staff implicated in this matter do nothing to hinder the effectiveness of our investigation?

25. Why did you refer this matter to the Office of the Inspector General (OIG) and the Office or Professional Responsibility (OPR)?

26. Do you believe that OIG, OPR and the Office of Special Counsel will be able to get to the bottom of whether there has been any wrongdoing in this matter?

27. You testified in the Senate concerning steps you have been taking to begin to repair the damage to the Department that this controversy has caused. Please describe the steps you have taken to date.

28. Are they any other steps that you are considering taking, and, if so, why?

29. What benefits do you expect to result from these steps, and how long might it take to achieve them?

30. Some, including the top career official at the Department, David Margolis, have stated that the idea of reviewing the U.S. Attorney Corps for improvements was a good one, even if poorly executed in this instance. They hope that the Department gets another chance to perform such a review, and perform it better, in the future. Do you share this hope? If so, why?

31. If you do hope the Department can perform such a review in the future, please describe, to the extent you have not already done so, any additional procedures you

would put in place to be sure that the review and its results are sufficiently sound and help inspire confidence in the Department?

32. We understand that the rest of the U.S. Attorney corps understands the resignations that were requested, although they think the individuals involved could have received better treatment. So that the Committee can better understand the impact of these eight resignations on the effectiveness and morale of the remaining United States Attorneys, please share with us the feedback you have received and/or your thoughts as to how they view the Department's actions that led to these resignations.

33. To the extent you have not already done so, please describe what steps the rest of the U.S. Attorney corps thinks the Department should take to improve upon the review process used in this instance, if it ever again undertakes such a process?

34. How much damage do you think the Department has suffered as a result of this controversy?

35. How much of that damage do you think is due to misperception or misinformation concerning the nature of what the Department did?

36. How long do you think it will take the Department to recover from that damage?

37. What do you think could happen to help the Department recover from that damage, especially to the Department's image?

38. At the hearing, you were asked questions about the circumstances of Debra Wong Yang's resignation from her post as U.S. Attorney for the Central District of California. Please state any additional information you would like to offer in response to this line of questioning.

39. At the hearing, you were also asked questions about Harriet Miers' knowledge of the circumstances of Debra Wong Yang's resignation and concerns Ms. Miers had about the post which Debra Wong Yang had filled. Please state any additional information you would like to offer in response to this line of questioning.

40. At the hearing, you were asked questions about the involvement of Monica Goodling in the hiring of career Assistant U.S. Attorneys. Please state any additional information you would like to offer in response to this line of questioning.

41. At the hearing, you were asked questions about Monica Goodling's assertion of her Fifth Amendment rights in this investigation. Please state any additional information you would like to offer in response to this line of questioning.

42. At the hearing, you were asked questions about a vote fraud case in Missouri and the involvement of Todd Graves and Brad Schlozman in that case. Please state any additional information you would like to offer in response to this line of questioning.

43. At the hearing, you were asked questions about whether the request for John McKay's resignation was associated with issues following the death of an Assistant U.S. Attorney in Mr. McKay's office. Please state any additional information you would like to offer in response to this line of questioning.

44. At the hearing, you were asked questions about Department officials who may have had more than limited input into the final decision process for the eight requested resignations. Please state those individuals whom you believed to be, or hoped would be, significantly involved in making final decisions regarding these eight United States Attorneys. Please also state what you believed to be, or hoped would be, the nature of their involvement.

45. At the hearing, you were asked questions about the degree to which you were justified in relying upon the recommendations of the Department's senior leadership in deciding that the Department should seek the eight U.S. Attorney resignations discussed above. Please state any additional information you would like to offer about the nature of your reliance upon the recommendations of the Department's senior leadership.

46. At the hearing, you were asked questions about the regulatory amendment recently adopted by the Department to reserve certain personnel authority to the Attorney General's office. Please state any additional information you would like to offer in response to this line of questioning.

47. At the hearing, you were asked questions about the involvement of Monica Goodling and Kyle Sampson in career and non-career hiring at the Department. Please state any additional information you would like to offer in response to this line of questioning.

48. At the hearing, you were asked questions about conversations concerning Mr. Iglesias which occurred between you and Senator Domenici and you and Mr. Iglesias. Please state any additional information you would like to offer in response to this line of questioning.

49. At the hearing, you were asked questions about whether you consult with U.S. Senators about the performance of U.S. Attorneys. Please state any additional information you would like to offer in response to this line of questioning.

50. At the hearing, you were asked questions about prosecutions of officials in Wisconsin and Alabama. Please state any additional information you would like to offer in response to this line of questioning.

51. At the hearing, you were asked questions about individual vote fraud prosecutions, such as a certain case brought in Alaska, as well as the relative importance of such

cases, as compared to cases of widespread vote fraud. Please state any additional information you would like to offer in response to this line of questioning.

52. At the hearing, you were asked questions about issues in the U.S. Attorney's Office for the District of Minnesota., including questions about the current and past U.S. Attorneys in that district. Please state any additional information you would like to offer in response to this line of questioning.

WAR ON TERROR/NATIONAL SECURITY

National Security Letters

1. Please describe the guidelines recently developed by the FBI regarding its NSL authority.

2. What steps, if any, did the Justice Department (including the FBI) take after enactment of the PATRIOT Act to provide guidance and put in place safeguards to protect against abuses? What about after the enactment of the PATRIOT Act Improvement and Reauthorization Act?

3. Do you have any evidence that anyone at the FBI intended to circumvent the law?

4. How important are NSLs to terrorism and foreign intelligence investigations?

5. What impact, if any, would adding a new requirement that an Assistant US Attorney approve an NSL before it is issued on (1) compliance with the law; and (2) the FBI's ability to carry out terrorism and counterintelligence investigations?

6. With regard to the problems identified with the FBI's database for tracking use of NSLs, who, if anyone, was aware at the Justice Department, of the deficiencies in the database? Who at the FBI was responsible for ensuring the accuracy of the database?

7. With respect to the exigent letters, how could the FBI issue over 700 letters without some oversight or review of these letters, which: (1) violated the law; and (2) contained material misrepresentations as to the intent to supply a grand jury subpoena for the requested materials? Who was responsible for reviewing these requests? Why was the illegal practice not discovered until 2004?

8. What additional protections can be put in place to ensure greater compliance by the FBI?

Foreign Intelligence Surveillance Act

1. The Administration recently submitted a proposal to reform FISA authorities. Please describe why such changes are needed?

Information Sharing

1. As the 9/11 Commission and others have noted, one of the breakdowns prior to 9/11 was the failure of the federal government to "connect the dots" about the attack. What steps has the Department taken since 9/11 to improve the sharing of information to prevent future acts of terrorism?*

VIOLENT CRIME AND GUNS

Gangs

1. What steps have you taken to ensure that violent gang activity is reduced?*

2. Are you reaching out to other countries to assist in the Department's efforts to fight gang activities?

3. Could you share with us the results and impact of the Administration's Project Safe Neighborhoods program? Violent Crime Impact teams? Safe Streets Task Force?

4. Could you share with us any results of your pilot program launched in March of 2006 in six cities? I understand you've expanded it to 4 additional cities bringing the total number of cities participating to ten. Could you share with us how you chose the initial six cities, what successes you saw in those cities that let you decided to expand the program, and where you see this initiative headed throughout the remainder of your tenure at the Department?

5. Could you share with us a bit more detail about how the Violent Crime Reduction Partnership Initiative proposed in the President's FY 2008 budget would work?

6. What specific efforts is Justice Department making with regard to MS-13?

Rise in Violent Crime

1. Have you identified causes of rise in violent crime reports?

2. What steps are you taking to address these problems?

3. Has the rise in violent crime been the result of reductions in COPS funding?

4. I understand that your staff traveled to a number of cities across the country – some that saw an increase in crime others that saw a decrease in crime – this fall to meet with Federal, state, and local law enforcement officials to study what factors might potentially lead to a rise in violent crime and the decrease of violent crime. Are there any findings or observations that you can report to us today that came out of this effort? What steps does the Department under your leadership plan to take to address any conclusions coming out of this study?

New Orleans

1. What is the status of the Justice Department's efforts to reduce violent crime in the New Orleans area?

Virginia Tech Shooting, NICS Improvement, and Trace Data

1. In the aftermath of the horrific shooting on April 16, 2007, at Virginia Tech, what efforts, if any, is the Justice Department planning to improve campus security?

2. The facts surrounding the case have raised questions as to the information sent by the States to the National Instant Criminal Background Check database. What steps if is the Justice Department taking to improve the accuracy of the NICS database?

3. Does the Department support the NICS Improvement bill, H.R. 297?

IMMIGRATION

Border Patrol Agent Case

1. There has been a lot of controversy surrounding this prosecution of Border Patrol Agents Ignacio Ramos and Jose Compean. Did the US Attorney seek Department approval before charging the defendants in this case?

2. What was the rationale for charging the defendants?

3. Why did the US Attorney give the victim/drug dealer immunity rather than have him plead guilty to drug trafficking and cooperate?

4. Did the victim breach his immunity agreement? [He was required to disclose all factual information to the government and he reportedly refused to tell agents where he obtained medical attention and people who wanted to retaliate against Border Patrol agents.]

5. Is the president considering a pardon? Has the Justice Department formally communicated its position on a pardon? Informally?

Immigration Sentencing

1. The Sentencing Commission proposed several changes to guidelines for illegal re-entry, some of which would reduce the sentence for criminals below that of current guideline. What was Justice Department's position on the proposed amendment?

Sanctuary Cities

1. What has the Department done to address the "sanctuary policies" some cities have adopted?

Prosecution of Alien Smugglers

1. I understand that in August 2006 you sent 20 Assistant U.S. Attorneys to border districts to prosecute immigration-related offenses. Have you seen any results from this? Did the President's FY 2008 budget provide funds for more Assistant U.S. Attorneys that could be added to those districts?

Inherent Ability of State and Local Law Enforcement Agencies to Enforce the Immigration Laws

1. We understand that there is a 2002 opinion from the Office of Legal Counsel affirming the inherent ability of state and local law enforcement officials to arrest aliens for immigration violations. Why hasn't the Department published the opinion?

DRUGS

Internet Pharmacies

1. Internet pharmacies are the primary source of supply for controlled substance and prescription drug abuse. Adults and teens are able to gain easy access to drugs from Internet pharmacies given the ease with which prescriptions can be obtained on the Internet. Is the Justice Department planning to propose legislation to address this problem?

Methamphetamine

1. Is the Department seeing any progress in the fight against meth?
2. As states have passed legislation to address the production of meth we're seeing a decrease in its domestic production. However, there is evidence that international drug traffickers have stepped into this void and that meth is now coming into the country through traditional drug trafficking routes. What is the Department doing on the international front to address this problem? Who are the international partners that are supporting your efforts? What exactly are they doing to support your efforts?

    a. Isn't most of it now coming from Mexico?
    b. What are you doing about that?
    c. Is the Mexico's government cooperating?

INTELLECTUAL PROPERTY ENFORCEMENT

1. Would you comment on what the Department is doing to combat intellectual property theft, especially that affecting copyrighted works? I am particularly interested in the activities of the Computer Crime and Intellectual Property Section. How are CCIPS resources being used?

2. CCIPS has conducted some of the largest, most successful multi-national and multi-district IP prosecutions in recent years. But there is a perception the Department's increase in attorneys available to prosecute IP crimes has not been matched by a proportional increase in FBI special agent resources. Do you share this concern? Can you respond to that view and explain, what, if anything the Department believes is necessary to "re-balance" the investigational and prosecutorial resources?

3. How many Computer Hacking and Intellectual Property (CHIP) units currently exist? How many have been created by the Department since June 2006 when DOJ reported having 25 such units?

4. How many CHIP units are fully staffed and operational? Does the Department have plans to create new CHIP units over the next year? If "yes," how many?

5. How many DOJ attorneys are dedicated full time to the prosecution of intellectual property offenses?

6. How many FBI special agents are dedicated full time to the investigation and development of IP prosecutions? How many of these agents are assigned to CHIP units?

7. Do the majority of FBI special agents who are involved in IP investigations work exclusively on such cases or is it more common for an agent to be involved in handling cases that are unrelated to IP? What percentage of total FBI "burned man hours" is devoted to investigating and developing IP prosecutions?

8. How many successful IP prosecutions have resulted from the CHIP units in the past year? Past three years?

9. Where does the prosecution of IP crimes rank on the Department's priority list? Where does the investigation of such crimes rank on the FBI's priority list? How have these priorities changed over the past decade? Past three years?

10. Please detail the forensic resources available to the CHIP units to assist in prosecuting IP cases?

11. In March 2003, the Department testified before the Courts Subcommittee about piracy and noted the growing and troubling influence of organized crime on the

international piracy landscape – particularly in Asia and parts of the former Soviet Union. Four years have passed since that statement.

a. What specific programmatic steps has the Department taken since March 2003 to respond to the influence of organized crime and IP crime?

b. Please identify which specific budget requests the Department has made since 2003 as part of its effort to respond to the growing influence of organized crime?

c. Please identify 3 specific steps the Department will take this year to combat the growing influence of organized crime in IP crime.

ANTITRUST

1. The Antitrust Modernization Commission recommends that the Antitrust Division of DOJ "systematically collect and record information regarding the costs and burdens imposed on merging parties by the Hart-Scott-Rodino Act process."[1] Do you agree that the Antitrust Division should not unnecessarily burden parties in the course of pre-merger review? Would you agree to work with Congress to develop metrics to help us understand the extent of this burden?

2. What is the Department doing to facilitate a harmonization of antitrust principles abroad? Specifically, what assistance is the Department providing China in the development of its competition law?

3. How does the Department fund its international antitrust technical assistance efforts? Does the Department support the direct of funding of such efforts as the Antitrust Modernization Commission recommended?

4. What is the Department doing to reduce the time it takes to decide whether DOJ or the FTC will review a merger under the Hart-Scott-Rodino pre-merger review process? Would the Department be amenable to a statutory deadline to clear mergers within a specified period of time as the Antitrust Modernization Commission recommended?

[1] AMC Report at 167 (Recommendation ¶ 30).

MISCELANEOUS CRIMINAL JUSTICE ISSUES

Crack-Powder

1. The Sentencing Commission recently announced late on a Friday evening that it was reducing guideline penalties for crack cocaine. We were not happy about the way in which this decision was reached, and are concerned about the specific impact that this decision may have. What is the Justice Department's view?

Hate Crimes

1. The House passed H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act on Thursday, May 03, 2007. Please outline the Administration's concerns about this bill.

ID Theft

1. Please describe the President's Identity Theft Task Force strategic plan to combat identity theft?

McNulty Memorandum (Waiver of Attorney-Client Privilege in Corporate Fraud Prosecutions)

1. On December 12, 2006, U.S. Deputy Attorney General Paul J. McNulty announced revised corporate charging guidelines for federal prosecutors throughout the country. Some are concerned that the new policy does not effectively address the problem of Justice Department prosecutors seeking corporate waivers of the attorney-client privilege. Please explain what specific provisions of the new guidelines you believe act as a check against the abuse of this authority and why you believe these provisions are effective.

2. Has the rate of such requests gone up or down since the memorandum was announced?

3. Is there anything you can point to as evidence that the new guidelines have had their desired affect, and have thus been effective in curbing the abusive use of the authority to grant such waivers?

STATE AND LOCAL LAW ENFORCEMENT FUNDING

COPS Program

1. Do you believe there is any basis for the claim made by supporters of H.R. 1700, the "COPS Improvements Act of 2007" that reduction in COPS funding has led to rise in violent crime?

CHILD PROTECTION

1. What has the Department been doing to protect children form sexual predators and other dangers?

2. Please state in detail any results the Department has begun to observe as a result of the implementation of the Adam Walsh Child Protection and Safety Act?

4. Has the Department begun to see any impact from the Project Safe Childhood initiative?

SCHOOL SHOOTINGS

1. What is the Department doing to address the recent school shootings/violence?

CIVIL RIGHTS

1. Please explain for us the impact you believe the Department's efforts are making in the fight against trafficking in persons?

2. Please explain in detail the role and activities of election monitors and observers in the Department's efforts to ensure the integrity of our electoral system. Please include a discussion of any prohibited activities (prohibitions put into affect to ensure that monitors and observers do not abuse their authority or otherwise inappropriately interfere with persons voting and/or persons administering elections or managing polling locations).

3. What other steps is the Department taking to ensure that voter fraud is prosecuted and that access to the polls for those who are legally eligible to vote is ensured?

RESPONSES TO POST-HEARING QUESTIONS FROM THE HONORABLE ALBERTO GONZALES, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE [1]

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

November 9, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Please find attached Part One of the Department's responses to questions for the record following the appearance of Attorney General Alberto Gonzales at the Committee's oversight hearing on May 10, 2007. We will supplement this letter when the Department's responses to additional questions become available. A number of the Committee's questions appear to call for responses directly from former Attorney General Gonzales. Those questions are pending with Judge Gonzales and we will forward his responses to you as soon as they become available.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this letter.
We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Lamar Smith
Ranking Minority Member

[1] The responses to post-hearing questions from the Honorable Alberto Gonzales include a series of attachments. Due to their large volume, the attachments are not printed as a part of this hearing record, but copies have been retained in the official Committee hearing record.

Questions for the Record Posed to
Former Attorney General Alberto Gonzales
House Committee on the Judiciary
DOJ Oversight Hearing on May 10, 2007
(Part 1)

QUESTIONS FROM CHAIRMAN CONYERS

Conyers 15 **Please describe the nature and substance of any guidance or opinion, whether made verbally, in writing, or otherwise, issued by the Department or any of its employees at any time, to the effect that immigration judge hiring decisions were not subject to ordinary civil service rules or that the Department could take political affiliation, party loyalty, party donations or other partisan political considerations into account when making hiring decisions for immigration judge positions.**

ANSWER: The Department has not located any record of legal advice that Immigration Judges are not subject to civil service restrictions on hiring based on political affiliation. To the contrary, the Department's Immigration Judges occupy positions that have not been exempted from the civil service requirements of 5 U.S.C. § 2302. The same also applies to members of the Board of Immigration Appeals, with the exception of the Vice Chair who occupies a general SES position that may be filled by a career or non-career appointee. The civil service laws would permit political affiliation to be taken into account if the positions were exempted or if they were reclassified, but the Department is not aware of any plans to do so.

Conyers 16 **Did the Department, at any time, place a freeze on the hiring of immigration judges? If so, for what reason or reasons did the Department do so, and for what period was the freeze in effect? Please describe any and all policy changes the Department made with respect to the hiring of immigration judges during and following the freeze on hiring.**

ANSWER: In late 2006 and early 2007, the Department began to consider revising and formalizing the process used to hire Immigration Judges, after questions were raised about the existing method for filling those positions. No Immigration Judges were hired after September 2006.

In April 2007, the Attorney General approved a revised process, which was developed by the leadership offices in consultation with the Executive Office of Immigration Review and other relevant components. The Department has formalized the hiring process to make it more routine and consistent and has placed the initial vetting, evaluation, and interviewing function for all candidates in the EOIR and the Office of the Chief Immigration Judge.

The new process is designed as follows: A vacancy announcement is posted on-line. Interested applicants apply through EOIR. The OCIJ and EOIR evalnate applicants, conduct interviews, and make recommendations to a panel established by the Deputy Attorney General and made up of career and non-career officials. That panel may decide to interview applicants further. The panel recommends a candidate to the Deputy Attorney General. If the Deputy Attorney General approves of the recommendation, he will then recommend the candidate to the Attorney General who decides whether to appoint that individual. At all points in the hiring process, the Civil Service Reform Act and other law and regulations govern the evaluation and consideration of candidates.

With the new process now in place, the Department has been working hard to fill existing Immigration Judge vacancies, and we hope to make appointments as soon as possible.

Conyers 17 **How many immigration judges has the Department hired during your tenure? Please list the name and date of each such hire and how many lacked experience practicing immigration law at the time of hire?**

ANSWER: Since Attorney General Gonzales's appointment on February 3, 2005, 33 individuals have been hired as immigration judges. Below is a list of immigration judges hired during Attorney General Gonzales's tenure including the date they entered on duty and whether they applied pursuant to a vacancy announcement. The Department values temperament, analytical ability, and all relevant experience in the selection of immigration judges, and believes that outstanding immigration judges can come from diverse legal backgrounds. The Department considers all applicants based on the totality of their professional records and backgrounds. Historically, immigration judges have come from a variety of backgrounds which do not necessarily include the practice of immigration law. In addition, while immigration law experience is certainly useful for a new adjudicator, other qualities, such as judicial temperament and legal reasoning ability or litigation experience and experience conducting administrative hearings, may serve a more important role in determining an immigration judge's long-term success.

Applicant's Name	Vacancy Announcement	Enter on Duty
Arthur, Andrew	No	11/2/2006
Balasquide, Javier	Yes	7/23/2006
Bass, Lori	No	5/28/2006
Bower, Glen	Yes	10/2/2005
Brisack, Chris	No	5/31/2005
Daw, Alison	No	5/14/2006
Evans, D. Williams, Jr.	No	10/15/2006
Feder, Robin	No	11/12/2006
Guzzo, Fred	No	10/15/2006
Harheck, Dorothy	No	9/17/2006
Harris, Roger	No	1/7/2007

Applicant's Name	Vacancy Announcement	Enter on Duty
Holliday, Carey	No	5/28/2006
Katsivalis, George	Yes	2/6/2005
Kessler, Elizabeth	No	1/8/2006
Leeds, Frederic	No	3/19/2006
Malphrus, Garry	No	3/20/2005
Metcalf, Mark	No	2/5/2006
Mulligan, Thomas	No	10/2/2005
Nettles, Marsha	Yes	2/6/2005
Nixon, William	No	5/15/2005
Nugent, James	No	2/20/2005
Pelletier, Dan	No	9/17/2006
Roepke, Thomas	No	2/6/2005
Rose, Howard	No	9/3/2006
Sagerman, Roger	Yes	9/17/2006
Smith, Gary	Yes	2/6/2005
Snow, Thomas	No	10/30/2005
Tabaddor, A. Ashley	No	11/27/2005
Taylor, Bruce	No	4/2/2006
Travieso, Frank	No	5/28/2006
Tsankov, Mimi	No	11/12/2006
White, Ted	No	5/28/2006
Wilson, Earle	No	10/2/2005

Conyers 19 **During your tenure, did the Department ever hire an immigration judge for a position that the Department did not post or advertise? If so, please describe each such instance, giving the name of the individual hired, the approximate date hired, and the reasons the position was not posted or advertised.**

ANSWER: During former Attorney General Gonzales's tenure, immigration judges were hired by direct appointment pursuant to 8 USC 1101(b) and through the posting of vacancy announcements. As attorneys, immigration judges, are appointed under Schedule A in the excepted service. See 5 C.F.R. § 213.3102(d). Section 6.3(a) of Title 5 of the Code of Federal Regulations allows the head of an agency to fill excepted service positions by the appointment of persons without civil service eligibility or competitive status. Vacancy announcements are not required for excepted service positions. In response to question 17 is a list of immigration judges appointed during A.G. Gonzales's tenure, their entry on duty dates, and whether the individual applied pursuant to a vacancy announcement.

Conyers 25 **Please describe fully the procedure for hiring an Assistant U.S. Attorney that should be followed in a U.S. Attorney's Office that is headed by an interim U.S. Attorney.**

ANSWER: It is a longstanding policy of the Department that interim and Acting United States Attorneys' authority to hire Assistant United States Attorneys and make other discretionary staff personnel changes is limited. This policy exists because hiring decisions are usually made by the Presidentially-appointed, Senate-confirmed United States Attorney. It is a longstanding practice to allow interim or Acting United States Attorneys to request that the Executive Office for United States Attorneys (EOUSA) grant a waiver of this limitation due to turnover and workload demands during the time in which the nomination and confirmation process are conducted. EOUSA reviews the requests for waivers to ensure that funding is sufficient to support the hires and also to ensure that upon confirmation, at a minimum, the incoming United States Attorney will have the ability to hire a First Assistant United States Attorney and a Secretary. Career ladder promotions and all other routine personnel actions for support employees (e.g., within-grade increases) are excepted because they do not involve filling a different position. EOUSA reviews these requests on a case-by-case basis and approves those requests where funding and employee turnover are sufficient to afford an incoming Presidentially-appointed and Senate-confirmed United States Attorney the opportunity to make additional hires, or where it is critical for an interim or Acting United States Attorney to fill vacancies to avoid a hardship.

Conyers 27 **Was Ms. Goodling involved in the approval process for any career Honors Program personnel? If so, under what authority, or under whose authorization, and with whose knowledge, was she involved and explain her involvement.**

ANSWER: The White House liaison was not part of the approval process for career Honors Program personnel and it is my understanding that she did not have any involvement. Please note that the Department has revised the process for Honors Program hiring and the White House liaison does not serve any role in the revised process.

Conyers 30 **For each position, please give the name of every Justice Department or White House official to whom Ms. Goodling reported.**

ANSWER: In both of her positions, Ms. Goodling reported to the Attorney General's Chief of Staff and through the Chief of Staff to the Attorney General. It is our understanding that although she did not report directly to anyone at the White House, each White House Liaison, including Ms. Goodling, has a designated point of contact within the Presidential Personnel Office (PPO).

Conyers 31 **Please provide the name of every Department or White House official involved in assigning or delegating work to Ms. Goodling.**

ANSWER: The Attorney General's Chief of Staff was generally responsible for assigning or delegating work to Ms. Goodling. Although the PPO would not assign work to Ms. Goodling, it may have provided her with resumes and asked her to interview certain candidates for political positions within the Department of Justice.

Conyers 35 **Please provide any documents that relate to Ms. Goodling's authority to participate in the hiring of career Assistant U.S. Attorneys in her positions as Senior Counsel and White House Liaison.**

ANSWER: We are not aware of such documents. As described above, when an interim or Acting United States Attorney requests a waiver of the Department's longstanding policy regarding their hiring ability, the Executive Office for United States Attorneys reviews the waiver request to ensure that funding is sufficient to support the hires and also to ensure that upon confirmation, at a minimum, the incoming United States Attorney will have the ability to hire a First Assistant United States Attorney and a Secretary. Each waiver request is reviewed on a case-by-case basis and approved where funding and employee turnover are sufficient to afford an incoming Presidentially-appointed and Senate-confirmed United States Attorney the opportunity to make additional hires, or where it is critical for an interim or Acting United States Attorney to fill vacancies to avoid a hardship.

Conyers 44 **A March McClatchy article reported that Justice Department officials denied that Mr. Elston ever made the telephone call to Bud Cummins in which he told Cnmmins that the dismissed U.S. Attorneys should remain quiet about the controversy. The same article noted that Department spokesperson Brian Roehrkasse criticized McClatchy for running the story, stating "It is unfortunate that the press wonld choose to run an allegation from an anonymous source from a conversation that never took place." Taylor, "U.S. Attorney Worried 'Gloves Would Come Off' Over Criticism of Ouster," McClatchy, March 5, 2007. Please name all of the Justice Department officials to whom the article referred.**

ANSWER: We do not know to whom the McClatchy article referred.

Conyers 45 **Please name every Department of Justice official or employee who told Mr. Roehrkasse that no such conversation had occurred.**

Response: Mike Elston spoke with Brian Roehrkasse and the reporter about the conversation, which was inaccurately characterized in press reports.

Conyers 46 **Did Mr. Elston mislead Mr. Roehrkasse? If so, please describe what, if any, action has been taken against him in response.**

Response: We do not believe that Mr. Elston mislead Mr. Roehrkasse.

Conyers 47 **Did any other Department official mislead Mr. Roehrkasse as to whether this conversation took place? If so, please name each such official. For each such official, please state whether any disciplinary action has been taken against the official for doing so.**

Response: We do not believe that Mr. Elston mislead Mr. Roehrkasse or any other Department official about this conversation.

Conyers 48 **Please describe the circumstances that led to your issuing the March 1, 2006, Order No. 2808-2006, titled "Delegation of Certain Personnel Authorities to The Chief of Staff To the Attorney General And the White House Liaison of the Department of Justice." In particular, please address: Who had the initial idea to reconcentrate personnel management authority in the Office of the Attorney General and then to delegate that authority to the Chief of Staff and the White House Liaison, and who else was involved in the development and implementation of the plan?**

ANSWER: In 2005, the Justice Management Division (JMD) and the Office of Attorney Recruitment and Management (OARM) proposed changes to the Department's regulations regarding the authority of the Deputy Attorney General (DAG) and Associate Attorney General (ASG). These changes were necessary to: (1) expand and clarify the personnel- and recruitment-related responsibilities vested in the DAG; (2) expand and clarify which of these responsibilities the DAG may redelegate to officials within the Department; (3) delete outdated references; (4) clarify the list of personnel-related responsibilities vested in the ASG; and (5) update the title of the official to whom the ASG may redelegate that responsibility. As part of the internal review of that proposal, it was approved by Robert D. McCallum, Jr., who was then serving as both the ASG and the Acting DAG, with the concurrences of OARM, the Office of Legal Policy and the Office of Legal Counsel (OLC). On review by the Attorney General's staff, Monica Goodling asked JMD to revise the proposal to reserve plenary personnel authority to the Attorney General for employees of the Offices of the Attorney General, DAG, and ASG, as well as for non-career, political appointees in the Department. JMD revised the proposal, and submitted it for the Attorney General's approval with the concurrence of OLC. The Attorney General approved the proposal on January 31, 2006, and the regulatory changes were published in the Federal Register. 71 Fed. Reg. 6306 (Feb. 7, 2006). While those regulations were awaiting the Attorney General's approval, Monica Goodling requested the Assistant Attorney General for Administration (AAG/A) to prepare a delegation to the Attorney General's Chief of Staff and the White House Liaison to exercise the personnel authority reserved to the Attorney General by the forthcoming regulation change. JMD prepared the delegation that the AAG/A submitted, in consultation with OLC. The Attorney General signed the delegation (Attorney General Order 2808-2006) on March 1, 2006.

Conyers 54 **Did any concerns or problems exist with the prior system of personnel management and how does this Order (and the actions taken to implement it) address them?**

ANSWER: Prior to issuance of the regulatory changes published at 71 Fed. Reg. 6306 (Feb. 7, 2006), and of Attorney General Order 2808-2006, plenary personnel authority for employees of the Offices of the Attorney General, DAG, and ASG, as well as for non-career, political appointees in the Department, had not been specifically reserved to the Attorney General. Order 2808-2006 addressed the delegation within the Attorney General's immediate staff for exercising this new responsibility.

Conyers 56 **Were Ms. Goodling or Mr. Sampson involved in the approval process for any career Senior Executive Service positions such as Section Chiefs in the Criminal Division? If so, how did each get involved, why, and what did each do?**

ANSWER: Neither Ms. Goodling or Mr. Sampson had any involvement in the approval process for career Senior Executive Service positions of Section Chiefs in the Criminal Division.

Conyers 58 **An April 30, 2007, National Journal article on the delegation order reports that an original version of the memo would have delegated even final decision authority regarding constitutional "inferior officers" to your Chief of Staff and the White House Liaison. See Waas, "Secret Order By Gonzales Delegated Extraordinary Powers to Aides," National Journal, April 30, 2007. Is it correct that there was an original draft order that would have delegated even the broader authority to make final decisions regarding constitutional "inferior officers" to the Chief of Staff and the White House counsel?**

ANSWER: The Department has made available for the Committee's review earlier drafts of the March 1, 2006 order delegating authority over certain personnel matters. The final order issued by the Attorney General contained an express exclusion of "inferior officers" from the delegation.

Conyers 59 **Do you agree with Professor Laurie Levenson's February 6, 2007, testimony to the Senate Judiciary Committee that United States Attorneys are constitutional "inferior officers"? See also United States v. Hilario, No. 00-1406 (1st Cir. July 17, 2000) (holding that United States Attorneys are constitutional "inferior officers").**

ANSWER: In *United States v. Hilario*, 218 F.3d 19 (1st Cir. 2000), the Court of Appeals held that "United States Attorneys—and a fortiori interim United States Attorneys—are inferior officers." Id. at 26. The Department's long-standing position accords with the view expressed in Hilario. See, e.g., United States Attorneys—Suggested Appointment Power of the Attorney General—Constitutional Law (Article II, § 2, cl. 2), 2 Op. O.L.C. 58, 59 (1978) ("U.S. Attorneys can be considered to be inferior officers").

Conyers 60 **Please list (by position) all constitutional "inferior officers" employed by the Department of Justice.**

ANSWER: The determination of whether an individual is an "inferior officer" of the United States is not an easy one. See, e.g., *Landry v. FDIC*, 204 F.3d 1125, 1132 (D.C. Cir. 2000) ("The line between 'mere' employees and inferior officers is anything but bright."). The Supreme Court has suggested that U.S. Marshals are inferior officers, see Ex Parte Siebold, 100 U.S. 371, 397 (1879), and as noted in response to the previous question, the Department has applied the same analysis to U.S. Attorneys. With respect to other officers, the Office of Legal Counsel recently issued a lengthy opinion discussing the factors to be considered in determining whether an official is an "officer" or an "employee" within the meaning of the Appointments Clause. See Memorandum Opinion for the General Counsels of the Executive Branch, from Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, Re: Officers of the United States Within the Meaning of the Appointments Clause (Apr. 16, 2007), available at www.usdoj.gov/olc/opinionspage.htm. We would direct you to that opinion for further guidance.

Conyers 61 **Did Office Of The Attorney General Internal Order No. 2808-2006 designate to the Chief of Staff to the Attorney General and to the White House Liaison the power to appoint interim U.S. attorneys? State the name of each and every person who recommended to the Chief of Staff to the Attorney General and/or to the White House Liason candidates for appointment to the position of interim U.S. Attorney during the period between March 1, 2006 through May 1, 2007, and for said period provide the names of each and every candidate for appointment and the district to which each was recommended for appointment.**

ANSWER: No. There is no set procedure for submitting or accepting recommendations for individuals to temporarily lead a U.S. Attorney's Office as the interim or Acting United States Attorney. A list of interim United States Attorneys who were interviewed and appointed between March 1, 2006 and May 1, 2007 is attached.

Please see Attachment 1 for additional information.

Conyers 62 **As discussed above, appointments or removals of constitutional "inferior officers" must be presented to you for approval. May the other personnel actions covered by this order be taken entirely by the Chief of Staff and White House Liaison without any consultation or approval by you?**

ANSWER: The 2808-2006 Order did require the Attorney General's approval, although we acknowledge that the order may have been ambiguous in this regard.

Conyers 63 **What does the first sentence of the order mean when it says that you delegate the authority to take final action on listed personnel matters "with the approval of the Attorney General"? Under this order, did you retain any authority to approve or disapprove of personnel management actions over the listed employees by the Chief of Staff and White House Liaison? If so, did you actively exercise this authority in reviewing any of**

those actions? If so, please explain how you did so.

ANSWER: See Conyers 62

Conyers 68 **The order states that it is not to be published in the Federal Register. Given that this order delegates authority that had only been reconcentrated in your office one month prior through published regulations, why was it decided not to publish this further action regarding that same authority?**

ANSWER: Order No. 2808-2006 delegated responsibility for exercising personnel authority reserved to the Attorney General to his immediate staff, which is an internal administrative matter. Because the responsibility for those actions ultimately rested with the Attorney General by regulation, and so that any necessary changes to that delegation could be made quickly in the future, the Department did not publish this order.

Conyers 69 **Since this order was issued, your Chief of Staff and White House Liaison have both resigned. Does the order remain in effect? Do your current Chief of Staff and White House Liaison now hold the delegated authority?**

ANSWER: No. The order has been rescinded and revised. Attached please find a copy of the new order.

Please see Attachment 2 for additional information.

Conyers 79 **In a recent interview with the Seattle Times, fired U.S. Attorney for the Western District of Washington John McKay described an address you gave at the 2005 U.S. Attorneys Conference in Scottsdale, Arizona. McKay is quoted as saying "[The Attorney General's] first speech to us was a 'you work for the White House' speech." McKay also reported you saying "I work for the White House, you work for the White House." Bowermaster, "Charges May Result From Firings, Say Two Former U.S. Attorneys," Seattle Times, May 9, 2007. McKay told the Seattle Times that he felt this speech was not consistent with "the traditional independence of U.S. Attorneys" and that his colleagues at the meeting were "stunned." Did you in fact address a group of assembled U.S. Attorneys in early 2005 in Scottsdale Arizona? Please provide us with background materials regarding this meeting including the date and time of all meeting sessions you attended.**

Response: The copy of the speech as prepared is attached.

Please see Attachment 3 for additional information.

Conyers 80 **Does any recording of the audio or video of your address exist and, if so, please provide it to the Committee. Please describe the subject and contents of your Scottsdale address and please provide a copy of your prepared remarks and a transcript, if any exists.**

Response: The event was not recorded electronically. See Conyers 79 for the text of the speech.

Conyers 93 **The Wall Street Journal also reported that Charlton's office sought clearance from Main Justice to use a wiretap and other investigative tools and that it took a year to get permission. Do you know if that report is true? If so, what was the reason for the delay?**

ANSWER: As you know, the Department has a long-standing policy against disclosing non-public information about pending matters, which is based in part on our strong interest in avoiding any action that might be perceived as subjecting our law enforcement decisions to political influence of any kind, and in protecting the privacy and due process interests of individuals who may be under investigation. Accordingly, we cannot comment on this or any other pending investigation.

Conyers 94 **What office(s) and individual(s) within Main Justice ordinarily would be responsible for providing that clearance? Were those the office(s) and individual(s) in fact involved in clearing this particular request, and was anyone else wihin Main Justice involved?**

ANSWER: Ordinarily, the Office of Enforcement Operations of the Criminal Division reviews all wiretap and other federal electronic surveillance requests. However, we cannot comment on the particulars of this pending investigation for the reasons stated above.

Conyers 95 **Is one year that an appropriate period of time to process such a request?**

ANSWER: Again, we cannot comment on the particulars of a pending investigation for the reasons stated above.

Conyers 97 **We understand that, from September 1994 until April 2002, contacts regarding pending Department investigations or criminal or civil matters were governed by a policy set forth in a letter from Janet Reno to Lloyd Cutler stating that initial communications on such matters should involve only the President, the Vice President, the White House Counsel, or the Deputy White House Counsel, on the one hand, and the Attorney General, the Deputy Attorney General, or the Associate Attorney General on the other. In other words, contacts were controlled so that four persons in the White House were authorized to speak to three persons in the Department. We further understand that,**

in a memorandum dated April 15, 2002, Attorney General John Ashcroft changed that policy, stating that, notwithstanding any such limitations, "the Attorney General may communicate directly with the President, Vice President, Counsel to the President, Assistant to the President for National Security Affairs, or Assistant to the President for Homeland Security regarding any matters within the jurisdiction of the Department of Justice." In addition to this expansion, the Ashcroft memorandum further states that "Staff members of the Office of the Attorney General, if so designated by the Attorney General, may communicate directly with officials and staff of the Office of the President, Office of the Vice President, Office of the Counsel to the President, the National Security Council, and the Office of Homeland Security."

ANSWER: No question posed.

Conyers 98 **Does the 2002 Ashcroft Memorandum still govern contacts between White House officials and Justice Department officials regarding pending Department matters and investigations?**

ANSWER: No it does not. In May 2006, the Department revised the Ashcroft memorandum. In addition, at the time of Attorney General Gonzales's resignation, the Department was in the process of reviewing the May 2006 memorandum to determine what further revisions were appropriate.

Conyers 99 **If the policy has been changed, when did it change, what were the reasons for changing it, and what is the new policy?**

ANSWER: See answer to Conyers 98.

Conyers 101 **How many individuals are included in the group "officials and staff of the Office of the President, Office of the Vice President, Office of the Counsel to the President, the National Security Council, and the Office of Homeland Security"?**

ANSWER: We do not know the exact number of employees within those offices, however, it would include a number of individuals.

Conyers 102 **Do you have any plans to review or revise the current contacts policy?**

ANSWER: See answer to Conyers 98.

Conyers 114 **Please identify any documents or records of the Department that reflect or relate to the concerns expressed by Senator Domenici to you about David Iglesias and provide a copy of each such document to the Committee.**

ANSWER: To the extent any such documents have been identified, we have produced them to the Committee in response to your oversight requests.

Conyers 131 **How and why was Brad Schlozman selected to be the interim replacement for Todd Graves? Who first identified Mr. Schlozman as a candidate to be an interim U.S. Attorney, and who participated in the decisionmaking process that led to his appointment? Were any candidates considered for appointment to this position other than Mr. Schlozman?**

ANSWER: Mr. Schlozman, one of the candidates considered for the position of temporary United States Attorney in the Western District of Missouri, and who was then serving as the Principal Deputy Assistant Attorney General in the Civil Rights Division, was interviewed for the temporary United States Attorney position on March 17, 2006. The interview was conducted by members of the Senior Staff who usually interview such candidates, including the Director of the Executive Office for United States Attorneys and representatives from the Office of the Attorney General and the Office of the Deputy Attorney General. The order appointing Mr. Schlozman to be interim United States Attorney was signed on March 23, 2006, the day before his predecessor, Mr. Graves, resigned. To the best of our knowledge, this was the only interim United States Attorney position for which Mr. Schlozman was a candidate.

Conyers 132 **When was Mr. Schlozman first identified as a candidate to replace Mr. Graves? Had he been selected as the interim replacement for Mr. Graves before Mr. Graves was asked to resign? Was he ever considered for appointment to any other interim U.S. Attorney position before being appointed to the Western District of Missouri?**

ANSWER: See the answer to 131, above.

QUESTIONS FROM CONGRESSWOMAN LOFGREN

Lofgren 136 **From Rep. Lofgren: Well, I don't want to be rude, Mr. Gonzales, but the bells are ringing and I just have one more second to read very briefly the quotes in the Boston Globe that says–and I quote–"Schlozman was reshaping the Civil Rights Division said Joe Rich, who was chief of the Voting Rights Section until 2005. In an interview he said, quote, 'Schlozman didn't know anything about voting law. All he knew was he wanted to make sure that Republicans were going to win.'" And that was from the career guy who got pushed out from the Department. I would like your comments on that, in writing, later.**

ANSWER: The Department is committed to the vigorous and even-handed enforcement of the Voting Rights Act on behalf of all Americans and has brought lawsuits on behalf of African-American voters, Hispanic-American voters, Asian-American voters, Native-American voters, and white voters. This Administration also has brought the first lawsuits in history to protect the voting rights of citizens of Vietnamese, Filipino, Korean, and Haitian heritage. These lawsuits have been filed irrespective of the party affiliation of the officeholders in the relevant jurisdictions. In addition, the Department is vigorously defending the constitutionality of the Voting Rights Act in ongoing litigation. See *Northwest Austin Mun. Util. Dist. v. Gonzales,* No. 06-1384 (D.D.C.).

Voting enforcement actions initiated since the beginning of this Administration include 37 lawsuits brought under the Voting Rights Act on behalf of minority voters. Nineteen additional lawsuits were brought during this Administration on behalf of voters, some of which focused on protections of minorities, under provisions of the Uniformed and Overseas Citizens' Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), the Civil Rights Act of 1960, and the Help America Vote Act (HAVA).

In addition to this litigation, the Department has set record numbers related to monitoring of elections on behalf of minority voters. During CY 2006, the Division deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. On November 7, 2006, over 800 federal personnel monitored the polls in 69 political subdivisions in 22 states. In CY 2006, we sent over 1,500 federal personnel to monitor elections, double the number sent in CY 2000, a presidential election year. In addition, in 2004, a record was set for the number of monitors and observers sent during a presidential election year.

During this Administration, records have also been set for enforcement of certain statutory provisions related to enforcement of the rights of minority voters. Since 2002, the Civil Rights Division has filed approximately three-fourths of all cases filed in the history of the Voting Rights Act to protect the right of voters needing assistance to vote and two thirds of all minority language cases in the entire previous history of the Voting Rights Act, including the first 2 cases ever brought under Section 4(e) of the Act.

As a result of these and other lawsuits, since 2002, the Department has brought a majority of all cases it ever has filed under the substantive provisions of the Voting Rights Act to protect voters of Hispanic and Asian descent, and the first cases ever filed to protect the voting rights of

voters of Filipino, Haitian, Korean, and Vietnamese descent. Indeed, over 86 percent of all cases filed by the Voting Section to protect Latino voters under the language minority provisions of the Voting Rights Act have been filed in this Administration. Moreover, a majority of all cases to protect Latino voters ever filed by the Department under the substantive provisions of the Voting Rights Act have been filed in this Administration, including 75 percent of all cases to protect Latino voters under the voter assistance provisions of Section 208.

Additionally, a number of cases have been brought by this Administration on behalf of African-American voters. These include the following key cases: (1) a successful lawsuit filed in 2006 against the City of Euclid, Ohio, alleging that the mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens in violation of Section 2 of the Voting Rights Act; (2) a vote dilution case filed in 2001 against Crockett County, Tennessee, that was successfully resolved by entry of a consent decree resulting in the creation of two majority African-American districts; (3) a Section 208 case filed in 2002 against Miami-Dade County, Florida, on behalf of African-American voters of Haitian descent that was successfully resolved by entry of a consent decree; (4) a Section 5 declaratory action filed in 2006 against the North Harris/Montgomery Community College District in Texas that was successfully resolved by entry of a consent decree; (5) a Section 2 voter discrimination and Section 11(b) voter intimidation case filed in 2005 on behalf of both minority and non-minority voters in Noxubee, Mississippi; and (6) beginning in 2001, the Department successfully litigated, and successfully defended through appeal to the U.S. Supreme Court, allegations that the at-large system for election of council members in Charleston County, South Carolina, diluted the voting strength of African-American citizens.

During the past six and a half years, the Civil Rights Division has hired people from an extremely wide variety of backgrounds and experiences. We will continue to hire the best attorneys available. It is our goal to ensure that every attorney hired to work in the Civil Rights Division has a demonstrated record of excellence, is a talented attorney consistent with that excellent record, and shares a commitment to the work of the Division.

QUESTIONS FROM CONGRESSMAN SMITH

Smith 140 **Given the Department's role as the lead federal law enforcement agency, if the White House has a concern or learns of concerns about whether a U.S. Attorney's office or any other part of the Department is enforcing laws efficiently and effectively or otherwise failing to execute its duties, what is the appropriate manner for it to inform you and your staff about those concerns?**

ANSWER: The White House Counsel or Deputy White House Counsel may contact the Attorney General or the Deputy Attorney General.

Smith 141 **What negative consequences could occur if the White House did not share such concerns with you?**

ANSWER: The Attorney General and Deputy Attorney General are the presidentially-appointed, Senate-confirmed leaders of the Department responsible for the day to day management of the Department. Therefore, it is important they know about any concerns that Department components are not enforcing the laws effectively or are otherwise failing to execute their duties.

Smith 174 **To the extent you have not already done so, please explain the relative importance to the Department of effectively achieving the Department's goals on: Immigration enforcement**

ANSWER: The President has said that securing our borders is "an urgent requirement of our national security." I could not agree more. Throughout my tenure as Attorney General, I have ensured that immigration enforcement has remained one of the Department's top priorities.

The Department plays two primary roles in immigration enforcement. Perhaps the more salient of these is prosecuting aliens and alien smugglers for criminal violations of the Immigration and Nationality Act and for immigration-related document fraud. Immigration prosecutions are now the Department's single largest category of criminal cases— accounting for nearly one third of all federal prosecutions—and we have committed to doing even more. In the latter half of 2006, the Department sent 30 additional prosecutors to the southwest border districts to help them handle a greater number of immigration cases and border-related narcotics cases. With those reinforcements, the overall number of Assistant U.S. Attorneys working in the five southwest border districts has increased by about 29 percent since 2000. The gains in some of these districts are remarkable: The U.S. Attorney's Office for the Southern District of California is anticipating that it will file at least 7% more immigration cases in FY 2007 than it did in FY 2006, for instance, and the U.S. Attorney's Office in Arizona is projected to post a 7.2% increase over the same period.

The Department, through the immigration courts and the Board of Immigration Appeals, also adjudicates administrative removal actions brought by the Department of Homeland Security and then, through the Office of Immigration Litigation, defends the final orders of removal in the federal courts of appeals. In FY 2006, the immigration courts issued more than 273,000 decisions, and the Board of Immigration Appeals took in more than 20,000 appeals. In addition to this massive administrative docket, litigation in the courts of appeals over final removal orders issued by the Board has sharply increased in recent years. In the year ending March 31, 2007, there were 10,042 appeals from the Board of Immigration Appeals to the circuit courts. There were, by comparison, only 1,764 such appeals in the year ending March 31, 2002. An alien typically cannot be removed from the United States until any litigation over his final removal order is resolved, so the successful conduct of this litigation is essential to effective immigration enforcement and an ongoing priority for the Department.

Smith 175 **Gun crime enforcement**

ANSWER: Reducing gun crime remains a priority for the Department of Justice. Through its flagship initiative, Project Safe Neighborhoods, Department prosecutors have more than doubled the number of federal gun crime prosecutions brought in the last six years, when compared to the six years prior to the program's inception. In FY 2006, the Department prosecuted a remarkable 12,479 defendants for federal gun crimes, and the conviction rate for firearms defendants was a record 92%. The percentage of those defendants sentence to prison—nearly 94%—is also a record high. Over 50% of those offenders received prison terms of more than five years and nearly 75% received sentences of more than three years.

Since 2001, PSN has committed over $1.7 billion to federal, state, and local efforts to fight gun crime and gang violence. These funds have been used to hire new Federal, State, and local prosecutors; provide training; hire research and community outreach support; and develop and promote effective prevention and deterrence efforts. The national PSN training and technical assistance partners have trained more than 30,000 individuals across the nation who work to make our communities safer. Local PSN programs have organized training for many thousands more.

The Department fully intends to continue its focus on reducing violent crime, particularly gun crime.

Smith 176 **Sentencing**

ANSWER: With approximately 70,000 sentences being handed down in federal courts every year, the issue of sentencing is of critical priority to the Department of Justice. The Department remains committed to the core principles underlying the Sentencing Reform Act of 1984 and the Federal Sentencing Guidelines that resulted from the Act - fair, tough, uniform, predictable and proportionate sentences. Consistency and fairness in sentencing are important; a defendant's sentence should not depend on which judge happens to preside over the case.

Since *United States v. Booker* (January 12, 2005), where the Supreme Court held that judicial fact-finding pursuant to the Guidelines violated defendant's Sixth Amendment right to a jury trial and remedied the problem by rendering the Guidelines advisory, advisory guidelines have led to increased disparity and fewer sentences within the guidelines range. The rate of departures in cases involving sexual exploitation of minors and career offenders has increased significantly, and factors previously deemed inappropriate for consideration at sentencing – such as a defendant's age or educational background – appear to be having a greater influence on the sentence imposed now than before Booker.

The Department favors legislation that would restore the protections and principles of the Sentencing Reform Act in a manner consistent with the requirements of the Sixth Amendment as set forth in Booker. Under such a system, the sentencing court would be bound by the guidelines minimum, just as it was before the Booker decision. The guidelines maximum would remain advisory, and the court would be bound to consider it, but not bound to adhere to it. Specific legislative language embodying the Department's legislative proposal is part of the Department's omnibus crime legislation, the Violent Crime and Anti-Terrorism Act of 2007, which was transmitted to Congress in June 2007.

Smith 177 **Obscenity enforcement**

ANSWER: Both President Bush and Attorney General Gonzales recognize the importance of enforcing the federal ban on obscenity and are committed to holding those who violate our nation's laws accountable for their actions. From a virtual standstill in 2000, obscenity enforcement efforts have vastly increased under the President's leadership. Since 2001, the Department of Justice has obtained obscenity convictions of 55 persons or entities and currently has 17 pending obscenity indictments. These prosecutions have targeted high-impact obscenity offenders and businesses using Internet web sites to distribute obscenity widely in the public sphere. For example, in May 2007, prosecutors in the Child Exploitation and Obscenity Section (CEOS) of the Department of Justice's Criminal Division, working with the assistance of the United States Attorney's Office for the Middle District of Florida, indicted Paul Little and his production company. Under the name "Max Hardcore," Little is a nationally-known producer of pornography. He now faces five counts of transmitting obscene matter through the Internet, as well as five counts of physically mailing obscene matter. Moreover, in 2005 the Attorney General created the Obscenity Prosecution Task Force (OPTF). Led by Brent Ward, an experienced former United States Attorney, the creation of the OPTF is the strongest indication yet of the Administration's commitment to obscenity enforcement. Almost half the pending obscenity indictments have been brought by the OPTF. In July 2007, for example, OPTF prosecutors, working with the assistance of the United States Attorney's Office for the Central District of California, indicted Ira Isaacs, doing business as Stolen Car Films and LA Media, with four counts of using an interactive computer service to sell and distribute obscene DVDs and two counts of using a common carrier to distribute obscene DVDs, as well as two counts of failing to label sexually explicit DVDs with the name and location of the custodian of records containing age and identification information for performers in sexually explicit films.

Smith 178 **Public corruption enforcement, and ensuring that related enforcement activities are conducted in a non-partisan manor**

ANSWER: Ensuring the integrity of government is one of my top priorities. Our citizens are entitled to honest services from all of their public officials, regardless of their political affiliation. Our citizens are also entitled to know that their public servants are making their official decisions based upon the best interests of the citizens who elect them and pay their salaries, and not based upon the public official's own financial interests. Whether public officials are responsible for protecting our national security, running our schools, or hiring the best contractor, citizens are entitled to know that the government is not for sale. Prosecutors in the United States Attorneys' Offices and the Criminal Division's Public Integrity Section work with the FBI and the Offices of Inspector General to combat public corruption on a daily basis. In order to protect the integrity of our government institutions and processes, I will continue the Department's commitment to aggressively investigate and prosecute public corruption wherever it is found. I consider it one of my paramount responsibilities to ensure that the Department continues to handle such investigations and prosecutions in a consistent, non-partisan, and appropriate manner throughout the nation.

Smith 179 **Vote fraud enforcement**

ANSWER: Voter fraud is a subset of public corruption, and, like public corruption, it erodes public confidence in the integrity of our government officials. As such, its prosecution must be among our highest priorities. In 2002, the Attorney General established a Ballot Access and Voting Integrity Initiative to spearhead the Department's efforts to combat election fraud and civil rights violations involving voting. To further these goals, the Initiative requires annual training of federal prosecutors in the areas of voter fraud and voting rights. This additional training for federal prosecutors has resulted in a Department-wide increase in expertise relating to both the criminal and civil rights laws addressing election fraud and voting abuses. To date, six Ballot Integrity Conferences have been held. The FBI has also created a parallel initiative. In addition, the Initiative requires each United States Attorney to consult before the federal general elections with the state election official responsible for handling election crime matters in the district. This coordination helps ensure that there is no interference with the orderly administration of elections, a function left to the states by the Constitution; demonstrates our commitment to prosecuting election fraud; and assists in the coordination of matters involving joint jurisdiction.

Smith 180 **To the extent you have not already done so, please explain the relative importance to the Department of preventing or effectively responding to: Insubordination**

ANSWER: The Department of Justice strives to maintain the highest standards in the workplace, and all of its employees are expected to act in a professional manner.

Smith 181 **Intra-agency disputes or disputes with other federal, state or local law enforcement agencies**

ANSWER: The Department of Justice works to protect America from terrorist attacks, fairly enforce the law, and seek just punishment for criminal offenders. In all these efforts, the men and women of the Department are expected to work together as appropriate with our partners in other federal agencies and at the state and local level.

Smith 182 **Ineffective management within the U.S. Attorney's offices, such as management that leads to fractiousness, dissension, low morale, etc.**

ANSWER: United States Attorneys serve at the pleasure of the President, and the Department of Justice expects them to aggressively and impartially lead their offices in prosecuting criminal activity and pursuing the goals of the Department, such as protecting our Nation from another terrorist attack, combating violent crime and drug trafficking, and protecting children from Internet predators. Should the need arise, a change may be made in a United States Attorney position because of poor management, policy differences, questionable judgment, or simply to have another qualified individual serve.

Smith 183 **To the extent you have not already done so, please explain the relative importance to the Department of assuring aggressive, hands-on leadership of U.S. Attorneys Offices by the U.S. Attorneys?**

ANSWER: Please see answer to No. 182.

Smith 184 **To the extent you have not already done so, please explain the relative importance to the Department and the nation of assuring that U.S. Attorneys can effectively be made accountable to the people, by being made politically accountable to the President?**

ANSWER: Please see answer to No. 182.

Smith 198 **What steps have you taken to make sure that we have all the access we need to witnesses in the investigation of the eight U.S. Attorneys' resignations?**

ANSWER: The Department has given the Congress extraordinary access to witnesses and documents. In response to your requests, we've made a number of Department Officials available for interviews and testimony.

Smith 199 **What steps have you taken to make sure we have all of the access we need to documents relevant to the resignations?**

ANSWER: The Department has undertaken extraordinary efforts to ensure that the Committee receives Department information necessary to its inquiry into the U.S. Attorney resignations. The Department has produced more than 8,500 pages of documents in response to the Committee's requests, and it has made Department officials available for transcribed interviews to provide further information to the Committee, including the documents related to this matter. In order to identify the documents produced, the Department has conducted both electronic and hard copy searches of documents of likely custodians in the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Executive Office for United States Attorneys, the Office of Legal Policy, the Office of Legislative Affairs, and the Office of Public Affairs. In addition, after meeting with Committee staff, the Department conducted additional searches and reviewed thousands of pages of additional documents using additional search terms and research tools requested by staff. Relevant Department employees also were instructed to preserve responsive documents.

Smith 200 **When the Department has withheld witnesses or information, has it been for reasons concerning Department law enforcement interests or other important Department interests? If so, what were they?**

ANSWER: As noted in response to the previous question, the Department has undertaken extraordinary efforts to ensure that the Committee receives Department information necessary to its inquiry into the U.S. Attorney resignations. These efforts have included the production of more than 8,500 pages of internal deliberative documents, as well as our making a dozen current and former Department employees available for interviews and public hearings. In the relatively few instances in which the Department has been obliged to withhold information, we have done so on account of important Department interests, including the need to protect sensitive law enforcement information, the need to protect the President's constitutional authority to nominate U.S. Attorneys, and the need to protect the Department's ability effectively to respond to congressional oversight requests and media inquiries. We would refer you to the letters accompanying our production of documents for a more complete description of the interests that have led the Department to withhold a limited number of documents from Committee review.

Smith 228 **At the hearing, you were asked questions about individual vote fraud prosecutions, such as a certain case brought in Alaska, as well as the relative importance of such cases, as compared to cases of widespread vote fraud. Please state any additional information you would like to offer in response to this line of questioning.**

ANSWER: Voter fraud, like other forms of public corruption, strikes at the heart of our representative form of government. A single instance of voter fraud can dilute or eliminate the effect of a ballot that is honestly cast; many instances can destroy representative government by those "elected" by fraud. Accordingly, the Department has made the investigation and prosecution of all public corruption offenses, including voter fraud, a law enforcement priority.

In 2002, then-Attorney General John Ashcroft established a Department-wide ballot integrity initiative to spearhead its enforcement responsibilities in two important and overlapping areas: the protection of individual voting rights by vigorous enforcement of the federal voting rights laws, and the protection of society's interest in the integrity of the election process by prosecuting voter fraud and thus deterring its occurrence in future elections. The initiative recognizes that it does little good to protect someone's voting rights if that person's vote is subsequently diluted or eliminated by fraud. Since the creation of the initiative almost five years ago, almost 100 persons have been convicted of voter fraud offenses throughout the country.

During the process of implementing the voting rights-voter fraud initiative, the Department determined that protecting the integrity of the electoral process should include attempts to prosecute isolated instances of voter fraud, in part to protect the integrity of the election process by deterring individual acts of fraud in future elections and also to learn, if possible, the impact of such conduct on the election process.

The cases we have brought are not by any means indicative of the dimensions of these crimes. There are a number of reasons for this. First, unlike traditional crimes such as robbery and burglary, voter fraud generally does not produce an easily ascertainable "victim" who has a motive to complain to authorities. For example, a voter who is paid for voting is unlikely to report this fact. And even when there are ascertainable victims -- such as persons whose votes are stolen either through intimidation or more subtle forms of aggressive "assistance" -- they are often unaware of the fraud. Second, many types of voter fraud, such as vote buying and absentee ballot fraud, target the economically and socially disadvantaged, who are generally reluctant to testify against those who corrupted or stole their votes. Finally, most election fraud is aimed at State or local elections. However, most federal criminal statutes available to address voter fraud require a Federal candidate on the ballot.

Notwithstanding the difficulties that make prosecuting voter fraud difficult, the Department is committed to continuing its efforts to protect the integrity of future elections by utilizing the criminal statutes Congress has provided to prosecute those who attempt to corrupt the election process.

Smith 229 **At the hearing, you were asked questions about issues in the U.S. Attorney's Office for the District of Minnesota., including questions about the current and past U.S. Attorneys in that district. Please state any additional information you would like to offer in response to this line of questioning.**

ANSWER: The Department is continuing its internal review of the management and performance of the U.S. Attorney's Office for the District of Minnesota.

Smith 230 **Please describe the guidelines recently developed by the FBI regarding its NSL authority.**

ANSWER: Following the DOJ Inspector General's report, the FBI consolidated existing guidance on NSLs with new guidance that addressed certain issues identified by the IG. The goal was to consolidate NSL policy so that FBI employees would have a single policy document to consult in order to obtain a working understanding of FBI policy and practice regarding NSLs. The FBI consulted DOJ's National Security Division and its Privacy Officer, Congressional staff, and privacy groups in its drafting of the consolidated guidance.

Among other items, the consolidated guidance bars the use of the so-called exigent letters, requires legal reviews of all NSLs, and mandates the review of information derived from NSLs before uploading the information into FBI databases. The guidance also clarifies the circumstances in which full credit reports may be sought through NSLs, requires signed NSLs to be retained, and mandates the use of model NSLs to ensure appropriate statutory language is used in all NSLs and to minimize other draftsman errors.

Smith 234 **What impact, if any, would adding a new requirement that au Assistant US Attorney approve an NSL before it is issued on (1) compliance with the law; and (2) the FBI's ability to carry out terrorism and counterintelligence investigations?**

ANSWER: National Security Letters are vital building blocks during preliminary stages of national security investigations, and will not be as productive a tool if they cannot be used swiftly and effectively. By statute, NSLs may be used only with a certification made by a senior or supervisory government official. Given the extensive requirements that already exist within the Department for the issuance of NSLs, requiring additional approval of NSLs by Assistant U.S. Attorneys, who would likely be less familiar with relevant factual circumstances, would only serve to substantially slow the issuance of NSLs without a concurrent improvement in compliance with applicable laws, regulations, and policies. Thus, this additional burden would significantly hamper the Department's ability to review and approve NSLs in a timely manner and would diminish the effectiveness of what the Inspector General described as an "indispensable tool" in our counterterrorism efforts.

Smith 235 **With regard to the problems identified with the FBI's database for tracking use of NSLs, who, if anyone, was aware at the Justice Department, of the deficiencies in the database? Who at the FBI was responsible for ensuring the accuracy of the database?**

ANSWER: In recent reports to Congress regarding NSLs, the Department has noted particular challenges with respect to information contained in the NSL tracking database and has been working to addresses these challenges. With respect to the specific issues raised by the Inspector General's reports, prior to the public release of the Inspector General's report on March 9, 2007, the Office of the Inspector General provided drafts of the report for classification and factual review. Upon learning of the findings contained in the draft report, former Attorney General Gonzales promptly ordered a detailed review of the report's findings and recommendations, and directed senior Department officials to address the shortcomings identified by the Inspector General's report, including the deficiencies in tracking the use of NSLs. The FBI has been taking a number of steps to improve the accuracy of the reporting of NSL statistics, and last year, the FBI began developing a new NSL tracking database. The FBI deployed this new system to

one field office for testing in July 2007 and plans to complete full deployment to all field offices by the end of FY 2007. In addition, FBI field offices are conducting hand counts of NSLs to compare against the information contained in the current database. Finally, the FBI has corrected known deficiencies in its current database. The FBI is not, however, reviewing all data in the database to search for historical errors.

Smith 238 **The Administration recently submitted a proposal to reform FISA authorities. Please describe why such changes are needed?**

ANSWER: Since the Foreign Intelligence Surveillance Act ("FISA") was enacted in 1978, there has been a transformation in the means by which we transmit communications. Sheer fortuity in the development and deployment of new telecommunications technologies, rather than a considered judgment of Congress, has resulted in a considerable expansion of the reach of FISA. As a result, FISA came to require approval of the Foreign Intelligence Surveillance Court ("FISC") for a range of intelligence activities that do not substantially implicate the privacy interests of Americans. This unintended consequence has impaired our intelligence capabilities by denying the Intelligence Community the agility that is essential to effective intelligence gathering. The process of obtaiuing FISC approval necessarily slows, and in some cases may prevent, the Government's efforts to conduct timely foreign intelligence surveillance. Director McConnell recently explained that, as a result, the Intelligence Community was "missing a significant amount of foreign intelligence that we should be collecting to protect our country."

The unintended expansion of FISA's scope also has caused the Intelligence Community, the Department of Justice, and the FISC to divert available resources away from applications implicating the privacy interests of U.S. persons in the United States and to applications related to persons overseas. The involvement of the FISC in surveillance directed at persons located overseas thus hampers the FISC's and the Department's ability to perform the core function of safeguarding the privacy of Americans.

To address these problems, the Administration introduced a comprehensive proposal to modernize FISA. The Administration's proposal would establish an enduring framework for the collection of foreign intelligence information that will both protect our national security and return FISA to its original focus on protecting the privacy of U.S. persons in the United States. In addition to amending the definition of "electronic surveillance" in FISA, it also would streamline the application and authorization process, thus freeing up additional resources for the review of activities implicating the privacy of persons in the United States. The Administration's proposal also would provide liability protection for those who are alleged to have aided the Government in conducting authorized communications intelligence activities in the wake of the attacks of September 11th.

Although Congress has not yet enacted that proposal, Congress recently did pass the Protect America Act of 2007 with bipartisan support; the President signed the Act into law on August 5, 2007. *See* Pub. L. 110-55, 121 Stat. 552. The Act provides critical amendments to FISA that will give our intelligence professionals some of the tools they urgently need to protect the Nation. Nevertheless, the Act provides only a temporary solution that does not contain a complete modernization of FISA, and it will sunset in approximately three months. To establish

an enduring framework for the collection of foreign intelligence information that will both protect our national security and safeguard the privacy of Americans, we must work together to enact permanent and comprehensive modernization of FISA. The Protect America Act does not contain all of the important provisions of the Administration's proposal. It does not, for example, streamline the application and authorization procedures of FISA. Nor does the Protect America Act contain liability protection for companies alleged to have assisted with authorized communications intelligence activities in the wake of the September 11th attacks. The Department of Justice looks forward to working with Congress, and with this Committee, to enact permanently these vital reforms to FISA, as requested by Director McConnell.

Smith 239 **As the 9/11 Commission and others have noted, one of the breakdowns prior to 9/11 was the failure of the federal government to "connect the dots" about the attack. What steps has the Department taken since 9/11 to improve the sharing of information to prevent future acts of terrorism?**

ANSWER: The Justice Department has taken numerous steps since 9/11 to improve information sharing to prevent future acts of terrorism. The Department has been "re-tooling" itself since September 11, 2001, to better perform its mission of investigating, preventing, disrupting, and prosecuting terrorist threats and attacks.

These steps include establishing the Department's Law Enforcement Information Sharing Program (LEISP) and developing a OneDOJ approach to information sharing; creating new entities within the Department at the national and local levels that improve information sharing; reorganizing and refitting the Federal Bureau of Investigation (FBI), in large part to increase and take advantage of information sharing; and implementing the provisions of the USA Patriot Act that helped bring down the legal and bureaucratic wall between the intelligence community (IC) and federal law enforcement. Together, the Department and the FBI play an active role in support of the Information Sharing Environment (ISE) under the leadership of the Program Manager for the ISE, serving on policy and technology working groups to develop a government-wide approach to sharing terrorism, homeland security and law enforcement information. Many of our ongoing technology initiatives will be leveraged to support the ISE. Department and FBI employees also are actively involved in efforts to establish guidelines for and to staff fusion centers in all fifty states.

1. Law Enforcement Information Sharing Program and OneDOJ.

In October 2005, the Department published its LEISP strategy and continued on its course to transform the way the Department shares information with federal, State, local, and tribal partners. LEISP envisions comprehensive information sharing through integrated systems and within workplaces dedicated to routine and systemic sharing across jurisdictional boundaries.

To fulfill the Department's law enforcement mission and to support the national effort to prevent terrorism, the Department, through LEISP, is committed to sharing as much information as possible, lawful, and practicable, while faithfully protecting individual privacy and civil liberties and preserving the public's trust in law enforcement. In furtherance of this

commitment, members of the Deputy Attorney General's staff play a significant role in overseeing the Department's information-sharing activities. These individuals work closely with the participating investigative components, United States Attorneys, the Department's Chief Information Officer, and, as necessary, representatives of regional and local law enforcement entities, to implement and monitor the expansion of the Department's information-sharing efforts.

A guiding principle of the LEISP strategy is the concept of OneDOJ. As its name implies, OneDOJ embodies the Department's commitment to presenting a single face to its information-sharing partners by enabling the investigative components' information to be presented in a uniform and consistent manner through the use of common tools, systems, and other sharing mechanisms. Accordingly, OneDOJ requires components to work together in undertaking and implementing information-sharing efforts and initiatives. The Department's collaborative and cooperative efforts reinforce the central attributes of LEISP: to ensure that the Department's information is shared comprehensively and routinely within the Department and with our Federal, State, local, and tribal partners; to provide information responsive to the needs of law enforcement officers; and to present that information in a form useful to the recipients.

Our OneDOJ approach enables and indeed obligates Department components to move forward aggressively to expand existing information-sharing capacities and capabilities. Capacity and capability expansion will permit each component to participate more fully and uniformly in existing Department-wide information-sharing programs and initiatives.

The recent rollout of certain regional information sharing initiatives has marked important progress in implementing LEISP and OneDOJ. In August 2005, the Department launched an information-sharing pilot program with the Northwest Law Enforcement Information Exchange (LInX) in Seattle, Washington. The Department entered into a partnership with the Automated Regional Justice Information Sharing (ARJIS) system in San Diego, California in March 2006, and in June 2007, the Department began a partnership with the L.A. Sheriff's Office. In addition, the FBI has used, or soon will use, the Regional Data Exchange system (R-DEx) to facilitate information sharing in Jacksonville, Florida, and St. Louis, Missouri. These efforts, among others, have resulted in the Department and its components learning important lessons and receiving valuable feedback on the operational successes and difficulties associated with implementing our information-sharing objectives. Regional information sharing systems are being established or expanded throughout the country, including many in the image of the sharing initiative and system started in the Pacific Northwest, and the Department is committed to the expansion of information sharing partnerships across the country. The Department relies, however, on local leadership and local governance to create effective information-sharing partnerships, and has provided grant funding through the Bureau of Justice Assistance and COPS for certain initiatives, as well as technical assistance to many community- or State-wide information-sharing efforts

In addition, the Department is developing a National Data Exchange system (N-DEx) that will provide a nationwide capability to exchange data derived from incident and event reports, including names, addresses, and non-specific crime characteristics. This information will be entered into a central repository available to law enforcement officials at all levels. N-DEx

complements R-DEx, through which the Department is able to participate with Federal, State, tribal, and local law enforcement agencies in regional full-text information sharing systems under standard technical procedures and policy agreements. In Phase 1 of its deployment, scheduled for February 2008, the Department will make N-DEx available to 50,000 initial users, who will have access to basic search and visualization tools. In Phase 2, scheduled for February 2009, the Department will double the number of N-DEx users while adding advanced analytical tools and increased the amount of data shared. N-DEx also will add subscription and notification capabilities in Phase 2.

Additionally, to ensure a collaborative and integrated focus on these objectives, the Deputy Attorney General has established a Law Enforcement Information Sharing Program Coordinating Committee to advise him on information-sharing issues. This Committee is chaired by a member of the DAG's staff and reports directly to the DAG on the Department's efforts to accomplish the Department's policy objectives. The Committee includes the Department's Chief Information Officer, a senior representative from each of the investigative components, a representative of the Office of Justice Programs, and a U.S. Attorney and other prosecutors. The Committee seeks broad input into the Department's information-sharing initiatives from both Department components and advisory groups such as the Attorney General's Advisory Committee, Criminal Justice Services Advisory Policy Board, and the Global Information Sharing Advisory Committee. Its priorities include expanding the geographic reach of the Department's information-sharing partnerships and improving the quality and quantity of data available to DOJ's State and local partners.

2. Creation of new Justice Department organizations at the national and local levels to share information and fight terrorism

The Justice Department has also engaged in an unprecedented build-out of new organizations at both the national and local level which improve the sharing of information to prevent future acts of terrorism.

A. National Security Division

At the national level, the Department has created a new division, the National Security Division (NSD), to carry out the Department's highest priority: to combat terrorism and other threats to national security. The NSD, which consolidates the Department's primary national security elements within a single Division, currently consists of the Office of Intelligence Policy and Review; the Counterterrorism and Counterespionage Sections, formerly part of the Criminal Division; and a new Law and Policy Office. This organizational structure ensures greater information sharing, coordination, and unity of purpose between prosecutors and law enforcement agencies, on the one hand, and intelligence attorneys and the Intelligence Community, on the other, thus strengthening the effectiveness of the Department's counterterrorism and other national security efforts. At the local level, the Justice Department has created Anti-Terrorism Advisory Councils (ATAC) and Joint Terrorism Task Forces (JTTF).

B. Anti-Terrorism Advisory Councils

The Attorney General has established an ATAC in each judicial district, except Guam and the Northern Mariana Islands, which are combined into a single ATAC and the EDVA and DC ATAC which is also combined. Each Office's ATAC is intended to serve as an umbrella organization of local, State, and Federal agencies to share information, coordinate activities, develop policy, and implement a strategic plan to combat terrorism at the local level, as well as to coordinate and share information with the other ATACs around the nation. The ATACs' focal point on all matters is to maintain the safety and security of citizens and key critical infrastructure. Specifically, the ATACs: 1. facilitate intelligence and information sharing among Federal, State and local authorities; 2. coordinate anti-terrorism initiatives; 3. initiate training programs; and 4. assist the Joint Terrorism Task Force (JTTF) with operational aspects of terrorism investigations.

C. Joint Terrorism Task Forces

Joint Terrorism Task Forces (JTTFs) are small cells of highly trained, locally based investigators, analysts, linguists, SWAT experts, and other specialists from dozens of U.S. law enforcement and intelligence agencies. They represent a multi-agency effort led by the Department and the FBI designed to combine the resources of Federal, State, and local law enforcement. The National JTTF was established in July 2002 to serve as a coordinating mechanism with the FBI's partners. Some 40 agencies are now represented in the NJTTF, which has become a focal point for information sharing and the management of large-scale projects that involve multiple partners.

3. FBI reorganization and new procedures to improve information sharing and combat terrorism

The FBI also has instituted several means of improving information sharing with their Federal, State, and local partners in the law enforcement and intelligence communities. Among these is the establishment of the FBI's Information Sharing Policy Board, which is chaired by the principal officer of the FBI for information sharing policy (currently the Executive Assistant Director in charge of the National Security Branch). This board brings together the FBI entities that generate and disseminate law enforcement information and intelligence and is charged with implementing the FBI's goal of sharing by rule and withholding by exception. The FBI is also actively participating in the interagency effort to establish a terrorism, homeland security and law enforcement ISE under the Presidential guidelines issued on December 16, 2005.

Field Intelligence Groups (FIGs) are the FBI's primary interface for receiving and disseminating intelligence information, and a FIG has been established in each FBI field office. The FIGs, which complement the JTTFs and other task forces, are expected to play a major role in ensuring that the FBI shares what it knows with others in the IC and with our Federal, State, local, and tribal law enforcement partners. FIGs participate in the increasing number of State fusion centers and Regional Intelligence Analysis Centers.

Within the law enforcement community, the FBI's National Information Sharing Strategy (NISS) is part of DOJ's LEISP and builds upon the capabilities offered by the FBI's Criminal Justice Information Services (CJIS) Division. The Terrorist Screening Center (TSC), which was

established to provide for the appropriate and lawful use of terrorist information to screen for known and suspected terrorists, also leverages the CJIS backbone to provide real-time actionable intelligence to appropriate Federal, State, and local law enforcement. Multiple federal agencies participate in this effort, including the FBI, DOJ, DHS, DOS, and Department of the Treasury.

In the National Counterterrorism Center (NCTC), analysts from the FBI, CIA, DHS, and DOD work side by side to identify and analyze threats to the U.S. and our interests. NCTC analysts produce the National Threat Bulletin, the Threat Matrix, and other analytic products. FBI SAs and analysts are also detailed to numerous other federal entities, including the CIA, NSA, National Security Council, Department of Energy, Defense Intelligence Agency, Defense Logistics Agency, and DOD's Regional Commands, adding yet another means through which information is shared with these organizations. The FBI also operates six highly specialized Regional Computer Forensic Laboratories designed to provide forensic examinations of digital evidence. In each of these laboratories, law enforcement agencies from all levels of government train, work, and share information.

Evolving technology offers ever greater ability to share classified information in secure environments. Within the IC, the FBI has a two-level approach. For those agencies that operate at the Top Secret/SCI level, the FBI is investing in the SCI Operational Network, a secure FBI network that is linked to the DOD Joint Worldwide Intelligence Communications System network used by the CIA, NSA, and other Federal agencies. The FBI also makes national intelligence more readily available to State, tribal, and local law enforcement agencies through the Law Enforcement Online network. Infrastructure threat information is provided to the private sector through the "sensitive but unclassified" InfraGard network.

For those agencies that operate at the Secret level, the FBI has connected the FBI's internal electronic communications system to the Intelligence Community network (Intelink-S), which serves military, intelligence, diplomatic, and law enforcement users. As a result, FBI SAs and analysts who need to communicate at the Secret-level with other agencies can do so from their desktops.

4. Tearing down the "wall" between the intelligence community and federal law enforcement via USA Patriot Act Implementation.

The Justice Department and the FBI have also taken numerous steps to improve information sharing by implementing the USA PATRIOT Act. Before the USA PATRIOT Act, the metaphorical "wall" between the intelligence community and federal law enforcement often precluded effective and indeed vital information sharing, perversely creating higher barriers in the most serious cases. Sections 218 and 504(a) of the USA Patriot Act—as implemented by Department guidelines issued in March 2002 that were approved by the FISA Court of Review in November 2002 – permitted the coordination between intelligence and law enforcement that is vital to protecting the Nation's security. These amendments to FISA have allowed for more coordination and sharing of information between intelligence officials and law enforcement officials.

The enhanced ability to coordinate efforts and share information has allowed the

Department to investigate cases in a more orderly, efficient, and knowledgeable way, and has permitted all involved personnel, both law enforcement and intelligence, to discuss openly legal, factual, and tactical issues arising during the course of investigations. These substantive and procedural improvements have greatly increased the prospect that the option best calculated to protect national security and the American people will be chosen in any individual case.

Smith 240 **What steps have you taken to ensure that violent gang activity is reduced?**

ANSWER: The Department has taken several important steps to address the prevalence of gang violence. The Department established an Anti-Gang Coordination Committee to organize the Department's wide-ranging efforts to combat gangs. Each United States Attorney has appointed an Anti-Gang Coordinator to provide leadership and focus to our anti-gang efforts at the district level. The Anti-Gang Coordinators, in consultation with their local law enforcement and community partners, have developed comprehensive, district-wide strategies to address the gang problems in their districts. The Department has also established a Comprehensive Anti-Gang Initiative, which focuses on reducing gang membership and gang violence through enforcement, prevention, and reentry strategies.

The Department has created a new national gang task force, called the National Gang Targeting, Enforcement and Coordination Center (GangTECC). GangTECC is composed of representatives from the Bureau of Alcohol, Tobacco, Firearms and Explosives, Bureau of Prisons, Drug Enforcement Administration, Federal Bureau of Investigation, United States Marshals Service, and the Department of Homeland Security, among others. The center coordinates overlapping investigations, ensures that tactical and strategic intelligence is shared among law enforcement agencies, and serves as a coordinating center for multi-jurisdictional gang investigations involving federal law enforcement agencies. In conjunction with GangTECC, the Department has also created the Gang Squad, a group of experienced anti-gang prosecutors charged with developing and implementing strategies to attack the most significant national and international gangs in the U.S., as well as prosecuting select gang cases of national importance.

The Department has established and leads numerous joint violent crime-related task forces, including, among others, FBI-led Safe Streets Task Forces and Gang Safe Streets Task Forces that focus on dismantling organized gangs; U.S. Marshals Service-led Congressionally-mandated Regional Fugitive Task Forces and district-based task forces across the country that focus on fugitive apprehension efforts; and ATF-led Violent Crime Impact Teams, which include federal agents from numerous agencies and State and local law enforcement, that identify, target, and arrest violent criminals to reduce the occurrence of homicide and firearm-related violent crime.

The President's fiscal year 2008 budget request seeks $200,000,000 from Congress for the Violent Crime Reduction Partnership Initiative. The initiative will assist State, local, and tribal governments in responding to violent crime, including chronic gang, drug, and gun violence, through support for multi-jurisdictional violent crime task forces. Built on the lessons learned from some of the nation's most effective crime task forces, the primary goals of the initiative are to: (1) address spikes or areas of increased violent crime in local communities; (2)

disrupt criminal gang, gun, and drug activities, particularly those with multi-jurisdictional characteristics; and (3) prevent violent crime by improving criminal intelligence and information sharing. Through discretionary funding to law enforcement task forces, the initiative will allow communities to address specific violent crime problems with focused strategies, including task force-driven street enforcement and investigations and intelligence gathering.

Additionally, former Attorney General Gonzales launched aggressive initiatives to meet the challenges posed by violent crime, and the Department continues to review crime data for emerging trends to develop further targeted programs. Those initiatives include: expanding the Comprehensive Anti-Gang Initiative to an additional four sites, bringing the total number of sites to10; expansion of the Violent Crime Impact Team initiative to an additional 5 cities, as well as an expansion of the Safe Streets program; expansion of the Don't Lie for the Other Guy program, which targets illegal straw purchasing of firearms; coordinated fugitive sweeps and proactive take-downs in a number of communities across the country; and launch of a comprehensive anti-gang training program for State and local law enforcement that will be pilot-tested.

Smith 241 **Are you reaching out to other countries to assist in the Department's efforts to fight gang activities?**

ANSWER: Yes. For example, earlier this year, on February 5, 2007, former Attorney General Gonzales traveled to San Salvador to seek further regional collaboration in combating transnational gangs with El Salvador President Saca and others. While in El Salvador, the Attorney General announced a comprehensive new anti-gang initiative to enable the United States and our colleagues in Central America to share information and coordinate law enforcement efforts as we work in partnership to target and dismantle violent gangs. The initiative included four broad elements:

1. Enforcement

Through assistance from the U.S. Federal Bureau of Investigation (FBI) and the U.S. Department of State, El Salvador's civilian police force (Policia Nacional Civil or PNC) is establishing a new Transnational Anti-Gang (TAG) Center to better pursue and prosecute gang members. FBI agents will provide front-line training, information-sharing, and other support aimed at increasing the capacity of PNC detectives to identify and arrest the worst offenders, who can then be prosecuted, when possible, by a Salvadoran anti-gang prosecutor embedded as a member of the new TAG unit.

2. Identifying, tracking and pursuing gang members

The FBI is accelerating the implementation of the Central American Fingerprinting Exploitation (CAFE) initiative. The State Department and the FBI are collaborating to provide equipment and training to help law enforcement agencies in El Salvador and other Central American nations acquire digital fingerprints of violent gang members and other criminals who travel and commit crimes under different identities in El Salvador, the U.S. and other countries.

The prints will then be integrated into a computerized system that allows law enforcement officials from participating countries to exchange information.

Additionally, the Justice Department is working with the Department of Homeland Security (DHS), El Salvador, Guatemala, Honduras and possibly others in the region to further implement DHS's new Electronic Travel Document system (eTD), which will provide law enforcement officials in those nations with electronic information on Salvadoran gang members and other criminals who have been deported from the United States to Central America after serving their sentences in the United States.

3. Enhanced cooperation

Former Attorney General Gonzales also announced a number of forthcoming events, aimed at enhancing law enforcement cooperation in combating gangs. For example, he announced that the Chiefs of Police for El Salvador, Guatemala, Honduras, and Belize would be meeting in Los Angeles at an international summit of chiefs of police focused on the single issue of transnational gangs. The summit took place as scheduled, and the outcome was a series of new anti-gang proposals that were subsequently presented at the 3rd Annual International Gang Conference in San Salvador in April 2007.

In addition, at the request of the government of El Salvador, the U.S. Marshals Service (USMS), FBI, Drug Enforcement Administration (DEA), Bureau of Alcohol Tobacco, Firearms and Explosives (ATF), and other law enforcement agencies will conduct a series of joint assessments of anti-gang capabilities in El Salvador, and help identify the best strategic options for El Salvador for undertaking additional steps to enhance domestic and regional anti-gang efforts in such areas as gang intelligence, fugitive apprehension, witness protection, firearms violence, prisons and drug trafficking.

4. Training and prevention

The United States has also increased its anti-gang training in Central America, including efforts through the International Law Enforcement Academy (ILEA) in San Salvador. In spring 2007 the ILEA completed its third anti-gang program in recent months, training police and prosecutors from El Salvador, Honduras, Guatemala and other nearby countries in the best practices of targeting and fighting gang activity and related crimes.

Further, the State Department is funding a new regional anti-gang program aimed at gang prevention, police training, and the development of effective law enforcement and criminal justice institutions in El Salvador and neighboring countries. Also, the U.S. Agency for International Development is funding a new regional program to support public-private partnerships in gang prevention and to further regional cooperation on this issue. All these joint initiatives with El Salvador and others in the region are part of a greater effort by the U.S. government to combat gangs and gang-related violence in North and Central America.

On the same date that he announced these initiatives, February 5, 2007, former Attorney General Gonzales also met with the Attorneys General of El Salvador, Honduras and Guatemala

to address transnational gangs. As a result of these discussions, the Attorney General of Mexico helped organize and convene a follow-on summit of regional Attorneys General from Central America, Columbia, Mexico and the U.S., to meet outside Mexico City, primarily to address the issues of transnational gangs, drug trafficking and other violent crime in the region.

On June 7-8, 2007, former Attorney General Gonzales traveled to Cuernavaca, Mexico, to meet with his regional counterparts and to help enhance regional anti-gang collaboration, among related efforts. In public remarks at the conclusion of the Summit, the Attorney General indicated that

* We recognize that this is not a problem that stops at our borders; the United States has developed a comprehensive strategy to help combat the threat from transnational gangs.

* We have launched partnerships with our neighbor countries to enhance law enforcement, crime prevention, and international coordination and training in the region.

* Our record of regional cooperation also includes a successful summit on transnational gangs held in Los Angeles involving the Chiefs of Police for El Salvador, Guatemala, Honduras, and Belize.

* The United States has been providing training for police and prosecutors from the region – in fact, the 4th such anti-gang training was held at the International Law Enforcement Academy in Central America in June, 2007.

* Each of these steps is a testament to the commitment of the United States to join with its neighbors to face the problems of violent transnational crime and gangs in a collaborative and comprehensive manner.

Subsequently, in July 2007, representatives of the FBI, DEA and ATF, along with the Chief of the new Gang Squad created in the Justice Department by former Attorney General Gonzales, presented at and participated in the U.S.-SICA security dialogue in Guatemala City. SICA (the System for the Integration of Central America) focused on three primary law enforcement issues, all of which are inter-related: Transnational Gangs; Drug Trafficking; and Firearms Trafficking. At the conclusion of the US-SICA meetings, the U.S. Department of State formally announced the new regional anti-gang strategy of the United States.

Smith 243 **Could you share with us any results of your pilot program launched in March of 2006 in six cities? I understand you've expanded it to 4 additional cities bringing the total number of cities participating to ten. Could you share with us how you chose the initial six cities, what successes you saw in those cities that let you decided to expand the program, and where you see this initiative headed throughout the remainder of your tenure at the Department?**

ANSWER: In May 2006, the Department launched the Comprehensive Anti-Gang Initiative by providing additional funding to six sites across the country: Los Angeles; Tampa, Florida; Cleveland; the "222 Corridor" that stretches from Easton to Lancaster, Pennsylvania (near Philadelphia); the Dallas/Ft. Worth Metroplex, Texas; and Milwaukee. Each site received $2.5 million in grant funding to support this initiative. In April 2007, the Comprehensive Anti-Gang Initiative was expanded to include four additional sites: Oklahoma City, Indianapolis, Rochester, N.Y. and Raleigh-Durham, N.C.

The Initiative was expanded due to the fact that the Comprehensive Anti-Gang Initiative has already made strides in the original six sites. For example, in Cleveland one of the most violent gangs operating in the target area has been dismantled through both federal and State investigations and prosecutions that have resulted in 63 federal and State indictments. Fifty-five defendants have pled guilty and the remainder are awaiting trial. Other examples of success can be found in the attached newspaper articles.

To be chosen as part of the Comprehensive Anti-Gang Initiative, the U.S. Attorneys' Offices had the opportunity, in consultation with Federal, State, and local partners, to apply to become one of these sites. The ten locations were selected to receive comprehensive anti-gang resources based on a variety of factors, including the need for concentrated anti-gang resources, established infrastructure to support the three components of the initiative and existing partnerships prepared to intensely focus on the gang problem. The original 6 sites are currently in the process of implementing their plans in their respective Sites, and the new 4 sites are in the initial stage of working with their communities to develop the comprehensive plans which will work best for their community. Eventually, when the plans are fully implemented and operational, the hope is to look to these communities to develop a successful model programs in the areas of prevention, enforcement and re-entry that will work to fight violent crime in other locations throughout the United States.

Please see Attachment 4 for additional information.

Smith 244 **Could you share with us a bit more detail about how the Violent Crime Reduction Partnership Initiative proposed in the President's FY 2008 budget would work?**

ANSWER: The President's Fiscal Year (FY) 2008 Budget request includes over $1.2 billion in discretionary grant assistance to States, local and tribal governments and includes the creation of four new competitive grant programs. These programs will provide States, localities and tribes with the flexibility to address their most critical needs.

Among the new grant programs, the Violent Crime Reduction Partnership Initiative will assist State, local, and tribal governments in responding to violent crime—as well as chronic gang, drug, and gun violence—through support for multi-jurisdictional violent crime task forces. Built on the lessons learned from some of the nation's most effective crime task forces, the primary goals of the initiative are to: (1) address spikes or areas of increased violent crime in local communities; (2) disrupt criminal gang, gun, and drug activities, particularly those with multi-jurisdictional characteristics; and (3) prevent violent crime by improving criminal intelligence and information sharing.

Smith 246 **Have you identified causes of rise in violent crime reports?**

ANSWER: Last winter, Department of Justice officials visited 18 metropolitan areas scattered across the country to talk with State and local law enforcement and others in the community. Many of the jurisdictions visited had experienced increases in homicide or robbery rates, while others had recently experienced decreases. Our teams met with police chiefs and officers who are out working on the streets, sheriffs, corrections officials, district attorneys and community organizations working to prevent crime.

What we learned is that every community faces unique challenges and problems. What may be the top concern in one location may not be as significant in another. The reasons for crime vary from place to place as well; in some cities, crime may be fueled by an active drug trade, while in other cities an expansion of gangs may be underpinning the violence.

Despite the very local nature of the crime problem, however, a few themes emerged from the Safer Communities visits. None of these was true in every city, but these topics came up in one way or another in many of those places. The first theme was the prevalence of violence committed by loosely organized street crews or local gangs. Second, we heard that the prevalence of guns in the hands of criminals is a problem in many jurisdictions. The third message we heard was a concern about the level of youth violence; offenders appear to be younger and younger and their crimes are becoming more and more violent in nature.

We also heard about the ineffectiveness of some states' juvenile justice laws at deterring youth crime. In some cases, the existing juvenile justice systems provide little, if any, real penalty for crime, even for repeat violent offenders. Many police chiefs attributed the problem of violence among youth to a lack of positive influence in the lives of young people, including a lack of parental involvement and the negative influence of popular culture which glamorizes violence and gang membership.

Smith 247 **What steps are you taking to address these problems?**

ANSWER: In October of last year, shortly after the 2005 FBI UCR was released, former Attorney General Gonzales announced the Initiative for Safer Communities. The purpose of the initiative was to investigate the recent up-tick in the rates of violent crime experienced by some cities from 2004 to 2005 by meeting with State and local law enforcement partners and other local community leaders to discuss the causes of violent crime in their cities. In November and December, Department of Justice officials visited 18 metropolitan areas, some that had experienced increases in homicide or robbery rates from 2004 to 2005 and some that had experienced decreases. What was learned on these visits has informed and will continue to inform Department of Justice policies for combating violent crime.

Although the vast majority of work fighting violent crime is done at the State and local level, the Department of Justice has an important role to play in helping State and local governments. There are many ways that the Department currently supports State and local law

enforcement efforts. A few joint efforts include Project Safe Neighborhoods (PSN) partnerships and joint task forces, such as the Safe Streets Task Forces led by the Federal Bureau of Investigation (FBI), the Violent Crime Impact Teams led by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the regional and district based fugitive task forces led by the U.S. Marshals Service. The Department is proud of our partnerships with State and local law enforcement and our existing efforts to reduce violent crime.

It was encouraging to hear feedback from nearly all of the cities visited that federal drug prosecutions and federal prosecutions for the misuse of firearms – through partnerships developed under PSN – are helping to fight violent crime. In the six years since Pan's inception, the Department has prosecuted twice as many crimes involving guns as we prosecuted in the six years prior to PSN. And, 2006 statistics indicate that over 90 percent of those offenders serve prison time.

On May 15, former Attorney General Gonzales announced many new efforts to reduce violent crime and help make our communities safer. These include new federal law enforcement efforts, assistance to State and local law enforcement, and requests to Congress to bolster Department legal authorities and budget for combating violent crime.

Some of the new federal law enforcement efforts include: a directive to all U.S. Attorneys and Department law enforcement components to ensure collaboration with State and local law enforcement and prosecutors to identify violent crime cases best prosecuted in the federal system; the hiring of additional federal prosecutors; joint Federal, State and local law enforcement fugitive round-ups and proactive takedown operations in a number of additional cities this calendar year; additional U.S. Marshals Service-led Fugitive Safe Surrender operations (in which fugitives from justice are given an opportunity to voluntarily surrender to the law in a neutral setting) this year; expansion of Alf's "Don't Lie for the Other Guy" program to educate federal firearms dealers on how to detect and deter illegal "straw purchases," enhance our partnership with dealers to prevent and deter these illegal purchases, and educate the public that engaging in straw purchases is illegal under federal law; and expansion of Alf's Violent Crime Impact Team (VCIT) initiative to five additional cities in the next year and FBI's Safe Streets Task Forces to at least two additional locations this year.

In addition to these enforcement efforts, the Department will be providing additional resources and training to support our State and local partners, including: over $18 million in grant funds distributed across the country to support traditional PSN efforts; approximately $31 million in grants to support expanded PSN efforts to combat gang violence nationwide; a $125 million grant program that is now available to State and local governments and law enforcement to prevent and control crime and to support the administration of justice; and the first-ever Department-sponsored Comprehensive Anti-Gang Training for State and local law enforcement, which is currently being planned.

Finally, the Department's FY 2008 budget request includes $200 million for Violent Crime Reduction Partnership grants and over $13 million for other violent crime-related enhancements that will support our PSN enforcement efforts, increase our ability to target firearms traffickers, and increase the prosecution of gangs and violent criminals. We are hopeful

that Congress approves this request. Additionally, on June 1 former Attorney General Gonzales announced a crime bill including proposals to amend and strengthen existing laws to ensure that federal law enforcement agencies are able to successfully investigate and prosecute many types of violent crime.

Smith 249 **I understand that your staff traveled to a number of cities across the country – some that saw an increase in crime others that saw a decrease in crime – this fall to meet with Federal, state, and local law enforcement officials to study what factors might potentially lead to a rise in violent crime and the decrease of violent crime. Are there any findings or observations that you can report to us today that came out of this effort? What steps does the Department under your leadership plan to take to address any conclusions coming out of this study?**

ANSWER: Please see the responses to Question 246 and 247, above.

Smith 250 **What is the status of the Justice Department's efforts to reduce violent crime in the New Orleans area?**

ANSWER: The Department of Justice has made available more than $86 million to the state of Louisiana to shore up the criminal justice system. The Department has also disbursed nearly $30 million to the New Orleans area for personnel costs, vehicles, prison beds, generators, office equipment, riot gear, ammunition, and miscellaneous equipment to shore up local law enforcement, the court system, and District Attorney's office.

In the United States Attorney's Office for the Eastern District of Louisiana (USAO), six attorneys were temporarily assigned in the USAO for the Eastern District of Louisiana last fall and winter for a six month detail, which has ended. An additional 7 attorneys are temporarily assigned, 9 additional Assistant U.S. Attorneys (AUSAs) for the District were hired to assist with Katrina related fraud and violent crime prosecutions, and one more AUSA will be hired to prosecute cases involving gang violence. The USAO is spearheading an initiative to co-locate ATF, DEA and FBI agents with New Orleans Police Department to identify cases subject to federal jurisdiction, provide investigative assistance, make federal arrests, and follow up with federal prosecutions. In 2006 the USAO charged a total of 358 individuals with drug, violent crimes, firearms and significant immigration offenses. The violent crime prosecutions increased by 32% in 2006 over 2005, producing a 98% conviction rate. Data additionally reveals a 100% conviction rate in immigration offenses and a 10.3% increase in drug cases filed, with an effective 100% conviction rate. Retrospectively, between the first of January 2006 and June 6, 2007, the USAO has indicted no less than 358 individuals on violent crimes and firearms related felonies, and indicted 708 individuals on drug-related felonies.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) assigned six additional ATF Special Agents to New Orleans to supplement the 6 Special Agents permanently assigned to the New Orleans Violent Crime Impact Team (VCIT), which focuses on reducing gun crime. With the addition of these agents, the VCIT initiative is staffed by 12 ATF Special Agents and

six New Orleans Police Officers. These Special Agents and task force officers identify and pursue recidivist offenders who are considered the "worst of the worst" and who reside and operate in the designated VCIT area. In addition, the VCIT jointly operates with the New Orleans Police Department (NOPD) within the designated area during peak hours of criminal activity. ATF re-launched the 24-hour ATF Gun Hotline which allows citizens to report the illegal use and possession of firearms for federal response. The hotline phone number (504-581-GUNS), which is advertised in an advertising campaign to publicize the local hotline number, has resulted in hundreds of tips, many of which have led to the arrests of violent offenders. Also, ATF has replaced the National Integrated Ballistics Identification Network (NIBIN) equipment that was destroyed by Katrina, and is housing that equipment in the local ATF offices until the New Orleans Police Department identifies a suitable permanent site.

The FBI currently operates the Violent Gang Safe Streets Task Force which includes officers from the NOPD and the Jefferson Parish Sheriff's Office. The FBI has detailed 18 Special Agents to supplement Special Agents permanently assigned to the task force with State and local enforcement. The homicide clearance rate in New Orleans increased from 19% to 54% (184% increase), which the NOPD attributed in part to FBI assistance. The FBI also provided training to the NOPD on Project Pinpoint, which combines mapping software with police intelligence to solve crimes.

Additionally, the FBI has been working with the NOPD's Homicide Unit since February 5, 2007. Nine Special Agents were detailed from other field offices for the specific purpose of assisting the NOPD Homicide Unit in determining if a federal nexus existed in any of their homicide cases. Since the inception of this initiative, the FBI assisted the NOPD on every homicide that has occurred in the NOPD 2nd District. Subsequently, the homicide clearance rate rose from 19% to 54%, a rise that NOPD Superintendent Warren Riley credits partially to the FBI's assistance.

The Drug Enforcement Administration (DEA) agents have temporarily been provided authority to investigate and enforce all federal criminal law, in addition to federal drug laws. The DEA, additionally, leads the High Intensity Drug Trafficking Area Task Force Group in partnership with the NOPD detectives. DEA, ATF and NOPD have recently initiated an intelligence effort aimed at violent crime reduction and titled the "Targeted Offenders Project," with three primary objectives. The first goal is for all NOPD arrests for murder, armed robbery and illegal possession of firearms since Hurricane Katrina to identify violent repeat offenders eligible for immediate Federal prosecutions for weapon violations. The second goal is to collect, analyze and collate all documentary evidence seized from these suspects and their organizational associates, where appropriate. Finally, the project will identify emerging violent gangs, conspiracies or organizations operating in the New Orleans Metropolitan Area for targeted enforcement action. Additionally, Dec's Divisional Intelligence Group (DIG) has sponsored Federal law enforcement analytical training in New Orleans for NOPD's Criminal Intelligence Bureau (CIB).

Since Katrina, the Unites States Marshals Service (USMS) has added 3 additional Deputy Marshals and 1 Investigative Research Analyst to supplement the Crescent Star Fugitive Task Force. The Crescent Star Fugitive Task Force locates and arrests violent felony fugitives across

13 parishes in the Eastern District of Louisiana, and includes representatives from the NOPD, the Orleans Parish Criminal Sheriff's Office, the St. Charles Parish Sheriff's Office, Louisiana Probation and Parole, and the Coast Guard Investigative Services. These Deputy Marshals assist in targeting and apprehending sex offenders and will prioritize violent offenders identified by the Crescent Star Fugitive Task Force. The Crescent Star Fugitive Task Force supports the NOPD's Violent Offender Warrant Squad by conducting weekly fugitive round-ups on targeted violators. The Crescent Star Fugitive Task Force is also assisting the Louisiana Probation and Parole Department in tracking down more than two thousand wanted probation and parole offenders, whose whereabouts are unknown since Hurricane Katrina.

In addition, the USMS Technical Operations Group (TOG) will be made available to assist and prioritize cases from the Crescent Star Fugitive Task Force. The TOG provides the USMS, other federal agencies, and any requesting State or local law enforcement agency with support in electronic surveillance, aerial surveillance, communications, as well as analysis and intelligence, related to fugitive investigations.

The Justice Department will work with local law enforcement, the National Police Athletic League (PAL), and the Boys and Girls Club of America to establish a new PAL chapter in the city for the children of New Orleans and rebuild Boys and Girls Clubs in the impacted area. The PAL chapter and Boys and girls Clubs will be made possible by grants from the Justice Department's Bureau of Justice Assistance and Office of Juvenile
Justice and Delinquency Prevention, which will also support the PAL mission through technical assistance and other prevention resources that benefit America's youth.

The Department of Justice will provide funds and help establish Safe Havens in the three New Orleans Weed and Seed Sites. Safe Havens provide a secure recreation and learning environment for Weed and Seed communities, keeping children off the streets and out of trouble.

Additionally, the Justice Department is allocating resources to help reestablish the NOPD Crime Lab, which was completely destroyed by Hurricane Katrina. The lack of a permanent and functional crime lab in New Orleans has led to significant delays in the processing and analysis of important evidence such as blood, drugs and ballistics. In the absence of a permanent forensics lab, the NOPD has been using space provided by the Jefferson Parish Sheriff's Office, the St. Tammany Parish Sheriff's Office, and the Louisiana State Police, and services provided by Justice Department agencies whenever possible. Through the assistance and financial support of FEMA, as well as that of the U.S. Attorney's Office and the New Orleans Police and Justice Foundation, the city has acquired the space necessary to establish a single dedicated NOPD crime lab at the University of New Orleans Research and Technology Center. The NOPD will hire additional technicians to assist in processing evidence and clearing the backlog that has built up since Katrina.

The Justice Department will also fund two highly trained victim assistance specialists for the next three years. In the wake of Hurricane Katrina, the local criminal justice system has faced many challenges, including the need to provide advice and assistance to victims and witnesses of crimes. The victim specialists will establish a regional victims services committee to lead and coordinate victims assistance efforts within Orleans and Jefferson Parishes; provide

essential training and outreach to communities and participating local law enforcement offices as well as schools, community centers and faith-based organizations; educate the general population as well as victims about the criminal justice process; and provide essential advice, counseling and services to victims and witnesses served by the local criminal justice system. The specialists will be stationed in the U.S. Attorney's Office for the Eastern District of Louisiana. The funding for the specialists was made possible through the close collaboration of the U.S. Attorney's Office and the Office of Justice Programs.

To provide assistance to victims of domestic violence and sexual assault in New Orleans and the surrounding parishes, the Justice Department is committing up to $3 million to create a comprehensive victim service and support center, where victims can find the services they need in one central location. The Department's Office on Violence Against Women is working with partners in the public and private sectors to identify the most effective way to help victims of domestic abuse and sexual assault crimes in New Orleans, by providing multiple services in a single location, including emergency housing, medical care, counseling, law enforcement assistance, faith-based services, social services and employment assistance, among others.

The Department already has helped 15 communities across the country establish comprehensive domestic violence victim service and support centers through the implementation of the President's Family Justice Center Initiative. The New Orleans Family Justice Center will be launched in two phases. Phase I of the New Orleans Family Justice Center will be housed in a historic city-owned building, located in the central business district. It is in very close proximity to the Municipal Court and Criminal Court buildings and is accessible by public transportation. On-site services will include victim advocacy and counseling services, social services, law enforcement, prosecution, and referrals for civil legal services. The grand opening ceremony for Phase I of the New Orleans Family Justice Center occurred on Tuesday, August 28, 2007. The New Orleans Family Justice Center Steering Committee will continue to gather information and assess options for Phase II, the permanent home of the New Orleans Family Justice Center.

Lastly, BJA continues to make progress in implementing the lessons learned from these disasters, including providing training and assistance to local justice agencies and systems on issues such as continuity of operations and related disaster response planning critical to ensure that law and order can be maintained.

Smith 251 **In the aftermath of the horrific shooting on April 16, 2007, at Virginia Tech, what efforts, if any, is the Justice Department planning to improve campus security?**

ANSWER: In the immediate aftermath of the tragic events at Virginia Tech, the Department of Justice participated, at the President's direction, in an inquiry into the issues raised by the shootings at Virginia Tech. This inquiry involved three cabinet secretaries: me, Secretary of Health and Human Services Michael Leavitt and Secretary of Education Margaret Spellings. The three of us led delegations of representatives of the three federal departments on visits to 12 states to meet with local leaders in the education, mental health, and law enforcement fields. We solicited their input on what challenges and successes State and local communities have seen in dealing with the complex issues raised by the tragedy. We reported back to the President on June 13 with our observations and recommendations about what the federal government can do

better to help prevent tragedies like this in the future. The report is available at http://www.hhs.gov/vtreport.html.

Before those recommendations were made, and in fact even before the shootings at Virginia Tech, the Department was working to improve campus safety. This is far from an exhaustive listing of Department efforts to improve school safety, but illustrates the variety of initiatives and the depth of our commitment to this issue.

For example, in the area of emergency response, the FBI and ATF are available in local communities to assist State, local, and campus police in responding to crises. These agencies were on the scene in Blacksburg and provided valuable assistance to the Virginia authorities. Federal law enforcement resources will continue to be available to State, local, and campus communities in need.

Beyond emergency response, the Department does a great deal of research and training on school violence and related issues. In particular, the FBI, through the National Center for Analysis of Violent Crime (NCAVC)'s Behavioral Analysis Unit (BAU), provides expertise and guidance to State and local law enforcement, as well as school officials. The NCAVC provides Federal, State, local and foreign law enforcement agencies with various behavioral analysis services, including analyzing and assessing threatening situations that arise in school environments. The NCAVC is frequently tasked with assessing the level of threat posed by situations emanating from within the student population. These situations often manifest themselves in the form of some inappropriate communication (i.e. note, letter, e-mail, telephone call, IM), most often anonymous, which insinuate that a bombing or other violent act will take place at the school at some future time.

The FBI and School Resource Officers and administrators interact nearly daily across the country as school violence issues emerge and local agencies call upon Agents in Divisions and RAs for assistance. Roughly 150-200 cases per year rise to a level where they are referred to BAU for assistance.

Every FBI field office has a NCAVC Coordinator trained to provide immediate behavioral assistance and coordinate case consultations with the NCAVC. Thirty five of these coordinators returned to Quantico for one week of advanced training in School Violence in January 2007. Updated School Violence presentations, information packets, and quick reference guides were shipped to these coordinators in May 2007 for use in addressing their Division's training requests. These coordinators have been provided school violence training for years and are actively sharing the updated versions. NCAVC provided training to over 14,000 personnel last year in violent crimes and threat assessment.

In addition to threat assessment, school agencies' training requests span a range of topics, from tactical response to crisis negotiation to crisis management to threat assessment. FBI field divisions continue to provide this training in support of schools and campuses.

The Department also collaborates with the United States Secret Service and the Department of Education on research and training. To update their independent research in

school violence completed several years ago, the FBI's BAU and the Secret Service's National Threat Assessment Center (NTAC) began collaborating on school violence training last summer prior to the Pennsylvania Amish School shootings. The BAU has joined a collaborative research effort with the NTAC to conduct a joint study of incidents of "Targeted Violence," in order to obtain a more comprehensive understanding of the process of identifiable behavioral indicators and thought processes which precede an attack or attempted attack. The FBI plans to distribute the findings generated from this research project to FBI and Secret Service Field Offices, JTTF personnel, and other federal, State, and local law enforcement partners for operational use.

Finally, the Department's efforts to improve campus security include conferences on school safety for law enforcement and others, which enable participants to learn about ongoing research into school violence, and to share best practices. Some examples of planned conferences are below:

- August 7, in Washington DC, the Department's Bureau of Justice Assistance, which is within the Office of Justice Programs, and the International Association of Campus Law Enforcement Administrators (IACLEA) held a summit called, "Developing and Sustaining Mutually Beneficial Partnerships Between IACLEA and Federal Agencies" which will addressed campus public safety issues from a federal perspective, and will include representatives from the Department of Justice, the Department of Education, and the Secret Service.

- August 20-23, in Detroit, MI, the Department's Community Capacity Development Office (CCDO), which is within the Office of Justice Programs, held its National Conference and offering the following learning lab: "Proactive School Security and Emergency Preparedness Planning: Trends, Strategies and Best Practices." Topics included national trends in school deaths and violence, school and public safety lessons learned from recent school shootings, terrorism considerations for school security, practical "heightened security" strategies for schools, common gaps found in school security assessments, best practices in school emergency planning, school and public safety partnerships and communicating safety issues to parents, media and the school community.

- October 23-24, 2007, in Raleigh, NC, the Department's Office for Victims of Crime (OVC), which is within the Office of Justice Programs, will hold a Training Workshop: "Responding to School Violence." This workshop will focus on the unique issues faced by school systems, administrators, faculty, staff, and parents in situations involving school-based violence. Promising practices, strategies for debriefing with students, staff, and communities after an incident of violence, and information on how to manage death notifications and media contact will be presented.

- October 29-31, 2007, in Washington, DC, the Hamilton Fish Institute on School and Community Violence and the Department's Office of Juvenile Justice and Delinquency Prevention, which is within the Office of Justice Programs, will hold the National Conference on Safe Schools and Communities. The conference will

feature bullying prevention, mentoring, program evaluation, and community programs, with special sessions on youth courts and mental health. Additional sessions will address gangs, juvenile and restorative justice, and protective factors and resilience, among other subjects.

The Department also makes millions of dollars available directly to the states that can be dispersed by the states for school safety initiatives.

Smith 254 **There has been a lot of controversy surrounding this prosecution of Border Patrol Agents Ignacio Ramos and Jose Compean. Did the US Attorney seek Department approval before charging the defendants in this case?**

ANSWER: The United States Attorney's Office for the Western District of Texas was not required to obtain Department approval before charging the defendants in this case. However, the United States Attorney's Office notified the Civil Rights Division that it was seeking a superseding indictment alleging violations of 18 U.S.C. § 242.

Smith 255 **What was the rationale for charging the defendants?**

ANSWER: Securing our Nation's borders can be a tough and dangerous job. Often, Border Patrol agents find themselves in difficult and dangerous situations. The law allows for the use of deadly force when an agent reasonably fears imminent bodily injury or death. But an agent is not permitted to shoot an unarmed suspect who is running away, regardless of whether the suspect is illegally in this country or turns out to be a drug smuggler. In order to maintain the rule of law, federal prosecutors cannot look the other way when law enforcement officers shoot unarmed suspects who are running away, and then destroy or acquiesce in the destruction of evidence, engage in a cover-up, and file official reports that are false.

There is no credible evidence that Compean and Ramos were in a life-threatening situation or that Osvaldo Aldrete-Davila, the Mexican alien, had a weapon that would justify the use of deadly force. In fact, another Border Patrol agent, who was at the scene, testified at trial that he did not draw his pistol because he did not believe that Aldrete-Davila posed a threat to his or Agent Compean's safety.

Smith 256 **Why did the US Attorney give the victim/drug dealer immunity rather than have him plead guilty to drug trafficking and cooperate?**

ANSWER: It is not unusual for prosecutors to give immunity to witnesses, victims, or even defendants suspected of criminal activity, in order to secure necessary testimony, evidence, or other participation in the case. Given Compean's and Ramos's criminal conduct, there was insufficient legally admissible, competent evidence to prosecute Aldrete-Davila in that case. It was only with Aldrete-Davila's cooperation that the U.S. Attorney's Office could conclusively establish that he was the driver of that van and that he was shot and seriously injured by one of

the two agents who had pursued and assisted in the seizure of the van. Aldrete-Davila received use immunity, which meant that in exchange for his agreement to testify truthfully about the events that occurred on February 17, 2005, he would not be prosecuted for offenses he disclosed and committed on that date. As a practical matter, this immunity gave up very little, since the case against him was not prosecutable.

Smith 259 **The Sentencing Commission proposed several changes to guidelines for illegal re-entry, some of which would reduce the sentence for criminals below that of current guideline. What was Justice Department's position on the proposed amendment?**

ANSWER: For the past two years the Department of Justice has strongly urged the Commission to review the guidelines for Alien Smuggling and Illegal Entry into the United States found at USSG §§ 2L1.1 and 2L1.2. Some of our suggestions were adopted during the 2005-6 cycle. During this past year, we again suggested a number of changes and included those proposals in a letter to the Commission on March 30, 2007, which read in part as follows (footnotes added):

"8. Immigration USSG §§ 2L1.1 and 2L2.1: With regard to the proposed amendments to the tables in §§ 2L1.1 and 2L2.1, that provide for increases in sentence based on the number of aliens or the number of documents, the Department strongly supports the idea of amending both tables to cover a broader numerical range. Our experience reveals that the tables do not adequately address the scale of the more serious alien smuggling and immigration fraud offenses we now regularly encounter. The challenges we face in enforcement in this area have grown dramatically since these guidelines went into effect. Offenses involving hundreds of fraudulent immigration documents have become common, and offenses involving a thousand or more documents are not unique. Reform is needed in order to provide a uniform mechanism for handling cases of this size in place of the current undefined upward departure process. This, in our view, serves the twin purpose of proportionality and uniformity. We think both of the options under consideration are an improvement over the existing Guidelines. We favor option two because it offers a more discriminating approach to the escalating seriousness of offenses involving 6 to 99 aliens or documents. Our experience reveals that the degrees of misconduct between the extremes of 6 and 99 aliens or documents are more significant than the present tables acknowledge. For instance, a smuggling offense involving 23 aliens generally is indicative of greater culpability than one involving 8 aliens, but the current table treats the offenses identically.

Second, option 2 is superior because it provides greater offense-level increases for smuggling and fraud offenses involving larger numbers of aliens or documents. We welcome such increases because organized alien smuggling and immigration fraud are two of the most serious enforcement problems we face today. Alien smuggling, for example, is a global affair with estimated annual profits in the billions. The increasing scale of immigration fraud is similarly alarming. In a recent prosecution in the Eastern District of Virginia, several U.S. members of an international network of visa brokers–including a former CIA officer–were prosecuted for selling 1,400 fraudulent applications for U.S. visas to Chinese and Russian citizens abroad. One particular application was offered for an astonishing $120,000. If we are to

turn this tide, it is very important that the Guidelines provide adequate punishment and deterrence to those who violate the law on such a grand scale.

USSG § 2L1.2: We believe that in contrast to the other guidelines, 2L1.2 is in dire need of major change. The Courts, the probation offices, defense attorneys, law enforcement officers and prosecutors are unnecessarily expending significant time and effort parsing over words and statutory construction of State and local laws without any real benefit to the ultimate outcome, namely, a fair, predictable and appropriate sentence. In FY 2006, the Courts handled over 17,000 immigration cases (24.2% of its cases). We must do more, however, to ensure that we are fully utilizing the resources that have been given to us by Congress to enforce our immigration laws. The simple reality is that the current immigration guidelines provide a significant barrier to doing more. The Department favors a variation of either Option 6 or Option 7.

We do not favor either of these options as a means to increase the overall sentences for illegal re-entry cases. Rather, we favor these as a means to achieving fair sentences more efficiently, thereby allowing all participants in the process to make better use of their limited resources. We originally offered the potential triggers in Option 6 as examples only, and recognize that the Commission may need to employ different triggers to develop a balanced Guideline with the goal of increased simplicity and net neutrality in terms of the total number of defendants who would receive the particular adjustments to their base offense level. The triggers in Option 7 were based on a subsequent analysis of a sample of cases and are the levels that would produce little change in the over all length of sentences. Of the 108 cases reviewed, 85 received the same sentence under option 7 as they would under existing § 2L1.2. Of the 23 that did not "neutralize," 14 were increased, and 9 were reduced.

In its current form, § 2L1.2 encourages endless litigation over whether convictions qualify for enhancement under the "categorical approach" outlined in the Supreme Court's Taylor decision. This litigation has become a major impediment to efficient sentencing and places a significant strain on the courts, the probation office, the prosecution, and the defense. This burden falls disproportionately on the five Southwest Border judicial districts, which prosecute the overwhelming majority of immigration related cases.

Making the Guidelines simpler will in turn make the system stronger and allow these cases to be handled more efficiently. Prosecutors, agents and probation officers spend an inordinate amount of time identifying, documenting, and researching prior convictions to determine whether they qualify as aggravated felonies or trigger specific offense characteristics under § 2L1.2. Defense attorneys must perform the same analysis, and eventually judges must do so as well. Reported court decisions are replete with examples in which the categorical analysis has led to counter-intuitive, if not capricious results, allowing bad actors to avoid appropriate punishment on seemingly technical grounds. For example, even when documents show what looks like a qualifying conviction, the outcome remains subject to litigation and the courts reach inconsistent results on whether convictions will qualify. For example, in *United States v. Cortez-Arias*, 403 F.3d 1111 (9th Cir. 2005), the Ninth Circuit held shooting at an occupied dwelling is a "crime of violence." However, in *United States v. Martinez-Martinez*, 468 F.3d 604 (9th Cir. 2006), the same court, relying on a different State statute, declared such

an offense is not a crime of violence, requiring proof that the residence actually was occupied at the time of the shooting–a fact one scarcely could glean from court records. The Fifth Circuit, based on yet another State statute, also found shooting at an occupied dwelling is not a crime of violence. *United States v. Alfaro*, 408 F.3d 204 (5th Cir. 2005). Further, the problem of the categorical analysis is not limited to crimes of violence. For example, the Supreme Court's *Lopez v. Gonzalez*, 126 S. Ct. 625 (2006) decision and the Ninth Circuit's *United States v. Corona-Sanchez*, 291 F.3d. 1201 (9th Cir. 2002) (en banc) decisions did not involve crimes of violence.

Options 6 and 7 would largely obviate the categorical approach in re-entry cases and substantially reduce the time needed to litigate and resolve these cases – an extremely important consideration given the increasing volume of cases. It is important to emphasize also that the benefit will not be felt in just the cases prosecuted but also in the cases that we review and decline to prosecute criminally because it will make it far easier for prosecutors to ascertain the possible sentence and, therefore, whether the case merits the expenditure of federal resources. The Guideline calculation would be driven primarily by the length of sentence imposed for prior convictions. Although state sentencing regimes are not entirely uniform, we believe the length of sentence imposed provides a far more objective and readily-determined basis for an increased offense level under 2L1.2 than does the current categorical approach which is governed entirely by varying practices in charging and record-keeping among the 50 states and thousands of counties and parishes throughout the United States. After all, the present criminal history categories in the Guidelines are largely based on sentence length, and extensive study by the Commission has shown that there is a direct relationship between recidivism and these same criminal history categories. We also note that present Guideline 4A1.3, (Criminal History) provides judges with the flexibility to address prior sentences that overstate the seriousness of an underlying offense.

While we are in favor of a shift away from the categorical approach, we do believe that convictions for certain specified offenses (murder, rape, for a child pornography offense or an offense involving sexual abuse of a child, or for conspiracies or attempts to commit such offenses), regardless of the length of sentence, should merit a 16 level increase to the base offense level.

We also recognize that in making such a major change, and despite the fact that there will be general neutrality in the effect on sentences imposed, in specific cases a defendant may receive a greater sentence or lesser sentence depending upon their particular record. We believe that these changes are a necessary result of a need to shift to a far more efficient, predictable, and rational system for determining the seriousness of the prior record.

We urge the Commission not to wait to amend 2L1.2 until Congress considers again this year possible amendments to the Immigration and Nationalization Act. The system needs relief now. First, as the media has repeatedly reported there is a good chance that nothing will happen and we will be in the same position we were last year at the end of the Commission cycle. Second, even if legislation is passed, it would most likely have little, if any, impact on the changes proposed in option 6 or 7. The compromise Senate bill, S 2611, which was passed by the Senate last year and has been the basis for discussions this year, amends the sentencing

scheme for illegal entry and re-entry violations so that they are based for the most part on the length of sentence imposed for prior convictions rather than the type of offense. We would submit that delaying change to 2L1.2 for another year only prolongs the expenditure of unnecessary resources and continues time consuming litigation. We urge the Commission to act this year to shift away from the use of the categorical approach, an approach we believe ill-serves all involved.

Finally, with regard to the request for comment regarding whether the Department believes the base offense levels for §§ 2L1.1, 2L2.1, and 2L2.2 should be increased. With respect to § 2L1.1, we do not believe the Commission should increase the current base offense level of 12, assuming the Commission adopts either option 1 or 2 to amend the table governing the number of aliens involved in the offense. Regarding § 2L2.1, last year we recommended that the Commission raise the current base offense level from 11 to 12 to match the base offense level in 2L1.1, and we stand by that recommendation here. As for § 2L2.2, we believe the base offense level of 8 should be increased, especially for offenses involving immigration or naturalization documents. Under the present Guideline, most offenders face a zone A sentence of 0 to 6 months upon conviction for an offense involving a green card, naturalization certificate, or asylum claim – this is insufficient punishment in light of the seriousness of the offense."

Option Two provided for substantially increased sentences when the offenses involved more than 100 aliens or documents while also including increases more rapidly when fewer aliens or documents were involved. Option One, while an improvement on the existing guideline, would have resulted in substantially lower sentences than under Option Two.

Options 6 and 7 would shift the determination of the length of sentence away from the categorical approach (i.e., one based on the type offense underlying the previous conviction) to one primarily determined by the length of sentence imposed for prior convictions. Some categorical offenses, such as murder, rape, child pornography, and child sexual abuse would still be the basis for the largest increase in sentence regardless of the length of term of imprisonment.

Smith 264 **Is the Department seeing any progress in the fight against meth?**

ANSWER: Over the past 10 years, small toxic methamphetamine labs became prevalent in the United States, peaking with over 17,000 lab incidents reported in the United States in 2004. A number of factors served as catalysts for the dangerous presence of these meth labs, including the presence of easy to follow "recipes" over the Internet, and availability of ingredients needed to produce methamphetamine, (contained in many over-the counter cold medications and common household products found at retail stores.) Methamphetamine abuse infected communities all across the country.

As a result of collaborate efforts from Federal and State partners, including increased education and awareness, enforcement efforts, and the enactment of the Combat Methamphetamine Act which placed restrictions on the sales of methamphetamine precursor chemicals, and there has been a 61 percent reduction in the number of small toxic methamphetamine labs.

Additionally, the number of "super labs" seized in the United States dropped 88 percent, from 143 in 2002, to 16 in 2006. There is also evidence that word about the consequences related to methamphetamine addiction have reached children. Statistics show that current methamphetamine use among 8th, 10th, and 12th graders plummeted 50 percent since 2001.

There has been a 38 percent increase in Methamphetamine Priority Target Operations (PTOs) (from 55 in FY 2005 to 76 in FY 2006). Since 2005, more than 650 chemical registrations and applications have been denied, surrendered, or withdrawn as a result of DEA investigations. In FY 2006, DEA made 6,233 methamphetamine related arrests and seized 1,550 kilograms of the drug.

Smith 265 **As states have passed legislation to address the production of meth we're seeing a decrease in its domestic production. However, there is evidence that international drug traffickers have stepped into this void and that meth is now coming into the country through traditional drug trafficking routes. What is the Department doing on the international front to address this problem? Who are the international partners that are supporting your efforts? What exactly are they doing to support your efforts?**

ANSWER: The Department, through DEA, is involved with Project Prism, an initiative sponsored by the International Narcotics Control Board (INCB). The initiative is aimed at assisting Governments in developing and implementing operating procedures to more effectively control and monitor trade in Amphetamine Type Stimulants (ATS) precursors, used mainly in the production of methamphetamine and Ecstasy, in order to prevent their diversion. A task force oversees the initiation of individual operations and ensures the sharing of information, intelligence, and the resulting findings. The United States is a member of the Project Prism task force and the regional focal point in the Americas for activities related to the project. Other task force members include the Netherlands, South Africa, Australia, China, Interpol, The World Customs Organization, the European Commission, and the INCB. At present, 127 nations and the international organizations listed participate in Project Prism. There are currently ongoing operational projects run by the INCB that target pseudoephedrine and ephedrine, the main precursor in the manufacture of methamphetamine.

During February 2006, DEA hosted a meeting in Hong Kong with many of its international law enforcement and regulatory counterparts with the specific objective of developing enhanced systems for voluntary cooperation in data collection and exchange in law enforcement channels. While there were some differences of opinion as to the manner and channels in which information regarding the illicit trade in these substances should be exchanged, it was important to bring precursor chemical producing nations together in concert with countries in which illicit drug manufacturing occurs, in order to have a candid discussion regarding the diversion of licit chemicals used in the production of synthetic drugs, including methamphetamine.

This meeting also helped to lay a foundation for the discussions and negotiation amongst concerned governments which led to the passage of a resolution, drafted by the U.S. delegation that included DEA representatives, entitled "Strengthening Systems for Control of Precursor

Chemicals Used in the Manufacture of Synthetic Drugs", at the 49th Commission on Narcotic Drugs (CND) in Vienna, Austria March 8-18, 2006. The major provisions of the CND resolution, which involved the precursor's ephedrine, pseudoephedrine, preparations containing these substances, PMK, and phenyl-2-propanone (P2P), include the following:

- Requests countries to provide to the INCB annual estimates of their legitimate requirements for PMK, pseudoephedrine, ephedrine, and P2P, and pharmaceutical preparations containing these substances. The resolution also includes language which would allow the INCB to provide these estimates to member states in such a manner so as to ensure such information is used solely for drug control purposes.

- Urges countries to continue to provide to the INCB, subject to their national legislation and taking care not to impede legitimate international commerce, information on all shipments of PMK, pseudoephedrine, ephedrine, and P2P, in addition to pharmaceutical preparations containing these substances.

- Requests countries to permit the INCB to share shipment information on pharmaceutical preparations containing these substances with concerned law enforcement and regulatory authorities to prevent or interdict diverted shipments. The resolution further outlines that the mechanism for the sharing of this shipment information with concerned national law enforcement and regulatory authorities could be done under the standard operating procedures as established in Project Prism, on a current basis, by using the INCB online Pre-Export Notification system or other effective mechanisms, so that appropriate measures can be taken in order to prevent or interdict those shipments of concern.

- Requests importing countries to ensure that its imports of these substances and preparations containing these substances are commensurate with their legitimate requirements.

The resolution also requests that the U.N. ensure that INCB precursor programs are adequately funded and invites member states to consider providing additional support to the precursor program in the form of the provision of cost-free expertise and extra-budgetary funds.

This year's Commission on Narcotic Drugs, Fiftieth Session March 12-17, 2007, included a follow-up resolution to the previous year entitled, "Prevention of Diversion of Drug Precursors and Other Substances used for the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances." This resolution encouraged vigilance in the movement of other ATS precursor sources, highlighting ephedra (primarily a source of ephedrine) and phenylacetic acid (a precursor for P-2-P manufacture, P-2-P being itself a precursor to both methamphetamine and amphetamine.

Additionally, through DEA's initiation and with the cooperation of the following countries, a pre-notice agreement regarding the shipping of precursor chemicals between Hong Kong, Mexico, and Panama was implemented. This agreement establishes that Hong Kong will

no longer send shipments of pseudoephedrine products to Mexico or Panama without the importer verifying that the recipient company is indeed legitimate and a valid permit for these exports has been issued by the importing country.

Smith 267 **What are you doing about that?**

ANSWER: International cooperation is the key in combating methamphetamine and the control of precursors. To enhance our international efforts to combat this drug, DEA has assigned Diversion Investigators (DIs) to a number of our foreign offices. These DIs, through their knowledge of pharmaceuticals and chemicals, play a critical role in preventing the diversion of List I chemicals, which are used in the manufacture of methamphetamine and of pharmaceutical controlled substances. The DIs coordinate with foreign host country counterparts to establish effective systems of chemical controls and to ensure that customers in foreign countries receiving U.S. exports of pharmaceutically controlled substances are in fact legitimate companies.

DEA is also working closely with our Mexican partners to combat the methamphetamine trade. In March, with DEA's assistance, Mexican law enforcement made the single largest cash seizure the world has ever seen—stripping methamphetamine chemical traffickers of $207 million in cash assets. In addition, 3 methamphetamine megalabs (multi hundred pound quantities) have been seized in Mexico as well as other superlabs (20 to hundred pound quantities). The Mexican government has also seized many ton quantity shipments of precursor chemicals destined for illicit use.

As a task force member for the Americas (western hemisphere) in Project Prism, DEA coordinates suspect shipment information with the Government of Mexico (GOM). Mexico has responded admirably and competently regarding these shipments and literally tons of precursor chemicals destined for illicit use has been seized in this coordinated effort.

Additionally, between FY 1999 and FY 2006, the Department trained approximately 9,700 State and local law enforcement officers and approximately 2,100 Mexican law enforcement and regulatory officials in a variety of investigative, enforcement, and regulatory methods relating to clandestine laboratory investigations and/or methamphetamine trafficking. DEA, through the State Department has also given 8 clandestine lab trucks to our counterparts in Mexico to assist in their efforts in combating Mexico's methamphetamine problem.

Smith 268 **Is Mexico's government cooperating?**

ANSWER: The Government of Mexico has acknowledged methamphetamine is a problem for both nations. They have sought DEA training for their agents, officers, chemists and prosecutors alike, to attack the problem south of the border. They cooperate in enforcement efforts and intelligence exchanges. They have enacted a series of laws, regulations, and agreements to restrict precursor imports and regulate their sales, with an emphasis on pseudoephedrine. These include: prohibiting one-time import shipments weighing more than three tons; restricting importation of pseudoephedrine to drug manufacturers only, all other

licenses were cancelled; requiring shipments of pseudoephedrine to be transported in GPS-equipped, security-escorted armored vehicles to prevent hijacking and unauthorized drop offs; limiting sales of pills containing pseudoephedrine to licensed pharmacies; and restricting customer purchases to no more than three boxes of pills with a prescription required for larger doses.

In 2006, the Government of Mexico reduced pseudoephedrine and ephedrine importation permits to 70 tons. These permits are to be split evenly amongst the Mexican-based pharmaceutical manufacturing companies. This represents a 53 percent reduction from the 2005 pseudoephedrine and ephedrine importation levels of 150 tons of these bulk substances. Mexican officials have further advised that this 70 ton limit also applies to combination products containing pseudoephedrine and/or ephedrine.

Smith 270 **CCIPS has conducted some of the largest, most successful multi-national and multi-district IP prosecutions in recent years. But there is a perception the Department's increase in attorneys available to prosecute IP crimes has not been matched by a proportional increase in FBI special agent resources. Do you share this concern? Can you respond to that view and explain, what, if anything the Department believes is necessary to "re-balance" the investigational and prosecutorial resources?**

ANSWER: In the post-9/11 world, the balancing of investigative resources and priorities has been an ongoing challenge for the Department and the FBI. Nevertheless, despite the many new and varied demands on its investigative resources, the FBI has continued to aggressively investigate intellectual property crimes and has increased its case numbers. For instance, building on a 38 percent increase in indictments filed from the FBI's IP investigations for 2003-05, last year the FBI increased the number of charged defendants in its cases by another 30 percent (from 145 in 2005 to 191 in 2006). Moreover, the number of FBI arrests in IP cases increased by nearly 40 percent in 2006 (144, up from 104 in 2005), and increased the number of convictions in those cases by more than 50 percent (from 124 in 2005 to 187 in 2006).

The balancing of investigative and prosecutorial resources will no doubt continue to be a challenge in the area of IP crime as well as other white collar crime generally. The Department will continue to seek ways to maximize the investigative resources of the FBI and other federal agencies, including the Department of Homeland Security, in order to preserve a strong criminal enforcement regime against IP crime.

Smith 271 **How many Computer Hacking and Intellectual Property (CHIP) units currently exist? How many have been created by the Department since June 2006 when DOJ reported having 25 such units?**

ANSWER The CHIP program was significantly expanded from a single CHIP unit in 2001 (San Jose) to 25 specialized units in 2006. The current number of CHIP Units remains at 25. However, as a result of the expansion of the CHIP program to encompass the previously-established Computer and Telecommunications Coordinator (CTC) Program, in addition to the 25 specialized CHIP Units, there is a least one specially-trained CHIP attorney assigned to each

of the 93 United States Attorneys' Offices, and approximately 230 CHIP attorneys in total (not counting CCIPS attorneys).

Smith 272 **How many CHIP units are fully staffed and operational? Does the Department have plans to create new CHIP units over the next year? If "yes," how many?**

ANSWER: All of the 25 CHIP Units are operational and, aside from a handful of positions for which attorneys are in the process of being selected or hired, fully staffed. Currently, there is no formal plan for the creation of additional CHIP units over the next year, although the Department is constantly assessing the need for additional CHIP resources and will seek to create additional CHIP Units, or expand existing Units, as needed.

Smith 273 **How many DOJ attorneys are dedicated full time to the prosecution of intellectual property offenses?**

ANSWER: Within CCIPS, 14 attorneys are dedicated full-time to intellectual property matters, and other CCIPS attorneys contribute to IP enforcement efforts as well. Additionally, each of the approximately 230 CHIP attorneys in U.S. Attorneys' Offices around the country dedicate a portion (and in some cases, a majority) of their time to the investigation and prosecution of IP crimes. Finally, in some U.S. Attorney's Offices, IP offenses are not handled exclusively by CHIP prosecutors, but rather are often assigned to their General Crime or White Collar crime sections. In short, hundreds of DOJ attorneys participate in criminal enforcement of IP through prosecution of IP cases, assistance with investigative legal process, and IP enforcement training efforts domestically and abroad.

Smith 274 **How many FBI special agents are dedicated full time to the investigation and development of IP prosecutions? How many of these agents are assigned to CHIP units?**

ANSWER: In the field, 519 Special Agents (SAs) are assigned to cyber matters. Of these, 282 are assigned to the Computer Intrusion Program and 237 are assigned to the Cyber Crime Program (CCP). The CCP includes the Innocent Images program, Intellectual Property Rights (IPR), and fraud committed over the Internet. Currently, 49 SAs are assigned to the investigation of IPR matters. The FBI has no SAs dedicated to Computer Hacking and Intellectual Property units.

Smith 275 **Do the majority of FBI special agents who are involved in IP investigations work exclusively on such cases or is it more common for an agent to be involved in handling cases that are unrelated to IP? What percentage of total FBI "burned man hours" is devoted to investigating and developing IP prosecutions?**

ANSWER: Of the 9,523 SAs conducting investigations and operations in the FBI's 56 field offices, 237 are assigned to the CCP. These 237 SAs generally investigate all CCP-related

matters. Of these, 49 SAs currently investigate IPR matters. This represents 20 percent of the SA resources assigned to the CCP. Overall, approximately 0.5 percent of the FBI's field SAs are assigned to the investigation of IPR matters.

Smith 276 **How many successful IP prosecutions have resulted from the CHIP units in the past year? Past three years?**

ANSWER: The following statistics show the number of defendants convicted by the various CHIP Units under at least one of the following IP offenses: 17 USC 506, 1201, 1202, 1203, 1204 and 1205; 18 USC 1831, 1832, 2318, 2319, 2319A, 2319B; and 47 USC 553 and 605. Defendants who were charged with an IP offense, but who were convicted of an offense other than the statutes listed above are not included here. Similarly, defendants who were never charged under an IP offense, but whose conduct was IP related, and who were convicted under general conduct statutes, such as conspiracy or mail and wire fraud, are also not included here.

Please see Attachment 5 for additional information.

Smith 277 **Where does the prosecution of IP crimes rank on the Department's priority list? Where does the investigation of such crimes rank on the FBI's priority list? How have these priorities changed over the past decade? Past three years?**

ANSWER: The enforcement of intellectual property laws has been one of the Attorney General's top priorities for the past three years, as evidenced by increases in IP prosecutions, the continuing development of the CHIP Network, the creation and ongoing work of the Intellectual Property Task Force, former Attorney General Gonzales's personal participation in both international and domestic IP enforcement efforts, and the Department's proposed IP legislation. Similarly, the FBI has made IP theft one of its highest priorities, and has trained additional agents to handle the legal and technical issues inherent in these developing areas of crime. Despite its many law enforcement responsibilities, including combating terrorism, the FBI has been able to increase the number of IP investigations and arrests over the past several years.

In general, IP crime has risen as priority for the Department since the creation of the Computer Crime and Intellectual Property Section (1996), the growth from one CHIP Unit in 2001 to 25 Units today and the institution of the Department's Task Force on Intellectual Property in 2004.

Smith 278 **Please detail the forensic resources available to the CHIP units to assist in prosecuting IP cases?**

ANSWER: In general, computer forensics in IP cases are handled by the federal agency investigating the case – usually either the FBI or ICE. Analysis is usually performed locally or regionally, and the resources available for such analysis often vary by district. For instance, the bulk of the FBI's computer forensics are performed by specially-trained Computer Analysis

Response Team ("CART") forensic examiners. More recently, in an effort to streamline and improve the efficiency of its computer forensic examination process, the FBI started a program that trained approximately 1,000 Special Agents in methods of reviewing evidence seized from computers This program, known as the Case Agent Investigative Review ("CAIR") program, was modeled after pilot programs begun in the Los Angeles and Washington, D.C. field offices. CART examiners assist case agents in reviewing evidence copied and extracted from seized computers. In at least 15 field offices, the evidence is made available for viewing on agents' desktops as part of the CART Storage Area Network, or CARTSAN program, which speeds up the initial review of seized digital evidence and helps maximize the productive use of existing CART resources.

CCIPS has also created an in-house Cyber Crime Laboratory ("CCL") to assist CCIPS and CHIP attorneys in understanding how computers, electronic devices, and emerging communications technologies are used to commit or facilitate crimes, or to contain evidence of such crimes. Using a state-of-the-art computer forensics facility, the three technologists in the CCL analyze new technologies and identify their potential use for prosecutors to obtain evidence in the fair and effective enforcement of criminal statutes. CCL technologists provide prosecutors with the technical training and information needed to exercise general direction over the enforcement of all federal criminal laws in an electronic environment. The CCL currently assists in IP prosecutions, particularly online and multi-district cases. The CCL also is available to:

- Provide specialized computer and network analytical and forensic support to on-going CCIPS and CHIP criminal investigations, including code analysis, network modeling, and electronic evidence management;
- Identify new and emerging technical issues and challenges at the intersection of technology and law;
- Support and advise senior Departmental decision-makers about technical matters related to policy issues, including legislation;
- Assist CCIPS, Division attorneys, and AUSAs in preparing to present technical issues at trial or in other litigation;
- Train CCIPS, Division attorneys, AUSAs, and law enforcement agents on technical issues related to the enforcement of criminal laws;
- Advise and support CCIPS in strengthening international enforcement capabilities;
- Identify and engage other sources of technical support and expertise to support the CCIPS mission, including technologists in both the public and private sectors.

Smith 279 **In March 2003, the Department testified before the Courts Subcommittee about piracy and noted the growing and troubling influence of organized crime on the**

international piracy landscape – particularly in Asia and parts of the former Soviet Union. Four years have passed since that statement.

ANSWER: No question presented.

Smith 281 **Please identify which specific budget requests the Department has made since 2003 as part of its effort to respond to the growing influence of organized crime?**

ANSWER: Please see Attachment 6 for additional information.

Smith 283 **The Antitrust Modernization Commission recommends that the Antitrust Division of DOJ "systematically collect and record information regarding the costs and burdens imposed on merging parties by the Hart-Scott-Rodino Act process." Do you agree that the Antitrust Division should not unnecessarily burden parties in the course of pre-merger review? Would you agree to work with Congress to develop metrics to help us understand the extent of this burden?**

ANSWER: The Department agrees that the Antitrust Division should avoid imposing unnecessary burdens on merging parties in the course of its review under the Hart-Scott-Rodino process. Enforcing the antitrust laws is the Division's paramount mission, and increasing the efficiency of review is essential to thorough and aggressive antitrust enforcement. The Division's goal is to get to the right answers as quickly as possible with the least burdens necessary to make responsible enforcement decisions. To achieve this goal, the Division strives to avoid wasting resources on matters that are unlikely to involve harm to competition while ensuring that the necessary resources are available to investigate and successfully resolve matters that threaten harm to competition. Efficient review also lowers the costs of enforcement to the economy, which in turn benefits consumers, businesses, and American taxpayers.

In addition, the Antitrust Division collects information to measure the costs and burdens of the merger review process, including the size of productions of data, documents, or other information, and the number of depositions taken during the course of an investigation. The Department would be happy to work with Congress to enable a better understanding of these costs and burdens.

Smith 284 **What is the Department doing to facilitate a harmonization of antitrust principles abroad? Specifically, what assistance is the Department providing China in the development of its competition law?**

ANSWER: One important way the Department encourages harmonization is by working with other nations' enforcement institutions as they draft antitrust laws. Working with China as it continues its efforts to enact its first comprehensive antitrust law remains a high priority for the Department. The Department has commented on several draft versions of China's antimonopoly law over the past three years. In addition, the Department has sent several high-level delegations to China to discuss the draft law and competition policy generally, including a delegation led by

Assistant Attorney General Thomas O. Barnett in September 2006, and several trips to Beijing led by Deputy Assistant Attorney General Gerald F. Masoudi. Department officials also moderated discussions with government officials from China in a U.S.-China Legal Exchange Program held in Seattle, Cleveland, and Washington, D.C. in December 2006. In March 2007, the Department participated in an all-day seminar with officials from the Chinese legislative committee responsible for preparing the antimonopoly legislation to discuss ways to improve the legislation. Both Chinese and United States officials agree on the importance of continued dialogue, and additional work with Chinese officials is expected both in the remainder of 2007 and beyond.

More generally, the Department participates in leadership positions in multilateral organizations, such as the Competition Committee of the OECD and the International Competition Network, that promote harmonization of international antitrust enforcement. The Department also engages in bilateral discussions with many antitrust enforcement agencies and sends Department representatives to many foreign agencies to provide technical assistance.

Smith 285 **How does the Department fund its international antitrust technical assistance efforts? Does the Department support the direct of funding of such efforts as the Antitrust Modernization Commission recommended?**

ANSWER: Most of the Department's antitrust technical assistance has been funded by USAID. For over fifteen years, the Antitrust Division and the Federal Trade Commission have enjoyed a close, cooperative relationship with USAID that recognizes the value of training in the area of competition policy. The Department has also been able to provide technical assistance as a result of funding from the Trade Development Agency, the Department of Commerce's Commercial Law Development Program, and the State Department. The Department has also used small amounts of its own funds in special situations, such as for providing technical assistance in countries without an active USAID program.

The Department's technical assistance and competition advocacy programs have been very successful. Nonetheless, given the importance of training and technical assistance on competition policy, the Department would be open to considering additional sources of funding for these programs.

Smith 286 **What is the Department doing to reduce the time it takes to decide whether DOJ or the FTC will review a merger under the Hart-Scott-Rodino pre-merger review process? Would the Department be amenable to a statutory deadline to clear mergers within a specified period of time as the Antitrust Modernization Commission recommended?**

ANSWER: The Department is committed to ensuring that matters are cleared to the appropriate agency as quickly as possible, and works actively to minimize the burden that clearance delays may impose on merging parties.

The current process is based on the principle that the agency with the greatest experience in the pertinent industry reviews each merger in that industry. This is a sound basis, and the process works well in the large majority of cases. Nevertheless, the Department continues to work with the FTC to improve the process and would be happy to work with Congress as well.

Smith 287 **The Sentencing Commission recently announced late on a Friday evening that it was reducing guideline penalties for crack cocaine. We were not happy about the way in which this decision was reached, and are concerned about the specific impact that this decision may have. What is the Justice Department's view?**

ANSWER: On March 30, 2007, the Department submitted to the Commission its views on the various proposed amendments to the Sentencing Guidelines. Included was the following statement with reference to any changes to the guidelines for crack cocaine:

> In 2002, Deputy Attorney General Larry Thompson testified before the Commission on behalf of the Administration opposing proposals, then under consideration, to lower penalties for crack cocaine offenses. The existing policy-including statutory mandatory minimum penalties and sentencing guidelines – has been an important part of the Federal government's efforts to hold traffickers of both crack and powder cocaine accountable, including violent gangs and other organizations that traffic in crack cocaine and operate in open air crack markets that terrorize neighborhoods, especially minority neighborhoods. The problems that crack brought to our communities have not gone away.

The Department opposed any sentencing guideline amendments– including the amendment recently proposed by the Commission -- that do not adhere to enacted statutes clearly defining the penalty structure for controlled substance offenses. Existing statutes embody federal cocaine sentencing policy and represent the democratic will of the Congress. The amendment, which treats crack cocaine offenses differently than all other controlled substance trafficking offenses for which there is a mandatory minimum, is contrary to that statutory sentencing policy.

The Sentencing Commission currently is considering whether the proposed amendment should be applied retroactively so that previously-sentenced prisoners receive the benefit of the proposed reduction in crack penalties. The Department opposes any retroactive application of the proposed amendment. Retroactive application again is contrary to the current statutory sentencing scheme, will require substantial judicial resources to litigate and implement and likely will result in the release of large numbers of prisoners into the population within a short period of time.

Smith 288 **The House passed H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act on Thursday, May 03, 2007. Please outline the Administration's concerns about this bill.**

ANSWER: Please see Attachment 7 for the Statement of Administration Policy on H.R. 1592.

Smith 289 **Please describe the President's Identity Theft Task Force strategic plan to combat identity theft?**

ANSWER: The President's Identity Theft Task Force Strategic Plan identified three distinct stages in the "life cycle" of identity theft: (1) the identity thief attempts to acquire a victim's personal information; (2) the identity thief attempts to misuse the information he has acquired; and (3) the identity thief completes his crime and enjoys the benefits, while the victim realizes the harm.

To attack each of these three stages, the Strategic Plan focused on improvements in four key areas: (1) keeping sensitive consumer data out of the hands of identity thieves through better data security and more accessible education; (2) making it more difficult for identity thieves who obtain consumer data to use it to steal identities; (3) assisting the victims of identity theft in recovering from the crime; and (4) deterring identity theft by more aggressive prosecution and punishment of those who commit the crime.

In these four areas, the Task Force made a number of recommendations, including the following broad policy changes: (1) that federal agencies should reduce the unnecessary use of Social Security numbers (SSNs), the most valuable commodity for an identity thief; (2) that national standards should be established to require private sector entities to safeguard the personal data they compile and maintain and to provide notice to consumers when a breach occurs that poses a significant risk of identity theft; (3) that federal agencies should implement a broad, sustained awareness campaign to educate consumers, the private sector, and the public sector on deterring, detecting, and defending against identity theft; and (4) that a National Identity Theft Law Enforcement Center should be created to allow law enforcement agencies to coordinate their efforts and information more efficiently, and investigate and prosecute identity thieves more effectively.

Further details regarding specific recommendations in the Strategic Plan are available at http://www.idtheft.gov/reports/StrategicPlan.pdf.

Smith 291 **Has the rate of such requests gone up or down since the memorandum was announced?**

ANSWER: The Department did not maintain a record of requests for waivers of attorney-client privilege prior to the announcement of the memorandum. The memorandum established new approval and record-keeping requirements.

Smith 296 **Has the Department begun to see any impact from the Project Safe Childhood initiative?**

ANSWER: Please see response to Question 294 above

Smith 297 **What is the Department doing to address the recent school shootings/violence?**

ANSWER: Please see the response to Question 251, above

Smith 299 **Please explain in detail the role and activities of election monitors and observers in the Department's efforts to ensure the integrity of our electoral system. Please include a discussion of any prohibited activities (prohibitions put into affect to ensure that monitors and observers do not abuse their authority or otherwise inappropriately interfere with persons voting and/or persons administering elections or managing polling locations).**

ANSWER: Section 8 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973f, authorizes the Attorney General to request that the Office of Personnel Management (OPM) assign federal observers to monitor polling place activities on election day. The authority for assigning federal observers was provided in the Voting Rights Act in 1965 to ensure that newly enfranchised black persons would be able to vote, have their votes counted, and be free from intimidation or harassment when they did vote. That remains the basic purpose of observers today. In addition, amendments to the Voting Rights Act in 1975 provided protection for certain groups of persons who may rely on languages other than English, i.e., Alaskan Natives, American Indians, Asian Americans, and Hispanics. Since then, federal observers have been utilized to monitor elections involving these persons as well.

Observers can be assigned only to political subdivisions of a state that have been determined to be covered under Section 4(b) of the Voting Rights Act, 42 U.S.C. § 1973b(b), and are certified by the Attorney General under Section 8(a) of the Act (formerly Section 6), 42 U.S.C. § 1973f(d), or where there is authorization by a federal court under Section 3(a) of the Act, 42 U.S.C. § 1973a(a). Federal observers are authorized by Section 8(d) of the Act to:

> (1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and
>
> (2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

The basic purpose of the federal observer program and the standards and procedures by which it is implemented have changed little since they were described by Assistant Attorney General J. Stanley Pottinger in testimony before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, on March 5, 1975, considers three basic areas: (1) the extent to which those who will run an election are prepared, so that there are sufficient voting hours and facilities, procedural rules for voting have been adequately

publicized, and polling officials, non-discriminatorily selected, are instructed in election procedures; (2) the confidence of the [minority] community in the electoral process and the individuals conducting the election, including the extent to which [minority] persons are allowed to be poll officials, and (3) the possibility of forces outside the official election machinery, such as racial violence or threats of violence or a history of discrimination in other areas, such as schools and public accommodations, interfering with the election. Such factors are particularly important in an election where a [minority] candidate or a candidate who has the support of [minority] voters has a good chance of winning the election. Federal observers provide a calming, objective presence in an otherwise charged political atmosphere, and serve to prevent intimidation of [minority] voters at the polls and to assure that illiterate voters are provided with non-coercive assistance in voting. For instance, when the local polling place is located in a white-owned store, the presence of federal observers can alleviate apprehension by black voters that informal voting procedures or other improprieties will be used which will enable the poll officials to know how they voted.

The decision of the Attorney General to request federal observer coverage for an election is based on extensive investigation by Voting Section staff of counties for which preliminary inquiries and past experience indicate that the presence of observers may be necessary to safeguard minority voting rights. When observers from OPM are appointed, one or more Department attorneys are assigned to coordinate the federal observer activities in the field. The Department attorneys in turn report to a supervisor in the Civil Rights Division's Voting Section.

Sometimes, the Department learns of election-related problems that may appear to warrant the assignment of federal observers, but there is insufficient time to either arrange for the assignment or to develop the factual predicate necessary for certification of the political subdivision. In addition, such problems may occur in jurisdictions that are not eligible for such certification because they are not covered under Section 4 or such problems implicate statutes other than the Voting Rights Act that also are enforced by the Voting Section, such as the Help America Vote Act. In all of these circumstances, one or more Department attorneys, often along with other Department personnel, may be assigned to monitor the election. Permission is sought from State or local officials, as appropriate, for Department monitors to be present in the polls during the election.

Federal observers and Department monitors are trained not to interfere in or comment on the conduct of the election; this point is stressed throughout their training. All participants are trained to observe and report their observations to their supervisors (the Department attorney leading the coverage or, in the case of observers, to the OPM captain or co-captain who in turn reports to the Department attorney leading the coverage). Observers and monitors are instructed with regard to the particular problems for which they should be alert and to notify their respective supervisors by telephone when those problems or other unusual or noteworthy events occur. The Department attorneys also report to Voting Section supervisors during the election coverage. On the day before the election, Department attorneys meet with local election and law enforcement officials, minority leaders, and candidates to describe our planned monitoring to them and establish lines of communication. Election officials are advised to contact the Department attorneys in the event any problem arises concerning a federal observer or Department monitor.

Because Department attorneys are present in the jurisdiction where the observers or monitors are stationed, when we learn of problems or receive complaints on election day we are in a position to determine the facts quickly and to immediately discuss with appropriate local officials what the problems are and how they might be remedied. In addition, on some occasions the Department engages in further investigation of election day complaints or problems that come to our attention after the election has been completed. The presence of federal observers or Department monitors has been very important in deterring improper activities, providing fast and accurate information that enabled us to get discriminatory practices stopped, and providing a generally calming atmosphere in racially charged elections.

QUESTIONS FROM CONGRESSMAN SCOTT

Scott 302 **Were any of the dismissed U.S. Attorneys forced out because, or due in part to, his or her investigation of a case that had partisan political implications?**

ANSWER: No.

Scott 305 **Please respond to the allegations concerning Debra Wong Yang in the New York Times article, dated May 4, 2007, entitled "The U.S. Attorney, the G.O.P. Congressman and the Timely Job Offer"?**

ANSWER: We are not going to respond to the unsupported, speculative allegations contained in a newspaper article.

Scott 306 **Given your statement during the hearing that you were told that Debra Wong Yang was experiencing financial hardship, has the Department of Justice ascertained whether or not Debra Wong Yang was offered money by the law firm representing Rep. Jerry Lewis while she was still the U.S. Attorney in Los Angeles?**

ANSWER: No.

Scott 307 **How many African American attorneys were in the Civil Rights Division of the Department of Justice on January 20, 2001? Since January 20, 2001, how many African American attorneys have been hired into the Civil Rights Division? How many African American attorneys are currently in the Civil Rights Division**

ANSWER: Forty-eight African-American attorneys worked in the Civil Rights Division on January 20, 2001. Since January 20, 2001, 29 African-American attorneys have entered the Civil Rights Division. Currently, 39 African-American attorneys work in the Civil Rights Division.

Scott 308 **Since January 20, 2001, how many attorneys have been hired into the Civil Rights Division of the Department of Justice who had significant experience in civil rights litigation prior to joining the Division? Did any of these attorneys have experience in representing minorities in discrimination cases prior to joining the Civil Rights Division?**

ANSWER: The Division does not track the civil rights litigation experience of its attorneys. However, in general, a number of factors may be considered in assessing an applicant's commitment to the work of the Division, including an applicant's reasons for wanting to work in the Division; understanding of the work and mission of the Division; personal background and interests; and demonstrated interest in and understanding of the laws enforced by the Division. Prior employment experience with an organization that conducts traditional civil rights

enforcement helps to demonstrate an applicant's commitment to the work of the Civil Rights Division. However, every applicant is unique and treated as such.

Scott 309 **Does the Department of Justice intend to initiate its own independent investigation of LAPD Officers' use of force during the immigration rally in MacArthur Park in Los Angeles, CA on May 1, 2007 for possible civil rights violations?**

ANSWER: The Criminal Section of the Civil Rights Division has opened a case and the Federal Bureau of Investigation is conducting an investigation. As with all criminal investigations, the FBI will provide the results of its investigation to the Criminal Section, which will then evaluate the evidence to determine whether further action is warranted.

Scott 310 **Under the Identity Theft Penalty Enhancement Act of 2004, a total of $10 million was appropriated to the Department of Justice for "the investigation and prosecution of identity theft and related credit card and other fraud cases." Please describe how these funds have been used to combat identity theft and related financial fraud.**

ANSWER: Section 6 of the Act authorized an appropriation of $2 million for each of the five fiscal years 2005-2009. It is our understanding that no specific appropriations pursuant to this authorization have been made.

Scott 311 **Representative Wolf, Representative Maloney, and I wrote you a letter a few months ago, recommending and requesting that you make better use of the tough measures in the PROTECT Act and the Adam Walsh Act to go after domestic traffickers of humans in this country, rather than prosecuting cases only where force, fraud, and coercion is involved. The bills we passed make it much easier to prosecute cases involving the notorious and brutal system of domestic prostitution. Why are you not prosecuting more cases based on the easier to prove provisions and enhanced punishments in the PROTECT Act and the Adam Walsh Act?**

ANSWER: The Department is grateful for the variety of tools given to us by Congress to prosecute all criminals, including international and domestic traffickers of adults and children. We seek to use all available statutory tools effectively. In every case, our prosecutors decide which charges to bring only after a careful consideration of the elements of the offense for all relevant criminal provisions and the evidence available to prove those elements and refute possible defenses.

As part of its effort to combat domestic prostitution, in the Spring of 2003, the Violent Crimes and Major Offenders Section (VCMOS) of Federal Bureau of Investigation, in partnership with the Department of Justice's Child Exploitation and Obscenity Section (CEOS) and the National Center for Missing and Exploited Children (NCMEC), started the Innocence Lost Initiative to target domestic sex traffickers of children and provide assistance to their

victims. The FBI has identified field offices located in areas where there is a high incidence of domestic sex trafficking of children and requested that these offices establish task forces to address the problem.

Since the inception of the Innocence Lost Initiative in 2003, it has resulted in 355 open investigations, 799 arrests, 187 informations or indictments, and 185 convictions in both the federal and state systems. These cases utilize many of the statutory provisions and enhanced penalties established by the 2003 PROTECT Act as well as the Adam Walsh Act, and, in most cases, do not require a showing of force, fraud, or coercion since they involve minor victims.

As part of the Innocence Lost Initiative, CEOS partnered with both the FBI and NCMEC to develop an intensive week-long training seminar, "Protecting Victims of Child Prostitution," held at and sponsored by NCMEC. The course is solely dedicated to the investigation and prosecution of cases involving child sex trafficking and serving the victims of these cases. The program brings State and federal law enforcement agencies, prosecutors, and social service providers of a targeted city to NCMEC, where the group is trained together. This grouping and training is designed to bring together each city's key elements in combating child prostitution, and cultivate cooperation, partnership, and a successful prosecution strategy. The pilot program occurred in September, 2003, and, since this initial program, NCMEC has sponsored several trainings each year. To date, over 600 key personnel have received this training as part of the initiative.

This task force approach, in combination with intensive multi-disciplinary training has not only increased the number of cases prosecuted, but has also increased the effectiveness of investigations, prosecution strategy, and victim services. The FBI, CEOS, and NCMEC continue to work together to insure the continued success of this very important initiative.

QUESTIONS FROM CONGRESSMAN LEE

Lee 312 **Mr. Gonzalez, I am in receipt of your letter dated May 9, 2007, in response to my letter to you regarding the numerous allegations of sexual abuse at various Texas Youth Commission facilities. Among other things, your response stated that in 2005 career prosecutors from the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Western District of Texas conducted their own investigation of sexual abuses at TYC facilities in 2005 and concluded there was not enough evidence to prosecute anyone for violations of federal criminal civil rights law. I want to explore this conclusion with you. Were those career attorneys aware of a 2005 investigation and report by the state's Texas Rangers that detailed allegations of wide-spread sexual abuse of juvenile inmates?**

ANSWER: The federal government reviews allegations of law enforcement official misconduct to determine whether the subject acted under color of law to willfully violate the civil rights of a person or persons. 18 U.S.C. 242. To be a felony, the conduct must have caused bodily injury, resulted in death, or involved kidnapping, aggravated sexual abuse, or a dangerous weapon. Although most states provide stiff criminal penalties for statutory rape, there is no comparable federal statute that criminalizes consensual sexual acts between an official and a ward in state custody, absent a willful violation of that ward's civil rights (i.e., a non-consensual sexual act).

Career prosecutors worked directly with the FBI, Texas Rangers, and the Texas Youth Commission to review all of the evidence in this matter. After reviewing this evidence, the career prosecutors determined that such evidence was insufficient for federal prosecution under 18 USC 242 or any other federal statute. The Department then referred the matter to state prosecutors for state prosecution under statutes such as TX Penal Code 39.04(a)(2) (felony to engage in sexual conduct with individual in custody).

Lee 313 **Which facilities were investigated?**

ANSWER: Career prosecutors from the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Western District of Texas conducted interviews and carefully investigated various allegations of sexual abuse by two officials employed at the West Texas State School in Pyote, Texas.

In addition, under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, and the juvenile justice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, the Special Litigation Section of the Civil Rights Division has authority to investigate complaints concerning conditions in State or locally-operated institutions, including juvenile justice facilities. When a systemic "pattern or practice" of the deprivation of constitutional or statutory rights is determined to exist, the Division has the authority to initiate civil action in the name of the United States against state or local officials to remedy such conditions.

Pursuant to this authority, the Special Litigation Section is currently conducting an investigation of the Evins Regional Juvenile Facility (Evins) in Edinburg, Texas, one of the facilities operated by TYC. On March 15, 2007, the Division issued its investigative findings, concluding that certain conditions at Evins violate confined youths' constitutional rights. Our findings letter is located at http://www.usdoj.gov/crt/split/documents/evins_findlet_3-15-07.pdf.

The Division is also aware of the statewide allegations of abuse in other TYC facilities and will consider any information to determine whether further federal investigations are warranted.

Lee 315 **In your May 9, 2007 response to my letter regarding the Texas Youth Commission, you reference a report prepared by the Department regarding the inquiry into TYC's Evins facility. On page 4 of the report, it states that "the rate of assaults found at the Evins facility is approximately five times the national average." Has a similar nationwide study been conducted regarding the incidence of sexual abuse at juvenile facilities? If so, what were the results? If not, why?**

ANSWER: The Department's Bureau of Justice Statistics conducted a survey of sexual violence in juvenile facilities during 2004. The estimated rate was 5.15 substantiated incidents per 1,000 youth in State operated juvenile systems. Later this year, BJS will issue a new report, based on a more in-depth survey of substantiated incidents involving youth, for calendar years 2005 and 2006.

Lee 316 Mr. Gonzalez, May, 9, 2007, you also responded to my letter which detailed the horrific incidents that have occurred at the Harris County Jail in Houston, Texas. Specifically, 101 inmates died in custody between January 2001 and January 2006. As tragic as this is, I must point out that if present trends continue, the number of deaths in 2007 will double the 22 deaths occurring in 2006. In your response you stated that your office will continue to gather information. But that will not end the string of needless and preventable deaths. An article published in the Houston Chronicle in 2005 that cites the fact that the Harris County Jail was decertified for two consecutive years by the Texas Commission on Jail Standards for unsanitary conditions due to overcrowding. How can I assist you in ensuring that this matter receives immediate attention from the Department?

ANSWER: As noted in response to question 312 above, the federal government reviews allegations of law enforcement official misconduct to determine whether the subject acted under color of law to willfully violate the civil rights of a person or persons. 18 U.S.C. 242. To be a felony, the conduct must have caused bodily injury, resulted in death, or involved kidnapping, aggravated sexual abuse, or a dangerous weapon. The Department is currently investigating a death at the Harris County Jail to determine whether a federal criminal violation has occurred.

As noted in response to questions 313 and 314 above, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. 1997, the Department of Justice is

authorized to investigate conditions of confinement in correctional facilities when it is alleged that prisoners are being deprived of constitutional rights pursuant to a pattern or practice of resistance to the full enjoyment of those rights. When such deprivations exist, the Department may initiate a civil action in the name of the United States against State or local officials to remedy unconstitutional conditions of confinement. The Special Litigation Section of the Civil Rights Division is charged with enforcing CRIPA. The Section has reviewed the information you originally provided to the Department as well as reports from media sources regarding conditions at the Harris County Jail. In addition, the Section is continuing to review additional information it has received regarding conditions at this facility to determine if a pattern or practice investigation is warranted. We will also review and consider any additional allegations from citizens or other sources that we may receive.

We again encourage you to share with us any further information you can provide regarding conditions at the Harris County Jail.

Lee 318 **Mr. Attorney General, isn't it also true that senior Justice Department and FBI civil rights officials were aware – indeed encouraged – this major decline in investigations by adopting tighter case-opening criteria that effectively excluded all but the most serious cases? It is reported that a retired authoritative source is quoted as saying: "Where there was a huge impact or a cry for a perceived impartial investigation, we had to open them up, and we did. But we didn't try to open the routine (police) shooting investigation, whereas before we would."**

ANSWER: The FBI continues to treat this important responsibility as a top investigative priority, maintaining manpower commitments to civil rights enforcement that are virtually identical to levels during fiscal year (FY) 2001. In fact, notwithstanding the inquiry's reference to a purported reluctance to conduct police shooting investigations, 74 percent of the FBI personnel assigned to the Civil Rights program are working Color of Law Matters, compared to 64 percent in 2002, 73 percent in 2003, 80 percent in 2004, 79 percent in 2005, and 72 percent in 2006. At the same time, SAs assigned to civil rights matters are investigating 18 percent more cases than in 2001. Perhaps the most important measure is the number of criminal indictments or other charges in civil rights cases; overall these figures were 21 percent higher in FY 2006 than in FY 2001. While the FBI has adjusted its approach to allegations of police abuse, every complaint is reviewed and SAs look carefully for potential violations of Federal law and the predication necessary to initiate an FBI investigation that can support later prosecution. The wisdom of this approach is evidenced by the percentage of convictions and pre-trial diversions obtained, which is substantially higher in 2007 than it was in 2002 (in FY 2002, only 4 percent of the FBI's Color of Law investigations resulted in convictions, compared to 13 percent for FY 2007 (through the third quarter)).

Lee 324 **On September 30, 2005, thirty of my colleagues wrote to you expressing concerns that states were not complying with the public agency requirements of the National Voter Registration Act's Section 7. They asked you to respond with the Department's plan to enforce this provision. To date there has been no response. Instead,**

we learned recently that the Department has a "nationwide effort to assess compliance" with the voter purge provisions of the NVRA. A lawsuit in Missouri resulting from this program was recently dismissed. Can you explain to the Committee the decision-making process to make a national effort to investigate states' compliance with the voter purge provisions of the NVRA and not investigate states' compliance with Section 7?

ANSWER: In point of fact, this Administration has breathed life into Section 7 of the NVRA, with the first two cases under Section 7 since 1996. These cases were filed against the States of New York and Tennessee.

Section 8 of the NVRA creates a number of requirements for how States maintain voter registration lists for federal elections. The Act deems as timely those valid voter registration applications by eligible applicants submitted to designated State and local officials, or postmarked if submitted by mail, at least 30 days before a federal election. The Act also requires notification of all applicants of whether their voter registration applications were accepted or rejected. The Act requires States to keep voter registration lists accurate and current, such as identifying persons who have become ineligible due to having died or moved outside the jurisdiction. At the same time, the Act requires list maintenance programs to incorporate specific safeguards, e.g., that they be uniform, non-discriminatory, in compliance with the Voting Rights Act, and not be undertaken within 90 days of a federal election. The removal of voters for non-voting or for having moved can be done only after meeting certain requirements provided in the Act. The Act allows for removal of voters from registration lists when they have been convicted of a disqualifying crime or adjudged mentally incapacitated, where such removals are allowed by state law. The NVRA also provides additional safeguards under which registered voters would be able to vote notwithstanding a change in address in certain circumstances. For example, voters who move within a district or a precinct will retain the right to vote even if they have not re-registered at their new address.

Our enforcement of Section 8 has included a claim under the NVRA in Cibola County, New Mexico, that the County had failed to treat as timely some 500 voter registration applications from residents of the Laguna Pueblo and other Native American citizens, and also that Native American voters had been removed from the poll lists without requisite notice.

We commenced a lawsuit against the State of Missouri, after independently confirming press reports alleging that about one third of Missouri's counties contained more registered voters than voting age population; indeed, the number of registered voters in two Missouri counties exceeded the total populations of those counties. Our investigation also uncovered numerous instances where voters were removed from the active voter rolls for improper reasons such as failing to vote. In one county, as many as 10,000 voters, out of a total county population of about 40,000, may have been designated inactive for this reason. The Missouri action was dismissed at the district court level, but on the procedural ground that the United States had not sued the parties it must sue to obtain relief. We are appealing this ruling.

QUESTIONS FROM CONGRESSMAN GUTIERREZ

Gutierrez 340 **Why did the FBI choose the enforcement action it did, given that it was in the middle of the afternoon, at the height of innocent mall pedestrian traffic with children present, as opposed to a different action?**

ANSWER: As noted in our response to question 338, because ICE was the lead agency in this action, the Department of Homeland Security is the appropriate agency to provide a full report of the enforcement action at Little Village. However, some background information about the investigation will help put in context ICE's decision about the timing of the enforcement action. The document-fraud ring whose leaders and members were the targets of the operation was a sophisticated international organization that had operated openly for about 20 years and was one of the principal sources of fraudulent documents in the Chicago area. Conversations intercepted during a wiretap leading up to the arrests, as well as other sources of information developed during the investigation, are detailed in the lengthy complaint affidavit which is a public record. These sources and the conversations demonstrated among other things that the operation was controlled by a crime family based in Mexico, and that leaders of the ring had committed at least one violent murder to protect their operation and were in the process of planning another murder imminently. The operation was staffed principally by Mexican nationals smuggled into the United States who themselves used multiple false identifications once here. The organization generated an estimated $2 to $3 million a year in cash from sales of fraudulent documents, much of which was smuggled back to Mexico.

Because the subjects were all illegal aliens living in the United States under false identifications, and because the organization was skilled in countersurveillance, investigators did not know where most of the defendants lived. The organization operated out of the Little Village shopping mall, with eight to 10 vendors, all illegal aliens, simultaneously selling documents in two shifts that worked from roughly 9:00 a.m. to 3:00 p.m. and 1:30 to 8:00 p.m. A mid-afternoon arrest operation, when the two shifts overlapped, maximized the number of subjects present.

Gutierrez 341 **Please give us examples, within the last 5 years, when operations like this were conducted in a busy commercial or business center, resulting in the detainment of many innocent bystanders.**

ANSWER: With respect to the FBI, while the FBI's files are not searchable in a way that would identify such operations, informal inquiry has not identified any FBI-led operations in the last five years that were conducted in such a manner. Nevertheless, please be assured that the FBI purposely plans and executes its operations to minimize the presence of innocent bystanders for the safety of all involved. Your inquiries involving previous ICE operations should be directed to DHS, which is in the best position to answer them.

Gutierrez 342 **Could you please let us know how many people were detained, even just for questioning, and how officers on the ground determined who would be detained and/or questioned and who would not be? Is it common practice to specifically detain individuals based on their gender, race and ethnicity, which by all accounts is what occurred during this operation?**

ANSWER: The FBI is unable to provide the requested information regarding this ICE-led operation. The FBI's role during the enforcement action at Little Village was limited to perimeter security.

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

December 28, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Please find attached Part Two of the Department's responses to questions for the record following the appearance of Attorney General Alberto Gonzales at the Committee's oversight hearing on May 10, 2007. We will supplement this letter when the Department's responses to additional questions become available. A number of the Committee's questions appear to call for responses directly from former Attorney General Gonzales. Those questions are pending with Judge Gonzales and we will forward his responses to you as soon as they become available.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this letter.
We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Lamar Smith
Ranking Minority Member

Questions for the Record Posed to
Former Attorney General Alberto Gonzales
House Committee on the Judiciary
DOJ Oversight Hearing on May 10, 2007
(Part II)

QUESTIONS FROM CONGRESSWOMAN LOFGREN

Lofgren 135 From Rep. Lofgren: ...I would just like the Attorney General...to spend some time attending to the dreadful situation of the FBI name check. As of May 4th of this month, USCIS had sent and had pending 300,000-plus names to the FBI; 155,000 of those name checks have been pending for more than six months. And we know, historically, that far less than 1 percent ever have any problem....so I don't want you to answer now, but I do hope that you will get back to this Committee, because it is an outrageous situation.

ANSWER: The FBI's National Name Check Program (NNCP) is fully engaged in addressing the pending name checks submitted by U.S. Citizenship and Immigration Services (USCIS). The NNCP is charged with disseminating information from FBI files in response to requests by Federal agencies, Congressional committees, the Federal judiciary, friendly foreign police and intelligence agencies, and state and local criminal justice agencies. The NNCP's largest customer is USCIS.

To date in FY 2007 (as of 7/5/07), the FBI has received approximately 3 million name check requests, averaging over 74,000 per week. Of that total, over 50% (1.5 million) have come from USCIS. In that same period, the FBI has responded to approximately 3.1 million name check requests. Currently, approximately 470,000 name check requests are pending; approximately 79% of these (370,000) of these are from USCIS. Historically, approximately 90% of USCIS name check requests have been completed within 60 days. While this initial group can be resolved quickly through a computer-augmented process, the review of the remainder must be conducted manually and is very labor intensive, with many requiring the location and analysis of multiple files.

The FBI is working with USCIS to develop ways to streamline the name check process, including the possible use of USCIS personnel and/or contractors to address pending USCIS name check requests. Pursuant to a Proof of Concept arrangement between the FBI and USCIS that began in June 2007, USCIS personnel provided technical advice and assistance to FBI personnel processing name check requests to ensure that information relevant to USCIS' adjudicative decisions was included in the FBI's written response to the name check request. While the Proof of Concept has ended, it resulted in an increase in the FBI's understanding of its customer's needs and a corresponding improvement in USCIS' knowledge of the name check process. The USCIS personnel who participated in the effort were granted access to the FBI's Automated Case Support (ACS) system,

reviewed responsive electronic files and, in the process, identified data useful to USCIS in adjudicating applications for immigration benefits. USCIS personnel are still onboard with FBI name check personnel and still have access to FBI systems, which facilitates the name check process from both sides. The FBI plans to continue such an arrangement with USCIS.

Several improvements to the name check process, both short term and long term, are underway. Among the short-term efforts, the NNCP continues to enhance the Dissemination Database to reduce paper-based processes and to eliminate the duplication of reports for multiple customer agencies. This effort includes the scanning of paper files to build an Electronic Records System to improve processing speed. The NNCP has also implemented a new employee development program to streamline the training of employees new to the name check process. The FBI has also procured and is testing textual analysis software designed to further automate the name check process. More long-term improvements include the establishment of a central records repository. Currently, paper files and information must be retrieved from over 265 locations throughout the FBI. The central records repository will permit expedited access to the information contained in the billions of documents that must currently be accessed manually. In addition, the FBI recently contracted with an independent firm to analyze name check program costs. Results of this analysis support a new fee structure, and the FBI will pursue this through a Notice of Proposed Rulemaking and an interim fee adjustment. The new fee structure will be designed to provide a long-term revenue stream to accommodate incoming requests, allowing the FBI to adjust resources to meet customer needs.

QUESTIONS FROM CONGRESSMAN SMITH

Smith 185 Do you have sufficient information yet in any of the districts from which the above U.S. Attorneys resigned to tell whether there has been an improvement because of the change in U.S. Attorney?

ANSWER: It is too early to draw conclusions. Prosecution numbers, which are merely one quantitative measurement among several qualitative criteria, show that firearms and immigration prosecution numbers have risen in several of the districts listed below.

Smith 186 If the answer to the previous question is yes, please describe what improvements have occurred in the: Southern District of California

ANSWER: Please see answer to Question 185, above.

Smith 187 District of Arizona

ANSWER: Please see answer to Question 185, above.

Smith 188 Western District of Washington

ANSWER: Please see answer to Question 185, above.

Smith 189 District of New Mexico

ANSWER: Please see answer to Question 185, above.

Smith 190 District of Nevada

ANSWER: Please see answer to Question 185, above.

Smith 191 Eastern District of Arkansas

ANSWER: Please see answer to Question 185, above.

Smith 192 Western District of Michigan

ANSWER: Please see answer to Question 185, above.

Smith 193 Northern District of California

ANSWER: Please see answer to Question 185, above.

Smith 231 What steps, if any, did the Justice Department (including the FBI) take after enactment of the PATRIOT Act to provide guidance and put in place safeguards to protect against abuses? What about after the enactment of the PATRIOT Act Improvement and Reauthorization Act?

ANSWER: After the terrorist attacks of September 11, 2001, and Congress' subsequent passage of the USA PATRIOT Act, the Department of Justice (DOJ) conducted a general, extensive review of existing guidelines and procedures relating to national security and criminal matters. In 2003, the Attorney General disseminated the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG). Those guidelines outline the various levels of investigative activity that can be undertaken, the circumstances for opening an investigation, various reporting requirements, and authorized investigative techniques.

The Department also has taken other steps to increase its oversight of national security investigations. In their role as representatives to the Foreign Intelligence Surveillance Court (FISC), DOJ attorneys have routinely visited FBI field offices along with attorneys from the FBI's Office of General Counsel to conduct file reviews to ensure that agents are adhering to the court-ordered minimization requirements in each Foreign Intelligence Surveillance Act (FISA) order. For the past several years, the Department has complemented its FISA minimization reviews with accuracy reviews designed to ensure the factual accuracy of assertions contained in the FBI declarations submitted to the Foreign Intelligence Surveillance Court and to correct any issues identified in these reviews. The Department is also increasing the frequency of these field office reviews; DOJ attorneys are on a pace to complete 30 such reviews by the end of this year, as compared with the 23 reviews conducted in 2006.

On April 7, 2006, soon after the enactment of the PATRIOT Act Reauthorization and Improvement Act, the FBI issued legal guidance that highlighted changes from existing law and the impact of those changes on FBI procedures. (The FBI had already issued, on March 9, 2006, upon enactment of that legislation, guidance that specifically addressed the Act's changes to NSL procedures.) Subsequent legal instruction incorporated these various procedural changes.

In September of 2006, the Department created the National Security Division, in part, to enhance oversight of FBI and Department national security activities, including activities

provided for by the PATRIOT Act. Since its establishment, the National Security Division has been building its capacity and increasing the tempo of its oversight activities.

On June 1, 2007, the FBI issued consolidated guidance on NSLs and set forth new policy intended to enhance safeguards regarding the use of NSLs. The FBI's Office of General Counsel has mandated that all National Security Law Branch attorneys conducting visits to FBI field offices must include training on this guidance during their visits.

Additionally, in July 2007, the Department announced the initiation of a comprehensive national security oversight program that extends well beyond the Department's traditional, primarily FISA-related oversight role. For the first time, DOJ attorneys have been given the clear mandate to examine all aspects of the FBI's national security program for compliance with law, regulations, and policies. To accomplish this expanded mandate, DOJ is standing up a dedicated Oversight Section, as approved by the Congress last year, within the National Security Division's Office of Intelligence. This section is part of a broader proposed reorganization of the National Security Division. The section will consist of attorneys and staff members specifically dedicated to ensuring that the Department fulfills its national security oversight responsibilities across the board.

The Oversight Section will exercise its oversight functions by conducting regular reviews of national security activities at FBI field offices and FBI Headquarters national security units. These reviews, which have already begun, are staffed by career Department attorneys with years of law enforcement and intelligence experience from the National Security Division and the FBI's Office of General Counsel, along with officials from the Department's Privacy and Civil Liberties Office. The reviews are not limited to the FBI's use of FISA or National Security Letters, but examine all national security activities to ensure compliance with all applicable laws, guidelines and policies. Since establishing this review process in April 2007, the National Security Division has completed national security reviews in twelve FBI field offices, as well as a review of FBI headquarters, and plans to complete a total of 15 such reviews by the end of this year.

The Oversight Section will also play an important role in other areas. At the Attorney General's direction, it will review all referrals by the FBI to the President's Intelligence Oversight Board, focusing on whether these referrals indicate that a change in policy, training, or oversight mechanisms is required. The Oversight Section will report to the Attorney General semiannually on such referrals and will inform the Department's Chief Privacy and Civil Liberties Officer of any referral that raises serious civil liberties or privacy issues. In addition, the National Security Division will provide training on legal and regulatory compliance issues for its lawyers and FBI agents and analysts, as well as conduct outreach to the rest of the intelligence community.

The Justice Department has also made two major structural changes to the FBI to increase guidance and oversight of FBI personnel as they carry out national security

duties. In 2005, the FBI created a National Security Branch to centralize and coordinate FBI national security programs.

The FBI has also proposed establishing an Office of Integrity and Compliance, modeled after similar programs in the public and private sectors. While it is too early to say with certainty what the compliance program to be implemented by this office will exactly look like, the Department expects to see a proactive program that ensures, to the maximum extent possible, that the rules and policies designed to protect privacy and civil liberties are adhered to by all FBI employees, and that the FBI promptly identifies and corrects any violations of law or policies, and that any information collected erroneously is removed from FBI databases.

The oversight and compliance programs run by the Oversight Section at DOJ and the Office of Integrity and Compliance at FBI will be at the forefront of the Justice Department's ongoing efforts to ensure that national security investigations are conducted in a manner consistent with the nation's laws, regulations, and policies, including those designed to protect the privacy interests and civil liberties of U.S. citizens.

Smith 245 What specific efforts is Justice Department making with regard to MS-13?

ANSWER: The Justice Department has made the prosecution and dismantling of MS-13 a high priority. To that end, the Attorney General created a new Gang Squad prosecution team in the Criminal Division that works with the national gang task force (Gang TECC) and the FBI's MS-13 National Gang Task Force (MS-13 NGTF), as well as with other Federal, State, local and overseas law enforcement agencies.

With the support of Congress, former Attorney General Gonzales also created the new, multi-agency, national anti-gang task force noted above. It's known as GangTECC—the National Gang Targeting, Enforcement & Coordination Center—and includes anti-gang agents from ICE, FBI, ATF, DEA, BOP and USMS, all working together to target and go after MS-13 and other such national and regional gangs.

Gang Squad has the prosecutors; GangTECC and MS-13 NGTF have the agents; and the third national component, also created by the Department of Justice and Congress, is the new team of anti-gang analysts at the National Gang Intelligence Center (NGIC). The Gang Squad prosecutors, GangTECC agents, and NGIC intelligence analysts all work side-by-side, and in coordination with the U.S. Attorney's Offices, to target and go after gangs such as MS-13 and 18th Street.

Because MS-13 has well over 10,000 members in the United States, arresting and prosecuting each and every one is neither practicable nor efficient. Accordingly, the Department of Justice's Gang Squad, the FBI's MS-13 national Gang Task Force and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) have targeted the

leadership of MS-13 – both in the United States and in Central America – in an effort to destroy its command and control capabilities.

To that end, on June 4, 2007, former Attorney General Gonzales announced the indictment of three leaders of MS-13 on federal racketeering crimes, including two men who allegedly ordered murders inside the United States from their prison cells in El Salvador. The 30-count indictment alleges that the three defendants—Dany Fredy Ramos Mejia, aka "Sisco," Saul Antonios Turcio Angel, aka "Trece," and Rigoberto Del Transito Mejia Regaldo, aka "Ski"—conspired to participate in a racketeering enterprise in the United States and El Salvador that involved murder, robbery, obstruction of justice, and witness tampering through their participation in MS-13. Two of the defendants allegedly communicated with MS-13 gang members from prison in El Salvador to commit a variety of crimes, including one instance which resulted in the murders of two persons in the United States.

The charges stem from a long-term investigation initiated by the U.S. Attorney's Office for the District of Maryland, conducted jointly with the Gang Squad of the Criminal Division at the U.S. Department of Justice and a task force headed by the ATF. The Regional Area Gang Enforcement (RAGE) Task Force is comprised of agents and officers from the ATF; the Federal Bureau of Investigation; the Bureau of Immigration and Customs Enforcement (ICE) at the Department of Homeland Security; the Maryland National Capital Park Police; the Prince George's County, Howard County and Montgomery County Police Departments; as well as the Maryland State Police. Both the FBI's MS-13 National Gang Task Force and the PNC in El Salvador assisted the Task Force with investigating the international defendants in El Salvador.

In matters related to the case to date, 42 gang members have been charged with various Federal offenses, with 30 defendants charged in this RICO conspiracy case. Fourteen MS-13 gang members have been convicted thus far in this RICO conspiracy case. On April 27, 2007, a federal jury convicted Henry Zelaya, Jose Hipolito Cruz Diaz and Omar Vasquez – all leaders of MS-13 in Maryland and Washington D.C. – after a seven week trial. Zelaya was sentenced on July 30, 2007 to life in prison. The sentencings for Cruz Diaz and Vasquez are pending. Two other MS-13 members – Edgar Alberto Ayala and Oscar Ramos Velasquez were convicted at trial by a Federal jury in November 2006 of the racketeering conspiracy. Velasquez was sentenced on July 23, 2007 to 37 years in prison and Ayala was sentenced to 35 years in prison on June 1, 2007. Nine defendants, all of Maryland, have pleaded guilty.

Similarly, in Nashville, Tennessee, an indictment charging 14 MS-13 defendants with RICO and gun charges was returned by a grand jury and is being prosecuted by the Criminal Division's Gang Squad and the U.S. Attorney's Office for the Middle District of Tennessee. That case is currently set for trial April 8, 2008.

These are merely examples of some of the specific, significant, recent efforts the Department is taking to combat MS-13.

In addition, as noted above, in February former Attorney General Gonzales went to El Salvador, one of the epi-centers of MS-13, to announce a new initiative aimed at enhancing enforcement, fugitive apprehension, international coordination and information sharing, and training and prevention. It includes a new Transnational Anti-Gang center to go after the worst transnational gang offenders, many of whom are MS-13 members. We're accelerating the implementation of the Central American Fingerprint Exploitation initiative, known as CAFE. It will provide equipment and training to help countries track down violent criminals who elude capture by moving from country to country. And we've launched a whole series of multi-national efforts to improve international coordination, information sharing, and anti-gang training.

Smith 295 Please state in detail any results the Department has begun to observe as a result of the implementation of the Adam Walsh Child Protection and Safety Act?

ANSWER: The impact of the Adam Walsh Act was seen immediately, particularly with respect to some of the key procedural provisions. For example, the Adam Walsh Act mandated that defendants charged with child exploitation crimes can only be released on bond pending trial under certain conditions. Critically, the Adam Walsh Act requires electronic monitoring of such defendants. District courts have held that if electronic monitoring is not immediately available, defendants shall be detained until a bracelet is made available. The Adam Walsh Act also includes a provision that restricts the duplication of child pornography as part of the discovery process. Many defendants sought to invalidate the provision on constitutional grounds, but courts have repeatedly upheld it. The provision has been effective in minimizing the number of copies of child pornography that need to be made over the course of a prosecution.

The Adam Walsh Act also created a new Federal crime which provides a penalty if a convicted sex offender fails to register as a sex offender and travels in interstate commerce. So far, 166 arrest warrants have been issued and 120 arrests had been made under this new provision.

Smith 298 Please explain for us the impact you believe the Department's efforts are making in the fight against trafficking in persons?

ANSWER: Since 2001, the Department has rescued more victims of human trafficking and prosecuted more traffickers than ever before. This effort is a continuation of the Department's decades-long commitment to protect the civil rights of all people. Human trafficking is a modern day form of slavery, involving the exploitation and enslavement of society's most vulnerable members – often minority women and children who are poor, are frequently unemployed or underemployed, and lack access to social safety nets. It ranks among the world's most vile and degrading criminal practices. Human trafficking offenses transgress the victims' human liberty in violation of the Thirteenth Amendment's guarantee of freedom. As such, trafficking offends the core

civil rights on which our Constitution and our country are based. The Civil Rights Division has long prosecuted human trafficking violations.

Congress showed great leadership by enacting the Trafficking Victims Protection Act of 2000, which provided additional tools to supplement the existing statutory framework for prosecuting these horrible offenses. Early in this Administration, the President identified the eradication of human trafficking as a priority. Two particular actions by the President focused Federal resources on trafficking. First, in February 2002, the President issued Executive Order 13257, creating a cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons. Second, in February 2003, the White House released National Security Presidential Directive 22 (NSPD-22) to identify human trafficking as an important national security matter as well as to instruct Federal agencies to strengthen their collective efforts, capabilities, and coordination to support the President's goal of abolishing human trafficking. The February 2003 NSPD-22 created a three-point plan of action: implementing training in Federal agencies, developing cooperation with State and local law enforcement in the United States, and integrating and coordinating international programs.

As the Attorney General has noted, the Department of Justice has greatly increased the investigation and prosecution of human trafficking offenses. In addition, the Department has made eradication of human trafficking a priority through several other proactive initiatives, including creating the first-ever specialized human trafficking prosecution unit to expand and coordinate anti-trafficking prosecutions across the nation; forming and funding forty-two United States Attorney-led Task Forces; holding hundreds of intensive training and awareness-raising events; convening the task forces and other anti-trafficking partners into three national training conferences; developing a comprehensive curriculum; developing a series of Federal, State, and local partnerships that pool the assets of law enforcement; conducting live and interactive televised broadcasts to task forces and U.S. Attorneys' offices nationwide to provide best practices; and developing numerous law enforcement tools and resources that empower practitioners. The President and the Attorney General have publicly demonstrated their leadership on human trafficking issues by devoting substantial time to speaking at national anti-trafficking events.

From FY 2001 to FY 2006, the Criminal Section of the Civil Rights Division, which prosecutes human trafficking cases involving adult victims, prosecuted 360 human trafficking defendants, secured almost 240 convictions and guilty pleas, and opened nearly 650 new investigations. That represents a six-fold increase in the number of human trafficking cases filed in court, quadruple the number of defendants charged, and triple the number of defendants convicted in comparison to 1995-2000.

In FY 2006 alone, the Division obtained a record 98 convictions of human trafficking defendants. Working with the various United States Attorneys' Offices, we charged a record number of sex trafficking defendants (85) and 26 labor trafficking defendants.

In addition to prosecuting the perpetrators of these horrible crimes, the Criminal Section also aids their victims. Under the 2000 Trafficking Victims Protection Act, 1,123 trafficking victims from 72 countries have obtained eligibility for refugee-type benefits from HHS with the aid of the Civil Rights Division and other law enforcement agencies.

The President has requested additional resources to continue our efforts to combat human trafficking, prosecute the traffickers, and rescue their victims.

Smith 300 What other steps is the Department taking to ensure that voter fraud is prosecuted and that access to the polls for those who are legally eligible to vote is ensured?

ANSWER: Congress has passed legislation in certain distinct areas related to voting and elections. These laws include, among others, the Voting Rights Act of 1965 and subsequent amendments thereto, the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA), the National Voter Registration Act of 1993 (Motor Voter or NVRA), and the Help America Vote Act of 2002 (HAVA). The Civil Rights Division enforces the civil provisions of these laws. The vast majority of criminal matters involving possible Federal election offenses are assigned to and supervised by the Criminal Division and are prosecuted by the United States Attorneys' Offices. However, a small percentage of voting-related offenses are principally assigned to the Civil Rights Division to handle or supervise.

The Department is committed both to prosecuting voter fraud and ensuring access to the polls.

Voter fraud, like other forms of public corruption, strikes at the heart of our representative form of government. Accordingly, the Department has made the investigation and prosecution of all public corruption offenses, including voter fraud, a law enforcement priority.

In 2002, then-Attorney General John Ashcroft established a Department-wide ballot integrity initiative to spearhead its enforcement responsibilities in two overlapping areas: the protection of individual voting rights by vigorous enforcement of the Federal voting rights laws, and the protection of society's interest in the integrity of the election process by prosecuting voter fraud and thus deterring its occurrence in future elections. The initiative recognizes that it does little good to protect a person's voting rights if that person's vote is subsequently diluted or eliminated by fraud.

Since the creation of the initiative almost five years ago, almost 100 persons have been convicted of voter fraud offenses throughout the country. However, this number is not an accurate reflection of the frequency of these crimes. There are a number of reasons why this is the case.

First, voter fraud tends to be an invisible crime; like bribery, its participants have a motive to conceal their illegal conduct. Second, unlike traditional crimes such as robbery and burglary, voter fraud generally does not produce an easily ascertainable "victim" who has a motive to complain to authorities. For example, voters who are paid for voting are unlikely to report this fact, and, if questioned, are generally reluctant to admit it. And even when there are ascertainable victims -- such as persons whose votes are stolen either through outright intimidation or more subtle forms of aggressive "assistance" -- these persons are often unaware of the fraud or reluctant to report the person responsible. In addition, it is important to emphasize that most election fraud is directed at local elections, and, with a few exceptions, local election fraud is not reachable under current Federal criminal statutes.

Finally, the Department's experience in supervising the nationwide prosecution of voter fraud over the past three decades is that many types of voter fraud, such as vote buying and absentee ballot fraud, target the economically and socially disadvantaged, who are generally reluctant to testify against those who corrupted or stole their votes.

Notwithstanding the various difficulties noted above that make prosecuting voter fraud difficult, the Department is committed to continuing its efforts to protect the integrity of future elections by utilizing the criminal statutes that Congress has provided to prosecute those who have corrupted the election process.

The Department also is firmly committed to ensuring access to the polls. The Administration strongly supported reauthorization of the Voting Rights Act and is currently vigorously defending the Act's constitutionality in court. When Congress approved the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, former Attorney General Gonzales stated that: "The Department of Justice is proud to have supported the passage of this historic legislation. The Voting Rights Act of 1965 was a critical chapter in the still-unfolding story of American freedom. As President Johnson said when he signed that bill, the right to vote is the lifeblood of our democracy. The reauthorization of this act is an important and proud American moment, and I know that President Bush looks forward to signing the bill. The Department of Justice stands ready and looks forward to continuing, vigorous enforcement of its protections."

During this Administration, the Department has vigorously enforced all of the provisions of the Voting Rights Act and all other statutes under its jurisdiction. In fact, the 18 new lawsuits we filed in Calendar Year (CY) 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years. Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress last summer, remains strong, with five lawsuits filed in CY 2006. In April 2007, in the City of Walnut, California, the Division filed the first lawsuit under Section 203 on behalf of Korean Americans. During the past 6 years, the Civil Rights Division has litigated more cases under the minority language provisions than in all other years combined since 1965. Specifically, we have successfully litigated approximately 60 percent of all language minority cases in the history of the Voting Rights Act. In CY

2006, the Division's Voting Section brought four out of the nine lawsuits filed under Section 208 since it was enacted twenty-five years ago; during the past six years, we have brought seven of the nine such cases, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans. We also have used Section 2 of the Voting Rights Act to challenge barriers to participation, as in United States v. Long County (S.D. Ga.), which specifically involved race-based challenges to Latino voters, and United States v. City of Boston (D. Mass.), which involved practices and procedures that discriminate against members of language-minority groups, specifically persons of Spanish, Chinese, and Vietnamese heritage, so as to deny and abridge their right to vote in violation of Section 2. We have filed the first voting rights cases in the Division's history on behalf of Filipino Americans, Vietnamese Americans, and Korean Americans, in addition to Haitian Americans (as noted earlier). We will continue vigorously to protect all Americans from unlawful discrimination in voting.

The Department also takes proactive measures in advance of elections to ensure voter access. Prior to the 2006 elections, Voting Section personnel reached out to representatives of minority advocacy groups and community organizations to explain the requirements of federal law and our interest in learning of problems affecting minority voters, and to encourage the gathering and communication of information about actual or potential violations of the Voting Rights Act or other Federal election laws.

The Voting Section also reached out repeatedly over the past two years, as it traditionally does, to state and local election officials to alert them of their obligations under federal election laws, and to advise them of specific steps to avoid violations of Federal law. In addition to numerous meetings and telephone calls with State and local officials across the United States, the Division has met with and addressed elections officials through appearances at meetings of elections officials organizations, such as the National Association of Secretaries of State, the National Association of State Election Directors, the National Association of County Officials, and the Election Center, and at conferences of local election officials.

Ultimately, the Division speaks most forcefully through litigation. During the period between the 2004 and 2006 general elections, the Department filed far more actions to protect voters against discrimination at the polls than in any time in its history. These lawsuits included key cases to (1) protect the rights of minority voters against race-based challenges to the eligibility of minority voters; (2) ensure appropriate treatment of minority voters; (3) prevent improperly influencing, coercing, or ignoring the ballot choices of minority voters; (4) ensure that voters, including minority voters, are provided with provisional ballots; (5) ensure that voters, including minority voters, are provided the assistance in voting that they are legally entitled to receive; (6) ensure that minority language voters are provided the bilingual assistance in voting that they need and are legally entitled to receive; and (7) ensure that localities provide voters, including minority voters, with the information Congress determined necessary in all polling places, including the posting of information on voters' rights. See, e.g., *United States v. Long County*; *United States v. City of Boston*; *United States v. Hale County, TX*; *United States v. Brazos County, TX*; *United States v. City of Springfield, MA*; *United States v.*

Westchester County, NY; *United States v. City of Azusa, CA*; *United States v. City of Paramount, CA*; *United States v. City of Rosemead, CA*; *United States v. Ector County, TX*; *United States v. Cochise County, AZ*; *United States v. San Benito County, CA*.

In CY 2006 the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. We filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina. In addition, we reached a voluntary legislative solution without the need for litigation in South Carolina and worked with some additional states and localities to forestall or mitigate late ballot transmissions.

QUESTIONS FROM CONGRESSWOMAN JACKSON LEE

Lee 320 Do you have any rough estimates on the percentage or number of detainees held in Guantanamo or held outside the U.S. that were brought to U.S. forces in exchange for large bounties? How many of the total number of detainees were brought to U.S. forces by foreign forces?

ANSWER: The enemy combatants in question were detained by, and remain in the custody of, the Department of Defense. Accordingly, we would direct you to that Department, which is in a better position to answer questions regarding the circumstances of their capture.

Lee 325 Administration officials, including Justice Dept. officials, have been on record supporting requirements that voters show photo ID in order to cast their ballots and in August 2005, the Department pre-cleared Georgia's voter ID law over the objections of 4 of 5 career staff. Can you please describe any efforts by the Justice Dept. to support state legislative efforts to enact voter ID requirements or ensuing court cases?

ANSWER: The Department of Justice has not undertaken any efforts to support State legislative efforts to enact voter ID requirements, nor filed any papers in any ensuing court action.

The Voting Section has filed one claim to enforce the Help America Vote Act (HAVA) requirement that first-time voters who register by mail provide identification as required by Congress. See *United States v. Cibola County*, (D.N.M.) (raising multiple claims: under Sections 2 and 203 of the Voting Rights Act alleging denial of election information and equal access to Native American voters; under HAVA alleging denial of provisional ballots to Native American voters; and under the NVRA alleging failure to process voter registration applications of Native American voters and removal of Native American voters from the poll list without required notice).

Lee 326 Did anyone in the White House or any other federal employee outside the Justice department communicate with you in any manner about the Justice Department opening an investigating or looking into organizations that historically have engaged in minority voter registration activities? Or did anyone from the White or other federal employee communicate with you regarding litigation brought by private parties against such organizations?

ANSWER: No, as to both questions.

QUESTIONS FROM CONGRESSWOMAN BALDWIN

Baldwin 327 Bradley Scholzman, while a U.S. Attorney, indicted four people in Kansas City for putting false information on voter registration applications. He issued the indictment days before the election and says his superiors approved the indictments. The Boston Globe reported has a policy that "federal prosecutors . . . should be extremely careful not to conduct overt investigations during the preelection period" to avoid "chilling legitimate voting and campaign activities" and causing "the investigation itself to become a campaign issue." And that it "interprets the policy as having an unwritten exception for voter registration fraud." Were you aware of the unwritten rule? When did it go into effect and was anyone in the White House part of the creating it?

ANSWER: The Department's noninterference policy with respect to the election process is as follows:

Noninterference with Elections

"The Justice Department's goals in the area of election crime are to prosecute those who violate federal criminal law and, through such prosecutions, to deter corruption of future elections. The Department does not have a role in determining which candidate won a particular election, or whether another election should be held because of the impact of the alleged fraud on the election. In most instances, these issues are for the candidates to litigate in the courts or to advocate before their legislative bodies or election boards. Although civil rights actions under 42 U.S.C. § 1983 may be brought by private citizens to redress election irregularities, the federal prosecutor has no role in such suits.

In investigating an election fraud matter, federal law enforcement personnel should carefully evaluate whether an investigative step under consideration has the potential to affect the election itself. Starting a public criminal investigation of alleged election fraud before the election to which the allegations pertain has been concluded runs the obvious risk of chilling legitimate voting and campaign activities. It also runs the significant risk of interjecting the investigation itself as an issue, both in the campaign and in the adjudication of any ensuing election contest.

Accordingly, overt criminal investigative measures should not ordinarily be taken in matters involving alleged fraud in the manner in which votes were cast or counted until the election in question has been concluded, its results certified, and all recounts and election contests concluded. Not only does such investigative restraint avoid interjecting the federal government into election campaigns, the voting process, and the adjudication of ensuing recounts and election contest litigation, but it also ensures that evidence developed during any election litigation is available to investigators, thereby minimizing the need to duplicate investigative efforts. Many election fraud issues are developed to the standards of factual predication for a federal criminal investigation during post-election litigation.

The Department views any voter interviews in the pre-election and balloting periods, other than interviews of a complainant and any witnesses he or she may identify, as beyond a preliminary investigation. A United States Attorney's Office considering such interviews must therefore first consult with the Public Integrity Section. USAM 9-85.210. This consultation is also necessary before any investigation is undertaken near the polls while voting is in progress.

The policy discussed above does not apply to covert investigative techniques, nor does it apply to investigations or prosecutions of federal crimes other than those that focus on the manner in which votes were cast or counted. However, if there is any doubt about whether the policy may apply, we recommend that the Public Integrity Section be consulted.

Exceptions to this general rule of course exist. For example, one exception may be appropriate when undercover techniques are justified and the Department's guidelines for undercover operations have been met. Another exception may apply when it is possible to both complete an investigation and file criminal charges against an offender prior to the period immediately before an election. All such exceptions require consultation with the Public Integrity Section, as they involve action beyond a preliminary investigation."

Federal Prosecution of Election Offenses (Seventh Edition, May 2007), U.S. Department of Justice, Criminal Division, Public Integrity Section, pp. 91-93; see also Federal Prosecution of Election Offenses (Sixth Edition, January 1995) , U.S. Department of Justice, Criminal Division, Public Integrity Section, pp. 60-61.

We are not aware of any unwritten exception to this policy. Rather, issues that may arise regarding the policy are generally consulted with to the Public Integrity Section and reviewed on a case-by-case basis.

QUESTIONS FROM CONGRESSMAN GUTIERREZ

Gutierrez 337 Mr. Attorney General, on April 24 of this year, heavily armed guards from several Federal agencies conducted a law enforcement operation at the Little Village Discount Mall in my district in Chicago. According to U.S. Attorney's Patrick Fitzgerald's Office, the raid was part of a probe of identification fraud, targeting sellers of phony Social Security and green cards. FBI spokesman Ross Rice said it was an ICE-led investigation with assistance from the FBI. And Secretary Chertoff of DHS told me personally that, in fact, it was a DOJ operation. According to witnesses, a lockdown of the mall and searches started shortly before 2 p.m. Mall patrons were detained eu masse while searching for members of the document fraud ring. Some 200 to 250 people were said to be working and shopping there, including women and children. According to one business owner in the mall, "the police closed all the doors and came through calling for people on a list. They made everyone sit on the floor and put the plastic handcuffs on some people. The rest were just quiet and scared." Others also said they saw heavily armed agents yelling at and handcuffing people, then rounding them up into vans before releasing all but a handful. Constituents I have spoken to described a war zone, a massive use of force against families who were doing nothing more than shopping in their community when they were detained in the mall or taken for questiouing. We have been told of the fear, intimidation and disrespect that law-abiding residents of Chicago felt from federal law enforcement agents who were involved in this operation. We have received contradictory answers from administration officials as to who was in charge of this operation. Mr. Attorney General, what agency was leading this operation? Was the Department of Justice through the U.S. Attorney's office in charge? Was the Department of Homeland Security and ICE responsible for leading the operation?

ANSWER: U.S. Immigration and Customs Enforcement (ICE) was in charge of the execution of the arrests. By way of background, the FBI's assistance during the enforcement action at Little Village was minor and limited to perimeter security. The FBI did not arrest anyone during the Little Village operation, but did arrest a defendant at another location in Chicago. The U.S. Attorney's Office (USAO) was not present at the arrest scene, and, consistent with standard practice, the lead law enforcement agency (here ICE) was in charge of planning and executing the arrest operation. The charges that were the basis for the arrests were brought in a complaint filed by the USAO as part of an investigation where ICE worked as the lead agency from the beginning of the investigation, with support from other law enforcement authorities such as the FBI, U.S. Secret Service, U.S. Postal Inspection Service, and Chicago Police Department.

Gutierrez 338 I fully support taking action to crack down ou sellers and manufacturers of frauduleut documents. Yet, I have grave concerus about how this operation appears to have been conducted. Could you please give a full report of the enforcement action?

ANSWER: Because ICE was the lead agency in this action, we respectfully refer you to the Department of Homeland Security to provide a full report of the enforcement action at Little Village.

Gutierrez 339 Who was overseeing the operation on the ground? The FBI, the U.S. Attorneys Office or ICE? Who was in charge of ensuring that innocent people would not be harmed during this operation?

ANSWER: As the lead agency, ICE was overseeing the operation on the ground at Little Village and was responsible for the operation's execution. The FBI's role during the enforcement action at Little Village was limited to perimeter security, and the USAO was not present at the arrest scene.