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DEPARTMENT OF JUSTICE OVERSIGHT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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DEPARTMENT OF JUSTICE OVERSIGHT

THURSDAY, JANUARY 18, 2007

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

The Committee met, pursuant to notice, at 9:32 a.m., in room 106, Dirksen Senate Office Building, Hon. Patrick J. Leahy (chairman of the committee) presiding.

Also present: Senators Kennedy, Kohl, Feinstein, Feingold, Schumer, Cardin, Whitehouse, Specter, Hatch, Grassley, Kyl, and Cornyn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. Thank you, all of you, for coming.

We are in a different hearing room than usual, but Attorney General, there was some interest in your testimony so we expanded the room somewhat.

We are going to hold what I believe is an important hearing to examine the operations of the Department of Justice. This is, after all, the Federal agency entrusted with ensuring the fair and impartial administration of justice for all Americans.

As I have always done, I take our oversight responsibility very seriously. In the 32 years since I first came to the Senate, and that was during the era of Watergate and Vietnam, I have never seen a time when our constitution and fundamental rights as Americans were more threatened, unfortunately, by our own government.

This last weekend, the President and Vice President indicated that they intended to override the will of the American people as expressed in the most recent national elections and ignore actions of Congress in order to escalate the war in Iraq.

For years, the administration has engaged in warrantless wire tapping of Americans, I believe, contrary to the law. I welcomed the President's decision yesterday to not reauthorize this program and to instead seek approval for all wire taps from the Foreign Intelligence Surveillance Court, as the law requires, as many of us have been saying should have been done years ago.

Now, we must engage in all surveillance necessary to prevent acts of terrorism, but we can, and should, do so in ways that protect the basic rights of all Americans, including the right to privacy.

To ensure the balance necessary to achieve both security and liberty for our Nation, the President must also fully inform Congress

and the American people about the contours of the Foreign Intelligence Surveillance Court order authorizing the surveillance program, but also the program itself.

Regrettably, the administration has all too often refused to answer the legitimate oversight questions of the duly elected representatives of the American people. Unfortunately, the Justice Department has been complicit in advancing these government policies which threaten our basic liberties and overstep the bounds of our constitution. Some of the criticisms have been made by members of both parties.

The Department has played a pivotal role, in my view, in eroding basic human rights and undercutting America's leading role as an advocate for human rights throughout the world.

Last week, the world marked the fifth anniversary of the arrival of the first prisoners at Guantanamo Bay, and they marked that anniversary with protests. That facility has replaced Abu Ghraib in the eyes of many, including some of our closest allies, our best allies, as a symbol of repression.

For more than 2 years we sought answers from the Department of Justice about reported—and in some instances documented—cases of the abuse of detainess at Guantanamo.

I wrote to the Attorney General regarding press reports that the Central Intelligence Agency has finally acknowledged the existence of additional classified documents detailing the Bush administration's interrogation and detention policy for terrorism suspects.

I am glad that after initially refusing to provide any new information in response to my inquiries, the Attorney General wrote to me last week to say that he would work to develop an accommodation that would provide the Judiciary Committee with a sufficient understanding of the Department's position on legal questions related to that CIA program.

But I remain disappointed that the Department of Justice and the White House have continued to refuse to provide the requests documents to the committee. The administration's secret policies have not only reduced America's standing around the world to one of the lowest points in our history, but these policies also jeopardize the Department's own efforts, ironically, to prosecute terrorism.

Last week, USA Today reported that the Department's terrorism case against José Padilla is imperiled by concerns of Mr. Padilla's treatment during his lengthy detention. The back-and-forth designation as a defendant and as an enemy combatant has eroded his mental capacity to such a great extent, he may not be fairly tried.

After the administration and, I must say, the Republican-led Congress, eviscerated the great Writ of Habeus Corpus in just a matter of hours, eviscerated the great Writ of Habeus Corpus not just for detainees but for millions of permanent residents living in the United States, this Department of Justice filed a legal brief expressly reporting that result, raising the specter that millions living in the United States today can now be subjected to definite government detention. The shudder that sent was felt not only throughout our country, but around the world.

This week, we commemorated the life and contributions of Dr. Martin Luther King, Jr. Sadly, while the Department has defended the constitutionality of the Voting Rights Act, I am concerned it is

backing away from the vigorous enforcement of the Voting Rights Act that the President promised only a few months ago. I know some of the Senators on this panel will have questions about that.

In nearly 6 years in office, the Bush-Cheney administration has filed only one suit on behalf of African-American voters under Section 2 of the Voting Rights Act, the key section that provides a Cause of Action for discrimination against minority voters.

I am deeply concerned the Department of Justice is retreating from its core mission to hold those who would violate our criminal laws accountable. Now, last week the President told us he plans to spend $1.2 billion more, on top of the billions of dollars sent to Iraq for reconstruction.

But despite mounting evidence of widespread corruption, contracting fraud, billions unaccounted for, the Department of Justice has not brought a single criminal case against a corporate contractor in Iraq, even though we know, just reading the press, about the huge amounts of money in taxpayers' dollars that have been stolen in Iraq.

The Department also has to do better at addressing the dangers that Americans face at home. According to the FBI's preliminary crime statistics for the first half of 2006, violent crimes in the United States rose again.

It troubles me that, while this administration is more than willing to spend more and more American taxpayer funds for police in Iraq, it is cutting back funding for our State and local police at home.

I do not want to get into a debate on the Iraq war, but if we can spend money to buildup police forces in Iraq and we have to pay for it by cutting money for police forces in the United States of America, there are a lot of us across the political spectrum who think that is a Hobson's choice.

This committee has a special stewardship role to protect our most cherished rights and liberties as Americans and to make sure that our fundamental freedoms are preserved for future generations.

So, there is much more to be done. I believe civil liberties and the Constitution of this great country have been damaged during the past 6 years. We will try to repair some of that damage.

Attorney General Gonzales, I do thank you for being here. I want to say that I hope that disagreements we may have do not obscure my desire to work with you to make the Department of Justice a better defender of Americans and their constitutional rights.

We will talk about this later on. I know there are areas that you will be speaking about this morning, about the competence of immigration reform, other areas. Let us find those areas we can work together. Let us repair some of the concerns—justifiable concerns—Americans have.

I will yield the rest of my time.

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

STATEMENT OF ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman.

We welcome you here, Attorney General Gonzales. The Congress has worked coordinately with the President on the major issues facing the country, the war against terrorism, with the resolution authorizing the use of force, and this committee structured the renewal of the Patriot Act, giving the Department of Justice substantial additional authority to fight terrorism.

As we have authorized executive authority, we have simultaneously expressed our concern about the balance with civil liberties. I was pleased to note yesterday that the Department of Justice has revised the Terrorist Surveillance Program and has brought it within the review of the Foreign Intelligence Surveillance Court.

Your letter to Senator Leahy, the Chairman, and me noted that you had been working on it since the summer of 2005. It is a little hard to see why it took so long. We will want to inquire further into the details as to the process that you used.

I thank you for the extensive briefing which I received yesterday from Steve Bradbury and Ken Wainstein, two very, very able attorneys in your Department. There are questions which remain unanswered.

I talked to them and they said they would get back to me about a review of the affidavits submitted establishing what you have concluded is probable cause, and the orders which have been entered, and the review, which they represented to me, that the Foreign Intelligence Surveillance Court is making.

Without discussing many of the details in an open session, there is a question which was already raised publicly about whether review is programmatic or individual. Your representatives have said that it is individualized on the warrants. In their description to me, I think we need to know more on the oversight process.

With respect to the time delay, the disclosure was made by the New York Times on December 16. It was a Friday. We were wrapping up the Patriot Act. The disclosure of that secret surveillance program was a major complicating factor. I think had that not been noted, that we would have gotten that Act finished before December 31 and I think it would have been stronger in some material respects.

I believe that the United States and the administration have paid a heavy price for not acting sooner to bring the Terrorist Surveillance Program under judicial review. That is the traditional way; before there is a wire tap or a search and seizure, to have probable cause established and to have court approval.

We lost a close election. I would not want to get involved in what was cause and effect, but the heavy criticism which the President took on the program, I think, was very harmful in the political process and for the reputation of the country. So I will be inquiring further as to why it took so long and what could have been done further.

As you know, this committee was hard at work with legislation which I had proposed and others had co-sponsored. We had four hearings, and I think we could have been of assistance to you if we had been consulted.

Turning to the issue of habeus corpus, I note in your statement that the bills which have been introduced "defy common sense". I

do not think Chairman Leahy and I would object to the characterization of the legislation which we introduced jointly to reinstate habeus corpus.

I do not think we would object to your characterization that our actions have defied common sense. But when you take a look at what the Supreme Court has said on this subject, Justice Stevens wrote in *Rasul* v. *Bush*, habeus corpus has been applied to persons detained within the United States. It has embraced claims of aliens detained within the sovereign territory of this country.

It is a little hard for me to understand how the Writ of Habeus Corpus, which goes back to the Magna Carta, can be modified by any legislation when there is an explicit constitutional provision that the Writ of Habeus Corpus would not be suspended except in time of invasion or rebellion. No one contends that either of those situations is present.

When you come to the issue of common sense, it goes beyond Pat Leahy and Arlen Specter to Justice Stevens and the four justices who joined him. It goes to Justice O'Connor in *Hamdi* v. *Rumsfeld*, when she outlined that the Writ of Habeus Corpus applies to every individual detained within the United States.

When your prepared statement cites the 1950 Supreme Court decision under totally different circumstances in World War II, any vitality of that decision is long gone with the recent pronouncements by the Supreme Court of the United States.

The issue of the signing statements, Mr. Attorney General, continues to be a matter of major concern. They came up in the Patriot Act, which was very carefully negotiated with the Judiciary Committee and the Department of Justice. Then the President issues a signing statement saying that he is at liberty to disregard provisions on oversight. It came up with the McCain legislation on torture.

Now it has come up with the legislation on the postal authority, where the President signed the legislation which prohibited opening mail, and then issues a signing statement that he retains the authority to do that.

If the President is asserting that the Act of Congress is unconstitutional, then he ought to say so and not sign the Act. But if he signs the Act, as provided in the Constitution that the Congress presents him an Act, he has the choice of either approving the Act or of vetoing it. Matters of that sort put a very, very considerable strain on the relations between the legislative and executive branches.

I wrote to you on November 20 requesting two memoranda which relate to the subject of rendition. You were quoted in the Chicago Tribune, saying that the decision on whether there will be rendition depends on the likelihood as to whether there will be torture or no torture, leaving open the possibility of torture.

I discussed this with you personally, and then got, really, a pro forma letter back from one of your assistants. My suggestion to you, Mr. Attorney General, would be that when the Chairman or the Ranking press a matter, write to you, talk to you about it personally, that you ought to give it your personal attention on a response.

I would suggest to you, further, that when you cite in your letter to me that these are highly classified matters, that you consider informing at least the Chairman and the Ranking Member, as is the practice on the Intelligence Committee, which I know in some detail, having chaired that committee in the 104th Congress.

I have a number of other points to make, but my red light is now going on so I shall thank the Chairman and conclude.

Chairman LEAHY. Thank you. Thank you, Senator Specter.

What we will do, after the Attorney General's opening statement, we will have 7-minute rounds. The Attorney General is going to stay here throughout most of the day. I understand from the floor that the flurry of votes we had late last night will not be repeated, certainly during the morning, so I would urge Senators to stay within that time.

Mr. Attorney General, please stand and raise your right hand.

[Whereupon, the witness was duly sworn.]

Chairman LEAHY. I would also note that this is, of course, an open hearing. We have television. We have 18 Senators, both Republicans and Democrats, who have a constitutional duty to their constituents, to their office to ask questions, and they want to be heard. They want to have the answers heard.

Also, though, it is a public hearing and the public has a right to watch what is going on. I understand that there are people in the audience who wish to demonstrate their feelings about things.

I would point out, however, that in standing, you are blocking the views of people who want to hear this. I think, as matter of politeness, you do want to give those people behind you a chance to watch these hearings. One of the great things about this country, is we have such hearings and people can be heard.

Mr. Attorney General, please proceed.

STATEMENT OF ALBERTO R. GONZALES, ATTORNEY GENERAL OF THE UNITED STATES, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Attorney General GONZALES. Thank you, Mr. Chairman. I look forward to our conversation this morning about the important work of the Department of Justice.

The Department of Justice's responsibilities are vast, as we all know, but our top priority continues to be the prevention of terrorist attacks. At the Department of Justice, every day is September 12th.

I expect that much of our discussion today will focus on matters related to the war on terror. In particular, I expect that you will want to discuss the letter I sent to Chairman Leahy and Senator Specter yesterday regarding the President's decision not to reauthorize the Terrorist Surveillance Program.

Court orders issued last week by a judge of the Foreign Intelligence Surveillance Court will enable the government to conduct electronic surveillance, very specifically, surveillance into or out of the United States, where there is probable cause to believe that one of the communicants is a member or agent of Al Qaeda or an associated terrorist organization, subject to the approval of the FISA court.

We believe that the court's orders will allow the necessary speed and agility the government needs to protect our Nation from a terrorist threat. I look forward to discussing these matters further.

I hope that we also can discuss other non-terrorism matters. I am keenly aware of the responsibilities that I have, and that all of you have, that are not related to terrorism, but nonetheless are of great importance to the American people.

First, I hope we can discuss a few things we can do together to keep American neighborhoods safe from the threat of violent crime, gangs, and drugs. The vast majority of this work is done by State and local law enforcement agencies, but the Department of Justice plays an important and unique role.

The Department's indictment last week of 13 members of the MS–13 street gang is an excellent example of the good work that is being done by the law enforcement community that works together at all levels, State, local, and Federal.

Despite our increased focus on combatting terrorism, investigating and prosecuting violent criminals remains a core function of DOJ. Although the overall violent crime rate is down, near a 30-year low, we have an increase in certain types of crime in some areas of the country and this concerns me.

To better understand these increases, Department officials have, over the last 2 months, visited 18 cities. In some of these cities the violent crime rate had increased, while in others it had decreased.

In each State, we met with State, local, and Federal law enforcement, as well as with community groups, to discuss the unique causes of, and responses to, crime in their city. Although our analysis is not complete, it is clear that there is no one-size-fits-all response. Every city is different. The appropriate response to crime in each city depends on its particular circumstances.

In the coming months, we will make policy recommendations based on our research, the crime trends we identify, and the best practices that have been developed.

Second, I hope we can discuss an emerging problem, the abuse of prescription drugs purchased over the Internet, and the things that we can do together to address this issue. Prescription drug abuse is now the second-largest form of drug abuse in the United States, and the only rising category of abuse among youth.

Now, feeding this abuse is a proliferation of illicit web sites that offer controlled substances for sale, requiring little more than a cursory online questionnaire and charging double normal price.

Make no mistake, these illicit web sites are not about getting necessary medicine to this in need. We must preserve legitimate access to medications over the Internet, while preventing online drug dealers from using cyberspace as a haven for drug trafficking.

I look forward to working with the Congress to ensure that controlled substances are dispensed over the Internet only for legitimate medical purposes.

Similarly, I look forward to working with the Congress to protect our children from pedophiles and sexual predators. Protecting our kids is a top priority for me as Attorney General and as a father.

It is a shame that the Internet, the greatest invention of our time, has provided pedophiles and child pornographers with new opportunities to harm our children. This is a new and evolving

criminal law enforcement challenge that we are addressing aggressively.

Last year's enactment of the Adam Walsh Act was historic, and I want to thank the committee for its work on that important bill. It is clear to me every day, however, that more tools are needed.

I continue to hear from Federal, State, and local law enforcement that they need access to the information that will help us find online predators and child pornographers. There are children to be rescued through the prosecution of these dangerous criminals. I ask you to work with me this year on this critical issue of protecting those who cannot protect themselves.

I also hope that your desire to protect our Nation's children from unthinkable sexual abuse will influence you to reform the mandatory nature of Federal sentencing guidelines.

The advisory guideline system we currently have as a result of the Supreme Court's Booker decision can, and must be, improved. The Sentencing Commission has determined that, post-Booker, in almost 10 percent of all cases involving criminal sexual abuse of a minor, judges have given below guideline sentences. Similarly, in over 20 percent of cases involving possession of child pornography, defendants are being sentenced below the guidelines' ranges.

Now, sentences should be fair, determinant, and tough. I call upon this body to enact legislation to restore the mandatory nature of the guidelines to ensure that our criminal justice system is both fair and tough.

One of the last issues I want to present to the committee today is the urgent need to reform our immigration laws. As the grandson of Mexican immigrants and as a law enforcement official, border security and immigration reform are close to my heart and always on my mind.

The President and I believe that we can take pride in being an open country and a Nation of immigrants, while also protecting our country from those who seek to harm us.

I will conclude with one final, and I believe urgent, request: please give the President's judicial nominees an up-or-down vote. Currently, there are 56 judicial vacancies, half of which have been designed as "judicial emergencies".

During the 107th Congress when Senator Hatch chaired this committee, 73 Federal judges nominated by President Clinton were confirmed, 15 of those were for the Circuit Court. I urge this committee to treat President Bush's nominees at least as fairly as President Clinton's were treated.

Thank you for the opportunity to appear before you. I am happy to answer your questions.

[The prepared statement of Attorney General Gonzales appears as a submission for the record.]

Chairman LEAHY. Thank you, Attorney General.

You know, there has been discussion of signing statements here. I would like to go into that area, first. I was deeply disturbed by the President's recent signing statement for the Postal Accountability and Enhancement Act. It suggests that the Bush administration is opening Americans' mail without first obtaining a warrant.

Now, when you appeared before this committee in February of 2006, I asked you whether the President believed that he had the legal authority to open mail under the Authorization for the Use of Military Force, AUMF, the authorization we gave to go into Afghanistan and get Osama bin Laden, something I wish had happened. You went to great lengths to avoid directly answering my questions.

Last week, our exchange appeared in the Washington Post editorial critical of the President's signing statements, and I put a copy of the editorial up there. I will, at this point, place it in the record.

I just believe from that I had asked you whether AUMF had permitted the warrantless opening of mail.

You answered, "There was all kinds of wild speculation out there about what the President has authorized. What we're actually doing, I'm not going to get into a discussion, Senator, about hypotheticals."

I responded, "Mr. Attorney General, you are not answering my question. Does this law—you are the chief law enforcement officer of the country. Does this law authorize the opening of First Class mail of U.S. citizens, yes or no, under your interpretation?"

You responded, "Senator, I think—I think that, again, that is not what is going on here. We are only focused on communications, international communications where one part of the communication is Al Qaeda. That is what this program is all about." I said, "You have not answered my question."

Now, my concerns about this issue are not, as suggested in our exchange, hypothetical. Thirty years ago, Congress placed limits on the government's authority to open private mail after the Church Committee found that the CIA and the FBI had been illegally opening citizens' mail for years.

It turned out they were doing that because they found some of these citizens were protesting the war in Vietnam, as many did, or that some opposed discrimination against blacks in America. The FBI and CIA were going to investigate why they would take such "terrible" positions.

Now, surely there are circumstances when the government should not have to wait for court approval to open mail, so it can save lives or protect public safety, but we have a provision in the law that allows you to do that.

But given the willingness of this President to ignore the law, to claim extraordinary information-gathering powers in the name of the war on terror, I think would deserve a straight answer on this question.

You are the chief law enforcement officer of this country so I ask you, is the Bush administration opening Americans' private mail without a warrant, yes or no?

Attorney General GONZALES. Senator, the answer is no, but let me flesh out the answer. I mean, obviously there may be instances where either the sender or recipient may consent to a physical search, so that possibility may exist.

But to my knowledge, there is no physical search of mail ongoing under either the authority to use military force or the President's inherent authority under the Constitution, except as otherwise au-

thorized by statutes passed by the Congress. For example, there are provisions in FISA which would allow physical searches under certain circumstances.

Chairman LEAHY. I understand. You understand some of our concern because of the willingness—and we may disagree on this—of the administration to ignore FISA in wire taps. Are you saying that they are following FISA in mail openings?

Attorney General GONZALES. What I am saying, Senator, is that to my knowledge there is no ongoing physical searches of mail under the authority we have claimed, under the authorization to use military force, or under the President's inherent authority under the Constitution as far as I know.

Chairman LEAHY. Not ongoing. Has there been some?

Attorney General GONZALES. Not that I am aware of. No, sir.

Chairman LEAHY. Does the President believe he has the inherent constitutional authority to open Americans' mail without a warrant?

Attorney General GONZALES. Now you are asking me to get into an analysis that, quite frankly, the Department has not done. What I would point you to is Justice Jackson's analysis under *Youngstown* in terms of looking at the inherent authority of the President, looking at the inherent authority of the Congress in weighing those.

Chairman LEAHY. But if you take *Youngstown*, we have laid out pretty clearly what the authority is following the Church Committee with FISA and everything else. Do you think the President has authority under AUMF, notwithstanding the requirements of the FISA statute?

Attorney General GONZALES. Senator, I am not prepared to answer that question. I think for purposes of today's hearing, I think it is important for everyone to note that, as far as I know, there is no ongoing physical searches of mail under the authorization to use military force—

Chairman LEAHY. And there has not been? Attorney General Gonzales. And, to my knowledge, there has not been any kind of authorization of that nature.

Would you know if there was?

Attorney General GONZALES. I think that I would know, sir. Yes, sir.

Chairman LEAHY. Well, then why in heaven's name did the President feel he needed to issue a signing statement?

Attorney General GONZALES. Sir, he issued that signing statement to preserve the authority we believe exists under FISA, under other statutes. So when you have got the President signing a statute saying, this is the only way you can engage in physical searches, the President wanted to preserve the authority you gave to him under the other statute. That is the purpose of issuing the signing statement.

Chairman LEAHY. Mr. Attorney General, can you understand a certain skepticism up here? It was done late in the week on something that actually is a compulsory organization, has nothing to do with FISA, in no way—in no way—goes into FISA, no way adds to or undercuts FISA.

And then we see one of these signing statements that, late in the day, kind of slipped out—in fact, most people did not find out about it until about a week later—saying, oh, by the way, I have the authority to just open your mail.

Do you understand why we might be just a tad concerned?

Attorney General GONZALES. Senator, from our perspective there was a possibility of misconstruing the statute in a way that would take away from the President existing authorities that the Congress had given under other statutes, and the President simply wanted to preserve the authorities that Congress had already granted to him.

Chairman LEAHY. Well, let me go into another area of this. The FBI has always had the ability to issue national security letters, and it has done that. But now we find, not from anything that has been told to us in our oversight, but we find from the New York Times—sometimes I wish it would just mark the New York Times "top secret". We would get the information quicker, in more detail, with the wonderful crossword puzzle at the same time.

But they reported that the Department of Defense and CIA have greatly expanded the use of non-compulsory national security letters to acquire Americans' sensitive financial records. There were 500 requests for financial records since 9/11.

Why in heaven's name do we have the Department of Defense and CIA spying on Americans? I mean, if we are going to be doing that, if we are going to be doing it legally, it should be done through your Department?

We have always tried to keep the Department of Defense and the CIA outside our borders and not delving into the Americans'—especially since Corantelpo and things like that—lives. Why are they doing it? Why has the Department of Justice not said, if there is a need for this, we will do it?

Attorney General GONZALES. Senator, I do not know if the DoD activity, which appears to be permitted—there are at least five NSL statutes, so whether or not this is a grand expansion, I think perhaps it is an incorrect characterization.

There has been authority provided by the Congress for certain law enforcement agents and certain agencies to engage in the collection of these kinds of business records. That is what we are talking about here, business records in the hands of third parties. So there is no constitutional issue here, per se.

Chairman LEAHY. But it has always been the law enforcement in the FBI. Law enforcement officials have done that, or those normally involved in law enforcement. All of a sudden, we have the CIA and the Department of Defense going into internal American matters.

Does this not trouble you?

Attorney General GONZALES. If the stories are true, of course it would be very troubling.

Chairman LEAHY. Well, are they true?

Attorney General GONZALES. Sir, I do not know if they are true or not.

Chairman LEAHY. Did you ask?

Attorney General GONZALES. I do not believe that they are true.

Chairman LEAHY. Have you asked?

Attorney General GONZALES. I have not asked, personally, in terms of whether or not the Department of Defense—

Chairman LEAHY. But this is going into your normal bailiwick. Why have you not asked?

Attorney General GONZALES. Again, Senator, I think by statute the Congress has decided that certain agencies do have the authority to engage in this kind of collection of information.

Let me just remind you, you cannot use it for criminal investigation. You cannot use it for domestic terrorism. You can only use it in connection with espionage investigations, and only with international terrorism.

So when you have DoD, who has bases all around the country, they could be involved in an espionage investigation. Congress has decided that they do have the authority to use national security letters.

Chairman LEAHY. Attorney General, in fairness to my colleagues, I will come back to this, because I have used my time. I also know that DoD has even gone and found Quakers who protest, that somehow they are going to protect their bases. Quakers tend to protest wars. It has happened a lot in this country.

But before I turn it over to Senator Specter, let mention that Senator Specter and I joined together in asking the Chief Judge of the FISA court for copies of the decisions of that court that you announced publicly on Wednesday. The court is apparently willing to provide these decisions to the committee. You have no objection to that, do you?

Attorney General GONZALES. Senator, I think that is a decision that I would like to take back to my principal, quite frankly.

Listen, let me just be real clear about this, however. I am extremely proud of the work of the lawyers involved in trying to get this application completed and this application approved.

I somewhat take issue—it is hard for me to do—with Senator Specter's innuendo that this was something that we could have pulled off the shelf and done in a matter of days or weeks. There is a reason why we did not do this as an initial matter shortly after the attacks of September 11th.

The truth of the matter is, we looked at FISA and we all concluded, there is no way we can do what we believe we have to do to protect this country under the strict reading of FISA.

Nonetheless, because of the concerns that have been raised, we began working in earnest to try to be creative, to push the envelope. Where is there a way that we could craft an application that might be approved by the FISA court?

So shortly after I became Attorney General I asked that we redouble our efforts to see if we could make that happen, so we have been working on it for a long time. It took a great deal of effort, and I am very, very proud of the work of the attorneys at the Department.

Chairman LEAHY. I do not think I fully understand. Are you saying that you might object to the court giving us decisions that you publicly announced? Are we a little Alice in Wonderland here?

Attorney General GONZALES. I am not saying that I have objections to it being released. What I am saying is, it is not my decision to make.

Chairman LEAHY. No, but it is the court's decision, is it not?

Attorney General GONZALES. Let me just make one final point.

Chairman LEAHY. Well, we are going to ask the court for them anyway.

Attorney General GONZALES. I cannot remember what is in the orders now, but certainly in the application there is going to be information about operational details about how we are doing this that we want to keep confidential.

That has been shared with Senator Specter. We have offered to make that information available to you, Mr. Chairman. We will continue to have a dialog to provide as much information as we can about the operational details, but I am sure you can appreciate the need to keep that information confidential.

Chairman LEAHY. We are going to continue our request that the court give us those decisions. They appear to be willing to. If parts of it have to be in closed session, we will do that.

Senator Specter, I am sorry.

Senator SPECTER. Thank you, Mr. Chairman.

Attorney General Gonzales, I have already noted my request to your subordinates to see the applications, the Statement of Probable Cause, and the orders. That is really indispensable for our appropriate oversight responsibilities.

Your letter to Senator Leahy and me yesterday recites that you have been on this since the summer of 2005. Now, I am not entirely unfamiliar with the issues involved here, but I cannot help but conclude that there has not been a sufficient sense of urgency on the part of the Department of Justice to get this job done faster.

I just do not see it as a 19-month undertaking. I say that in the context which, as you know, I introduced legislation a year ago on this subject to send this matter to the Foreign Intelligence Surveillance Court.

I cannot understand why, in that context where I discussed it with you personally, with your subordinates, and with the President personally, that this committee and I were not made privy to what was going on so that we could help you.

But we are going to pursue this to see if there is any conceivable justification for more than a year and a half elapsing. I have dealt with complicated matters and I do not see a justification with a sufficient sense of urgency.

Let me move on to the disclosures 10 days ago about the CIA and the Department of Defense conducting surveillance on American citizens.

There is a very basic distinction between the role of the FBI and the CIA. That is, that the CIA is overseas and the FBI has exclusive jurisdiction over domestic investigations. On that fundamental point Attorney General Gonzales, is that distinction not correct?

Attorney General GONZALES. Senator, I do not recall what the story said about the CIA's involvement.

Senator SPECTER. Answer my question as to whether—

Attorney General GONZALES. Yes, it is correct.

Senator SPECTER. It is correct. Well, then I, again, am at a loss to see what the CIA is doing on domestic investigations.

Now, with respect to the Department of Defense, the Department of Defense has no authority to investigate American citizens. We

have a Posse Comitiatus Act. We have very severe limitations for the Department of Defense.

Is there any justification for the Department of Defense moving into an area where the exclusive authority rests with the Federal Bureau of Investigation?

Attorney General GONZALES. I think, Senator, again, my reading of the statute is that they would have the authority to engage in the investigation related to espionage.

Senator SPECTER. What statute?

Attorney General GONZALES. Either the Right to Financial Privacy Act, two provisions of the Fair Credit Reporting Act, Section 2709 of Title 18, and Section 802 of the National Security Act.

Senator SPECTER. What do those Acts say about the Department of Defense? Supply that answer in writing so we can see exactly what you have in mind.

When I walked in this morning—no, no. It was not when I walked in, it was after I walked in and was seated here. I got a letter from Richard A. Hertling, Acting Assistant Attorney General, Office of Legislative Affairs. Now, Mr. Hertling is a good man. He used to work for me; I thought I had trained him.

This contains your responses to the hearing 6 months ago, July 18 of last year. We have 186 pages. I am a speed reader, Attorney General Gonzales, but not this speedy. There are lots of issues I would like to ask you about. Can you come back tomorrow so I have a chance to read this tonight?

Attorney General GONZALES. I will come back as soon as I can, Senator.

Senator SPECTER. How about tomorrow?

Attorney General GONZALES. I will come back as soon as I can.

Senator SPECTER. How about tomorrow?

Attorney General GONZALES. Well, Senator, let me—

Senator SPECTER. Is there any justification for dropping this on us this morning?

Attorney General GONZALES. No, there is not.

Senator SPECTER. All right. I thank you for that direct answer.

Attorney General GONZALES. I am disappointed at placing the committee in that position. It should not have happened.

Senator SPECTER. On a couple of investigative matters, Attorney General Gonzales, we had the Director of the FBI before us in December. And I raised with him the issue of a leak on an FBI investigation about Congressman Weldon shortly before the last election. Director Mueller said that he was "exceptionally disappointed", and that it was "unfair in advance of an election." He is looking at an investigation which might be a "criminal" investigation.

Will you advise this committee, or at least the Chairman and Ranking Member, what the progress of that investigation is?

Attorney General GONZALES. I will certainly go back and see what information we can provide. Let me also say, Senator, that I was, likewise, very, very disappointed—angry—about that leak. I do not care if it was before an election or whatever, leaks relating to ongoing investigations should not happen.

I know that all the U.S. Attorneys were advised by the Office of U.S. Attorneys that things like this should not happen. I know that

Alice Fisher, head of the Criminal Division, notified everybody within the Criminal Division that this kind of stuff is intolerable and should not happen.

Senator SPECTER. Attorney General Gonzales, will you inform this committee, or at least the Chairman and Ranking Member, about what is happening on the anthrax investigation which hit, not close to home, but at home?

Attorney General GONZALES. Senator, Director Mueller, I believe, has offered to give the Chairman a briefing. We are waiting to try to accommodate the Chairman's schedule to make that happen. We understand the frustration and the concern that exists with respect to the length of time. This is a very complicated investigation.

I know that the Director is very committed to seeing some kind of conclusion in the relatively near future, and so we are prepared to sit down and brief the Chairman with respect to the progress.

Chairman LEAHY. If the Senator would just yield a moment. If there is going to be a briefing of me as Chairman, I would want the Ranking Member included in that briefing. Obviously I have beyond a professional interest. I have a personal interest, insofar as somebody tried to kill me with those anthrax letters, and the attempt killed at least two people.

One, I would like to know why I was singled out, but mostly, for the now, I guess, five people who were killed and several others who were crippled by that anthrax attack, I would like the perpetrator brought to justice. This was on my time, not on Senator Specter's.

Senator SPECTER. Well, let me reclaim just a little time, Mr. Chairman, to finish up on this subject. The FBI has resisted telling us what is happening in that matter.

We have had tremendous resistance from the Department every time we move into what you claim is an ongoing investigation or pending prosecution. Let me remind you of the commitment which your Department has made.

I wrote to you and I wrote to Deputy Attorney General McNulty referencing the standards set forth in extensive memorandum by the Congressional Research Service, which concluded that "the Department of Justice has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, and that the oversight authority of the Congress extends to documents respecting open or closed cases that include prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda, and correspondence prepared during the pendency of cases."

Then I asked Mr. McNulty, "I would like your specific agreement that the Department of Justice recognizes the oversight authority of this committee." Mr. McNulty said, "You have my agreement."

Now, let me remind you, Mr. Attorney General, that we have not had that agreement carried out. I cite the anthrax investigation and the Weldon matter as two matters which have attracted the attention of this committee, and would ask for your responses specifically.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Next, we will call on actually the most senior of this committee and nearest the Chairman of the committee, Senator Kennedy.

Senator KENNEDY. Thank you very much.

Welcome, General Gonzales. Many of us believe that the war that we are fighting in Iraq today bears no resemblance to the war Congress authorized in 2002. Our troops are being asked to take sides in a civil war in a country where militias operate with impunity, where sectarian violence is the norm, and where ethnic cleansing is taking place neighborhood by neighborhood. I do not believe any Member of Congress would have authorized our involvement in a civil war.

I have introduced legislation to require congressional authorization to escalate our involvement in Iraq. The bill would prevent the President from increasing the number of troops unless Congress authorized him to do so.

Article 1, Section 8 of the Constitution clearly gives Congress the extensive power over a war. It gives it the power, under Article 1, to lay and collect taxes, to provide for the common defense, to declare war, grant letters of mark and reprisal, make rules concerning captures on land and water, raise and support armies, to provide and maintain a navy, to make rules for the government, regulation of the land and naval forces, to provide for calling forth the militia to execute the laws of the Nation, suppress insurrections and repel invasions, to provide for organizing, arming, and disciplining the militia.

James Madison wrote, "The Constitution supposes, but the history of all governments demonstrate, that the executive is the branch of power most interested in war and most prone to it. It has, accordingly, with studied care, bested the question of war in the legislative branch."

So I have a letter here which I will share with you, and I will ask that it be included in the record, from leading constitutional scholars confirming that Congress has this authority.

They say, "Congress may limit the scope of the present Iraq war by either of two mechanisms. First, it may directly define limits on the scope of that war, such as by imposing geographic restrictions or a ceiling on the number of troops assigned to that conflict. Second, it may achieve the same objective by enacting appropriations restrictions that limit the use of appropriated funds."

The letter concludes, "Far from an invasion of Presidential power, it would be an abdication of its own constitutional role if Congress were to fail to inquire, debate, and legislate as it sees fit regarding the best way forward in Iraq."

Now, my question, General, do you accept that Congress does have the authority to prevent the President from increasing troop levels in Iraq in the manner I have described?

Attorney General GONZALES. Senator, I do not know if I am prepared to answer that question. I am prepared to say that I have had many conversations about this, and I may have said that during my confirmation hearings, I think if you look at the framework of the Constitution, the framers clearly intended that, during a time of war, that both branches of government would have a legitimate role to play.

At the far end, you have got the power of the Congress to declare war. I think at the other end you have the core sort of commander-in-chief authority to say, take that hill. Then things get kind of murky.

But, clearly, you recited certain provisions in the Constitution which clearly provide Congress the authority to raise and support armies, to provide and maintain a navy, the power of the purse.

So, clearly, Congress does have a role to play in the execution of the war. As to whether or not the legislation that you were referring to would be constitutional, would be one that I would have to evaluate under the *Youngstown* framework.

Senator KENNEDY. All right.

But you recognize that when the Constitution says it may limit, we are not talking about assigning battalions into different field positions or we are superimposing a judgment on the use of troops in any form, we are talking about the general direction or the scope of the war.

As this memo points out, "imposing the geographic restrictions or ceiling on the number of troops assigned to it," or it may achieve the same by enacting appropriations. You do not deny that those two powers rest in the Congress.

As I understand your question, it is whether the legislation conforms with that. Are you questioning whether the Constitution gives us the authority and the power?

Attorney General GONZALES. Rather than giving you an answer here without looking at the words as to the constitutional of the Congress vis-a-vis the President during a time of war, I would like the opportunity to look at it and respond back to you.

Senator KENNEDY. All right. I will make it available to you.

I believe that the President needs to have congressional authorization if he is going to invade Iran. What is your position on that? Do you agree with me?

Attorney General GONZALES. I am not aware of any plans to invade Iran.

Senator KENNEDY. I am not asking whether he is planning to. If he were to invade Iran, I believe that he would have to come to the Congress for authorization.

Attorney General GONZALES. Senator, for example, if there were an attack by Iran, I think the President would have constitutional authority to defend this country. So there may be circumstances where I am not sure that that would necessarily be true. It would depend on a lot of circumstances and factors that we would have to look at.

Senator KENNEDY. I am not talking if it is an attack of retaliation. It is clearly described in the Constitution, and also in the War Powers Act. That is all clearly outlined, after a great deal of debate and passage by Republicans and Democrats, with a great time of deliberation.

I am asking, now, just as we are looking at the current situation in Iran, whether it is your understanding, as the principal advisor of the President on legal matters, that he has a requirement to come to the Congress for an authorization prior to the time of invasion?

Attorney General GONZALES. Well, again, I am not aware of any plans to invade Iran, and I can assure you, in providing advice to the President, I would make sure that he understood that the Constitution does give to the Congress a role with respect to the country going into war. Again, you are asking me a difficult constitutional question absent of any facts that I think would be important in providing an answer.

Senator KENNEDY. Well, I think this is distressing and disturbing to leave out there that somehow there are the circumstances where you think that an invasion of Iran would not require an authorization by the Congress of the United States.

Attorney General GONZALES. Senator, I think we all understand that. Certainly I understand that. My reading of the interpretation of the Constitution, is with respect to the country going into war, the country is better off when the branches are working together. Clearly, the framers intended that, with respect to the country being at war, being in combat, that the Congress would have some role as spelled out in the Constitution.

Senator KENNEDY. My time is up. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Hatch.

Senator KENNEDY. Oh, Mr. Chairman? I get 7 minutes. I thought it was five. I have another 2 minutes. Excuse me.

General, I am disturbed by the pattern of the administration of pushing policies and practice that trample on the constitutional legal rights—we referred to those, or the Chairman did, earlier—and then backing off or purporting to back off when a court of law is about to rule against you or Congress is about to act. This was done yesterday in announcing that the warrantless wire tapping program be brought under FISA.

We still have to learn more facts about that. After years of insisting that it could not be, I am told you rushed to court to argue that the most advanced challenge to that program is now moot.

In the case of José Padilla, when he was detained unlawfully for years, about to go to the Supreme Court, at the last minute you charged him with crimes unrelated to the allegations pursuant to which he had been held, and you have done it in defending the use of torture.

You were nominated for Attorney General and then went back and had the repeal of the old torture statute, the Bybee memorandum, and then came up with a new torture statute and went on for your confirmation.

All of the while, the administration was criticizing raising the issue of the patriotism of individuals that were critical of those actions, whether it was torture or whether it was in these other areas, FISA and other areas.

This, I think, raises, as has been pointed out, time, resources, and really squandered the support of the other branches of government and the American people.

Your reaction?

Attorney General GONZALES. Senator, we have taken actions that we believed were absolutely necessary. The President has ordered actions that he believed was absolutely necessary to protect the security of our country.

You mentioned our actions with respect to obtaining orders from the FISA court. This was not motivated by the litigation. We began this process well in advance of the disclosure of the program, and thus well in advance of the litigation.

We began this action simply because the President believed that there was no other alternative, there was no other way to do it, no other way to protect this country, and because there was a firm belief—and that belief continues today—that he does have the authority under the Constitution to engage in electronic surveillance of the enemy, on a limited basis, during a time of war. That is consistent with tradition and practice, and that is certainly not inconsistent with the various Circuit Courts that have looked at this issue.

So I would simply say that the President at all times has been motivated in terms of what he believes is the right thing to do to protect this country in a manner that is consistent with the Constitution and his obligation as the Chief Executive and the Commander in Chief.

Chairman LEAHY. Thank you.

Senator Hatch?

Senator HATCH. Thank you. Thank you very much, Mr. Chairman.

General, welcome. I personally appreciate the service you have given. I know you have inherited this job at one of the toughest times in the history of the world, let alone our own country. These issues are very difficult issues and there are differing points of view with regard to many of these issues.

As we all know, that is why the Supreme Court is constantly hearing constitutional cases, so they can determine whether one side or the other is right, or just exactly what constitutional principles to go with.

With regard to Iran, there are so many variable-fact situations that you could conjure up where a president would have an obligation to defend the country, so to just come out and say, well, you cannot go to war with Iran without approval of the Congress, I mean, that is such an over-simplification that you cannot even discuss it constitutionally, other than, it is an over-simplification. There are all kinds of problems.

In this world of terrorism where these people do not wear uniforms, they do not represent a country, they basically represent a minority ideology that is not embraced by the vast majority of Muslim people in the world, and they do not care about human life, including their own.

It is easy to sit back and criticize, but we live in a world of real controversy and real difficulty. I think you are in a very, very tough position here. From what I have seen, you have done your very dead-level best to make sure constitutional principles are followed and that the Justice Department handles matters in a respectable, decent, honorable way, and I want to commend you for it.

But let me just change the subject. You correctly emphasized that the Internet has radically changed the world of obscenity and child exploitation. We hear every day about child exploitation in this country.

It has changed the way the material is produced, marketed, distributed, and even used. It has been 21 years since the Attorney General established a commission to study obscenity and pornography to make recommendations for us. The Internet did not even exist when the commission did its work.

Last September when you testified before the Senate Banking Committee, my colleague from Utah, Senator Bennett, raised this issue with you and you were open to considering it. I want to repeat the suggestion here.

Will you consider establishing a new commission to study this crisis and make recommendations, with a particular focus on the Internet? I believe that the Internet is part of the problem when we come to child molestation and some of these issues that have been in the news every day for a long time.

Attorney General GONZALES. Senator, I have considered it. I am willing to sit down with you and get your views about it. I think we are doing a lot already in terms of, I established an obscenity task force. We have got 52 obscenity convictions.

We had a training session down in South Carolina a few months ago where a representative from every U.S. Attorneys' Offices came. I went and spoke, Paul McNulty went and spoke. The purpose of this was to emphasize the obscenity prosecutions around the country.

Many of the recommendations of the Meese Commission, of course, are reflected in laws passed under the PROTECT Act, the Adam Walsh Child Protection Act, so I think we have done a lot. I am, however, still very concerned about this issue and the threat to our children. I characterize it as a battle. It is a war and we need more resources. So, if we need the commission, that is something I am happy to sit down and talk with you about.

Senator HATCH. Well, I think you ought to consider it.

You mentioned the Adam Walsh Act just a minute ago, and also in your testimony. That is one of the most important goals we have enacted around here in a long time, and I commend you for your support of it and for the help that you gave the committee in the process.

Now, Title 5 of the Act includes language I introduced strengthening the requirement that the producers of sexually explicit material keep records regarding the age and identity of performers. Now, the existing law, which covered one category of child porn, had not been enforced and the Adam Walsh Act extended it to cover a second category.

Has the Department issued new regulations for implementing these recordkeeping requirements, and can you assure that you will vigorously enforce this bill, and also any regulations that are issued?

Attorney General GONZALES. Well, we already are enforcing the provisions of 2257. We had a recent conviction with respect to "Girls Gone Wild". So we already are making some progress. You are right, the Adam Walsh Child Protection Act required certain amendments to the law.

We are in the process now of getting those regulations approved. I am pushing as hard as we can to get it done. But, yes, sir, you have my commitment that we will vigorously enforce the law.

Senator HATCH. Well, thank you. You have, in the past, expressed concern that investigators in child exploitation cases sometimes hit dead ends because Internet service providers have not kept data that would help determine the source of images posted on the Internet. How big a problem is this for law enforcement, and is there something Congress can do to help solve it?

Attorney General GONZALES. Well, it is a problem. You are right. We have encountered investigations where the evidence is no longer available because there is no requirement to retain the data. Many ISPs do retain data for commercial purposes.

Let me just say, most ISP companies are great partners with the law enforcement community, so I want to commend them for their efforts.

However, those few cases where we need that information, the question is, how do we maintain that evidence? So for that reason I have had discussions with the ISP community, with victims' groups, with privacy groups about whether or not it makes sense to have some kind of legislation dealing with data retention, not data retained by the government, but data retained by ISPs that could be accessed through a court order by the Department of Justice from a court judge.

I think that I would like to have a discussion with the Congress about that. I know we are all committed to doing everything we can to ensure the safety of our kids.

Senator HATCH. Well, let us work on it.

Now, General Gonzales, we debated this issue of Presidential signing statements before. I wonder sometimes if these debates have not provided more heat than light. Am I right that this is not something invested by President George W. Bush, but that many presidents have issued such statements?

Attorney General GONZALES. They began with Thomas Jefferson, so there have been a series of presidents, including President Clinton, who made great use of signing statements, which represent only a dialog between the President of the United States, the American people, the Congress, but primarily the executive branch about the interpretations of certain provisions and a piece of legislation that may be constitutionally suspect.

Senator HATCH. Well, am I also right that top legal officials in past administrations have repeatedly opined that these signing statements can be used for various perfectly legitimate reasons, and do these reasons include an explanation of how the administration, the executive branch, which is charged with enforcing or implementing the laws Congress passes, will interpret and enforce a particular statute? Is that not an accepted, legitimate use of Presidential signing statements?

Attorney General GONZALES. That has been the uniform analysis of the executive branch throughout various administrations of both parties. I might also add that the Congressional Research Service did a review of signing statements and, likewise, concluded that they could not see any inherently unconstitutional or inappropriate use of signing statements by presidents.

Senator HATCH. Well, I think it is very important. My time is up, but let me just make this one comment. I think it is very important

to be crystal clear about issues like the signing statement we discussed earlier.

As I understand it, the President was preserving other legal authority he already has. He was not asserting any new authority. Is that a fair statement?

Attorney General GONZALES. That is correct. In fact, I would think that the Congress and the American people would want to know his thinking about legislation and his thinking about the implementation of legislation. I mean, again, this is a dialog between the President of the United States, the American people, the Congress, and, of course, the executive branch.

Senator HATCH. Well, thank you, General. My time is up.

Chairman LEAHY. Under our rules of appearance, Senator Kohl of Wisconsin would go next. But Senator Feinstein of California is managing a bill on the floor. Senator Kohl, in his usual gracious manner, has yielded first to her.

Senator Feinstein, you are recognized.

Senator FEINSTEIN. Thank you very much. I want to thank my friend and colleague, Senator Kohl. The bill goes up at 11, so I very much appreciate this.

Good morning.

Attorney General GONZALES. Good morning, Senator. Good to talk to you again.

Senator FEINSTEIN. Thank you. Mr. Gonzales, let me speak as a member of the Intelligence Committee for a minute. I want to commend you for the action—the corrective action—you have taken on the Terrorist Surveillance Program.

I believe bringing it into conformance with the law is the right thing to do. In my briefings on the program, I believe you are doing that. I think there are a couple of things outstanding which we can discuss, but not in this forum. I just want to say, I think it is overdue, but thank you for taking that action.

Attorney General GONZALES. Senator, I just say that we continue to believe that what has happened in the past, the President's actions were, of course, lawful. But I think this is a good step. I think involving all branches of government on such an important program is best for the country.

Senator FEINSTEIN. Thank you.

Now, let me ask you one question. One part of the letter you sent to the Chair and Ranking Member said that the President will not be reauthorizing the Terrorist Surveillance Program following, I guess, the end of this 45-day period. What will happen to it?

Attorney General GONZALES. Well, there will be no "Terrorist Surveillance Program". All electronic surveillance, as defined under FISA, of the kind described in the letter, international communications outside the United States where we have reasonable grounds to believe that a party to the communication is a member or agent of Al Qaeda or an affiliate organization, that that will all be done under an order issued by a judge in the FISA court.

Senator FEINSTEIN. Thank you.

You and I talked on Tuesday about what is happening with U.S. Attorneys. It spurred me to do a little research, and let me begin. Title 28, Section 541 states, "Each U.S. Attorney shall be appointed for a term of 4 years. On the expiration of his term, a U.S. Attor-

ney shall continue to perform the duties of his office until his successor is appointed and qualified."

Now, I understand that there is a pleasure aspect to it, but I also understand what practice has been in the past. We have 13 vacancies. Yesterday you sent up two nominees for the 13 existing vacancies.

Attorney General GONZALES. There have been 11 vacancies created since the law was changed, 11 vacancies in the U.S. Attorney's offices. The President has now nominated as to six of those. As to the remaining five, we are in discussion with home-State Senators. So let me publicly sort of preempt, perhaps, a question you are going to ask me.

That is, I am fully committed, as the administration is fully committed, to ensure that with respect to every U.S. Attorney position in this country, we will have a Presidentially appointed, Senate-confirmed U.S. Attorney.

I think a U.S. Attorney, who I view as the leader, law enforcement leader, my representative in the community, has greater imprimatur of authority if in fact that person has been confirmed by the Senate.

Senator FEINSTEIN. All right.

Now, let me get at where I am going. How many U.S. Attorneys have been asked to resign in the past year?

Attorney General GONZALES. Senator, you are asking me to get into a public discussion about personnel.

Senator FEINSTEIN. No. I am just asking you to give me a number, that is all.

Attorney General GONZALES. I do not know the answer.

Senator FEINSTEIN. I am just asking you to give me a number.

Attorney General GONZALES. I do not know the answer to that question. But we have been very forthcoming—

Senator FEINSTEIN. You did not know it on Tuesday when I spoke with you. You said you would find out and tell me.

Attorney General GONZALES. I am not sure I said that.

Senator FEINSTEIN. Yes, you did, Mr. Attorney General.

Attorney General GONZALES. Well, if that is what I said, that is what I will do. But we did provide to you a letter where we gave you a lot of information about—

Senator FEINSTEIN. I read the letter.

Attorney General GONZALES. All right.

Senator FEINSTEIN. It does not answer the questions that I have. I know of at least six that have been asked to resign. I know that we amended the law in the Patriot Act and we amended it because if there were a national security problem the Attorney General would have the ability to move into the gap. We did not amend it to prevent the confirmation process from taking place.

I am very concerned. I have had two of them ask to resign in my State from major jurisdictions with major cases ongoing, with substantially good records as prosecutors. I am very concerned because, technically, under the Patriot Act, you can appoint someone without confirmation for the remainder of the President's term. I do not believe you should do that. We are going to try to change the law back.

Attorney General GONZALES. Senator, may I just say that I do not think there is any evidence that that is what I am trying to do? In fact, to the contrary. The evidence is quite clear that what we are trying to do is ensure that, for the people in each of these respective districts, we have the very best possible representative for the Department of Justice and that we are working to nominate people, and that we are working with home-State Senators to get U.S. Attorneys nominated. So the evidence is just quite contrary to what you are possibly suggesting. Let me just say—

Senator FEINSTEIN. Do you deny that you have asked, your office has asked, U.S. Attorneys to resign in the past year, yes or no?

Attorney General GONZALES. Yes. No, I do not deny that. What I am saying is, that happens during every administration, during different periods for different reasons. So the fact that that has happened, quite frankly, some people should view that as a sign of good management.

What we do, is we make an evaluation about the performance of individuals. I have a responsibility to the people in your district that we have the best possible people in these positions. That is the reason why changes sometimes have to be made, although there are a number of reasons why changes get made and why people leave on their own.

I think I would never, every make a change in a U.S. Attorney position for political reasons or if it would in any way jeopardize an ongoing serious investigation. I just would not do it.

Senator FEINSTEIN. Well, let me just say one thing. I believe very strongly that these positions should come to this committee for confirmation.

Attorney General GONZALES. They are, Senator.

Senator FEINSTEIN. I believe very strongly we should have the opportunity to answer questions about it.

Attorney General GONZALES. I agree with you.

Senator FEINSTEIN. I have been asked by another Senator to ask this question, and I will. Was there any other reason for asking Bud Cummings of Arkansas to resign, other than the desire to put in Tim Griffin?

Attorney General GONZALES. Senator, again, I am not going to get into a public discussion about the merits or not with respect to personnel decisions. I will say that I have had two conversations, one as recently as, I think, yesterday with the Senator from Arkansas about this issue. He and I are in a dialog.

I am consulting with the home-State Senator so he understands what is going on and the reasons why, and working with him to try to get this thing resolved, to make sure for his benefit, for the benefit of the Department of Justice, that we have the best possible person manning that position.

Senator FEINSTEIN. All right. If I could move on quickly.

In 2000, the last year that the Bureau of Alcohol, Tobacco, Firearms, and Explosives issued a report with an analysis, it was revealed that 57 percent of all guns used in crimes in the United States had come from 1.2 percent of licensed gun dealers. In other words, the majority of crimes were not coming from guns from the black market, but from a few licensed dealers.

Now, this information was really quite useful. But starting in 2004, the Congress added amendments on the CJS appropriations bill restricting BATFE's ability to share gun trade data with local jurisdictions.

In the 109th Congress there was no CJS bill, so therefore the gun trace data effort died in the Senate. So, it is now possible to provide this gun trace data to bona fide law enforcement organizations on a local level.

As you know, murder has gone up. As you know, there are real substantial problems. I think the murder rate in one city in my State is 33 percent. It is a real problem out there, what is happening.

My question is this: do you support allowing State and local law enforcement to have access to BATFE gun trace data?

Attorney General GONZALES. Senator, I need to go back and look at this because your question has confused me. It was my understanding that we already are sharing gun trace data, State and local, for law enforcement purposes.

My understanding is that certain State and local officials wanted the information for non-law enforcement purposes. That has been the issue. I am told by professionals at ATF that that would jeopardize their law enforcement efforts. I am not sure why that is the case. I am happy to look into it and get back to you on that.

Senator FEINSTEIN. But you do support gun trace data going to governmental entities on the local level?

Attorney General GONZALES. For law enforcement purposes.

Senator FEINSTEIN. For law enforcement purposes.

Attorney General GONZALES. Yes. And I believe that that is ongoing, so that is why I am a little bit confused by your question.

Senator FEINSTEIN. All right. I think that is fair. I think we need to check it out. But I know places where it has not gone for law enforcement purposes, so I would be happy to talk with you about that further. My time is up. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. I am just wondering, when we take our break for lunch, would it be possible to get the numbers that Senator Feinstein has asked for?

Attorney General GONZALES. The number? I think it is possible. I will certainly—

Senator FEINSTEIN. U.S. Attorneys asked to resign.

Attorney General GONZALES. Senator, that is information that I would like to share with you. I do not want to have a public discussion about personnel decisions. It is not fair, quite frankly, to the people.

Chairman LEAHY. We are just curious as to the numbers. I do not care who they are.

Attorney General GONZALES. Yes.

Chairman LEAHY. I want to know numbers. Thank you.

Senator FEINSTEIN. That is fine.

Chairman LEAHY. Senator Kyl?

Senator KYL. Thank you, Mr. Chairman.

Mr. Attorney General, first, let me say there have been several stories—there was one in the Wall Street Journal yesterday as a

matter of fact—about U.S. Attorneys' Offices prosecuting people in connection with Internet gambling.

I want to compliment you and the various offices that have engaged in those prosecutions because they have begun to deal seriously with a very difficult problem. Congress passed a law at the end of last year that requires Treasury to issue some regulations so that banks can more easily comply, and I hope that your office will work with Treasury so that those can be done quickly and effectively and that your office can continue to engage in these prosecutions.

Attorney General GONZALES. It is my understanding, Senator, that we have already initiated discussions, or have been in discussions with Treasury, so that process is moving and hopefully it can be completed in an expeditious manner.

Senator KYL. Excellent.

You have taken quite a bit of abuse, I guess I would say, at this hearing and in the media generally over a variety of efforts that your office has been engaged in relating to the war against terrorists, the TSP program, detainee, habeus corpus issues, various prosecutions.

I suppose that is somewhat inevitable, and I suspect you do not need any reminder that if there were another terrorist attack on this Nation, probably that criticism would quickly evaporate and instead you would be up here trying to answer why you did not connect all the dots and why you were not more vigorous in your effort to protect the American people, and so on.

I suppose it is the nature of a body like the Senate always to engage in that kind of second guessing, but I do want to encourage you, notwithstanding this criticism which I know is heartfelt and genuine in terms of the people who are making the criticism, but I do strongly encourage you to continue to perform your functions under the law as best you understand them for the benefit of the American people, because this war against these international terrorists is deadly serious. Much of our protection will come from the efforts of the people that work in the Department of Justice and the other agencies of the U.S. Government.

Attorney General GONZALES. You have my commitment to that, Senator. Let me say one thing in response to some stories that I read. The President of the United States would not have authorized the action that was disclosed yesterday if there was any doubt in his mind that it would make the United States any less safe.

He has been advised by the Director of National Intelligence, by the Director of NSA, that this is something that we can do and still maintain the same level of safety and security for the United States of America. I mean, that is his number-one priority and that is what we kept in mind as we tried to find a way to bring this program under FISA.

Senator KYL. Thank you, Mr. Attorney General. At any time that you believe that you do not have the proper authority to engage in what you believe are necessary activities to protect the American people, I would expect you to come to this committee and let us know.

I know there are some outstanding things you would like to have us do that we have not done that would assist in those efforts, and hopefully we will be able to advance some of those in the future.

You stated in your testimony that various proposals to repeal the enemy combat litigation provisions of the MCA and the DTA are ill-advised and defy common sense. Again, with respect to those who have made these comments, I have to agree that this would be a very, very bad idea.

The effect would be to not only allow prisoners held at Guantanamo to literally sue the soldiers that are guarding them, their captors, but also to contest all manner of conditions of their detention there, contrary to all precedent not only in this country, but in other countries as well.

Then such as Khalid Shiek Mohammad and Ramsey ben Al-Shied, both of whom were involved in the September 11th attacks. These proposals would also, as I understand it, allow any enemy detainees held inside the United States to sue to challenge detention and conditions of confinement. If I am incorrect in this in terms of your understanding, please let me know, but I think this is accurate.

I think back on World War II about the roughly 425,000 German prisoners of war that were held in the United States. What would the Justice Department have done, or the Defense Department at that time, if these POWs had had the habeus corpus rights that are being sought by the proponents of this legislative change?

By the way, did we allow these prisoners to bring habeus actions, to sue?

Attorney General GONZALES. Sir, I am not aware of any specific cases. Someone may have thought about it, but obviously we did not have a situation. We had 400,000 claims, people claiming illegal detention or people claiming mistreatment. That just did not happen. People would have thought it rather odd, quite frankly.

These were lawful combatants. These were people that fought according to the rules. So the notion that we would do that for people that were unlawful combatants, who do not follow the rules, I think people would say that is somewhat odd, also.

I think people lose sight of the fact that we, as a government, provide more process to unlawful combatants than prisoners of war get under Geneva, so you are actually penalized by finding according to the rules.

Under Geneva, you are captured on the battlefield, you have a battlefield determination: you are a prisoner of war. That is it. There is no more determination. Here, if you are an unlawful combatant, you get multiple evaluations. If you are sent to Guantanamo you get a CSRT you get—

Senator KYL. What is that?

Attorney General GONZALES. That is a Combatant Status Review Tribunal, where there is a proceeding that provides a meaningful opportunity for the detainee to present his case that he is not lawfully detained.

Senator KYL. Represented by American lawyers?

Attorney General GONZALES. He is not represented by a lawyer, per se. There is a lawyer involved that is sort of his legal rep-

resentative or helper. I would not call him his counsel, but he is represented by counsel on appeal.

He has a direct right of repeal to the DC Circuit, and there he is provided counsel. He also has a right, if the Supreme Court wants to hear his challenge, to take it up to the Supreme Court.

Senator KYL. Now, that right of direct appeal to the Court of Appeals, we wrote that in the statute. That was unprecedented. Is that correct?

Attorney General GONZALES. Yes. The amount of process we provide is unprecedented not only for unlawful combatants, it is, quite frankly, unprecedented for prisoners of war, lawful combatants. So we have gone well, well past what is precedented.

I think the United States should, quite frankly, be proud of the amount of process that it provides to unlawful combatants who kill innocents indiscriminately, who do not follow the rules, and yet nonetheless the people of the United States have decided we are going to provide these individuals CSRTs, we are going to provide them access to a court, when that has never, ever in the history of this country been done before.

Senator KYL. Mr. Chairman, do I understand my time has expired?

Chairman LEAHY. The Senator's time has expired.

Senator KYL. Thank you.

Chairman LEAHY. But we will be having another round.

Senator KYL. No, no. That is fine. I appreciate that. Thank you.

Chairman LEAHY. Senator Kohl, you were very patient and yielded your time earlier. Please, go ahead.

Senator KOHL. Mr. Attorney General, I would like to discuss the rise in violent crime in our country with you. As you may know, I discussed this topic with the FBI Director in December, and since then violent crime statistics for 2006 have been made available, which unfortunately show that 2005 was not an aberration, but rather part of a very unfortunate trend.

Our entire country has been hit hard by a crime wave, and my own city of Milwaukee is no exception. There are no doubt a variety of factors that have contributed to this rise.

The FBI, for example, used 2,190 fewer agents in 2004 on traditional crime matters than it did in 2000 due to the essential focus on terrorism. This decreased Federal involvement, as you know, places a greater burden on our State and local law enforcement communities.

For exmaple, the Milwaukee police received $1 million from the COPS program in 2002, but last year it received no funding at all.

Mr. Attorney General, we are not giving our States and our localities the help that they so desperately need. Now, we are all on the same team, I know, and we all have the very same goal in mind.

I would like to make a particular request to you on behalf of Milwaukee. Can I ask you to pledge yourself to taking some time to study the situation in Milwaukee and report back to me on what can be done by way of some increased level of Federal funding on behalf of law enforcement to help to reverse this trend?

Attorney General GONZALES. Senator, you do have my commitment. I think we should all be proud of the historically low crime rates that we have enjoyed recently. There have been some dis-

turbing trends with respect to certain kinds of violent crime, with respect to certain places in the country.

You talked about it in terms of a "crime wave". What we are seeing are increases, disturbing trends, with respect to certain areas of the country and certain-size communities.

Nonetheless, I am concerned about it and for that reason we initiated this Initiative for Safer Communities, where I sent out teams to 18 cities. Milwaukee was one of them.

We wanted to study Milwaukee carefully and see what was working, what was not working, and we are going to take that information and hopefully come up with some good ideas that we can share with you and the American people about how we address this issue.

As you also know, Milwaukee was one of the cities that I identified last year to receive $2.5 million for a special gang initiative, where we would focus on prevention and education efforts, law enforcement efforts, and prisoner reentry efforts in your community. We want to see how these initiatives around the country—Milwaukee being one of them—work.

If people come up with some good ideas, then perhaps we will come to the Congress and try to get some more money and provide similar grants to other communities around the country. We, of course, have programs like Project Safe Neighborhood, where we make funds available to State and local communities. I think we are doing a lot, but I am worried about it, too.

Obviously, State and local officials are our best partners. We want to feel like they are appreciated. I look forward to working with you, and you have my commitment, in particular, with respect to Milwaukee. We will look at it and see what else we can do there.

Senator KOHL. That is very kind of you and I very much appreciate that. Thank you.

Chairman LEAHY. Thank you very much. Yes. Did you want to say something?

Attorney General GONZALES. Yes. I received some bad information, and I apologize for this. Milwaukee was not a city that received one of these. I confused it with Minneapolis, and my apologies. But you still have my commitment that we are going to study it.

Senator KOHL. If you will look at Milwaukee, that would be very good of you. Thank you.

Chairman LEAHY. Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Welcome Attorney General Gonzales. I wanted to talk a minute about the questions that Senator Feinstein raised about the process by which interim U.S. Attorneys are appointed so that we can understand this better and perhaps put it in context.

My understanding is that prior to the reauthorization of the Patriot Act, the Attorney General had the authority to appoint an interim U.S. Attorney for a period up to 120 days. After 120 days the courts, before which the U.S. Attorney would appear, would make a longer term interim appointment until such time as the President nominated, and the Senate confirmed, a permanent U.S. Attorney. Is that correct?

Attorney General GONZALES. That is correct. As you might imagine, Senator, that creates a problem, a court where he has been appointed by the judge, and so that created a problem.

We had, also, a problem of judges, recognizing the oddity of the situation, who kind of refused to act, so we have to take action, or give them a name or something, but it created some discomfort among some judges. Other judges were quite willing to make an appointment.

Regrettably, though, you have the potential for a situation where someone is appointed who has never worked at the Department of Justice, does not have the necessary background check, cannot get the necessary clearances, and so that is a serious problem, particularly during a time of war.

So for these reasons, quite frankly, I think the change that was made in the reauthorization of the Patriot Act makes sense. I have said to the committee today under oath that we are fully committed to try to find Presidentially appointed, Senate confirmed U.S. Attorneys for every position, but they are too important to let go unfilled for any period of time, quite frankly.

It is very, very important for me, even on an interim basis, the qualifications, the judgment of the individuals serving in that position.

Senator CORNYN. Mr. Attorney General, this was not just sort of an odd arrangement before the reauthorization of the Patriot Act, it raised very serious concerns with regard to the separation of powers doctrine under our Constitution, did it not?

Attorney General GONZALES. It does in my mind. Again, it would be like a Federal judge telling you, I am putting this person on your staff.

Senator CORNYN. That is because the U.S. Attorney is the chief law enforcement officer for the district concerned. So it would seem problematic for the top judicial branch official to name his executive branch counterpart. The process that Senator Feinstein asked questions about that is now the norm after the reauthorization of the Patriot Act, that is something Congress itself embraced and passed by way of legislation, and the President has signed into law. Is that correct?

Attorney General GONZALES. I believe it reflects the policy decision, the will of the Congress, yes.

Senator CORNYN. And I find it a little unusual that some of our colleagues are critical of the Justice Department replacing Bush appointees with interim appointments until such time as we can get a permanent U.S. Attorney nominated by the President and confirmed by the committee.

I just want to raise three quick examples of delays, unfortunately not caused by the administration, but by this committee itself in terms of confirming high-level nominees at the Justice Department. For example, Alice Fisher, whose nomination waited a period of 17 months before this committee actually confirmed her nomination.

Then there is Kenneth Wainstein, who was appointed to a brand-new position, as you know, the head of the Counterterrorism Division at the Department of Justice. This was a recommendation by the WMD Commission and others. This nomination was obstructed

for 6 months, until September 6, 2006, which allowed this new, important position to remain vacant for a half a year.

Then there is the inexplicable—to me, anyway—case of Steve Bradbury, who serves in a very important position as head of the Office of Legal Counsel, Acting, who is yet to be confirmed even though he was nominated June 23, 2005.

As you know, Mr. Bradbury was integral to our efforts to deal with this issue of, how do we try terrorists like Khalid Sheik Mohammad consistent with the Supreme Court's decisions and our Constitution?

So I appreciate your willingness to make sure that the administration nominates U.S. Attorneys on a timely basis. Hopefully this committee and the Congress, the Senate, will meet the administration more than half way and schedule up-or-down votes on the nominees that the President sends forward.

Let me take off also on this issue of violent crime. You mention the Project Safe Neighborhoods, and I want to ask you just a couple of words about that. You cover this at some length in your prepared statement.

Of course, I have a special interest, as you know, because of the origins of Project Exile out of Richmond, Virginia, originally a project of the U.S. Attorney there which we embraced in Texas when I was Attorney General, with then-Governor Bush.

We launched Texas Exile, which at the time was an innovative program to combine the resources of Federal, State, and local law enforcement agencies to focus on gun crime, of course, to make sure that our laws were strictly enforced.

But I have to tell you that I am very pleased with what I see are the results of Project Safe Neighborhoods, under which this effort has now been taken nationally, where you report a 66 percent increase in the number of cases filed and a 55 percent increase in defendants prosecuted since fiscal year 2000.

Could you just touch on, for a moment, the importance of our prosecution of individuals who are violating our gun laws in this country in terms of stemming the tide of violent crime? Also, I have seen a lot of public service announcements pointing out the harm inflicted on the families of those individuals who violate our gun crime laws and what that does in terms of deterring those sorts of crimes.

Attorney General GONZALES. I appreciate the question, Senator. I think we have made good progress in addressing violent gun crimes in this country because of the programs like Project Safe Neighborhoods where we are working in partnership with State and local communities in terms of providing training, sharing information, making joint decisions about, where is it appropriate and the best place to prosecute someone?

In certain cases it makes more sense to prosecute them in Federal court because, quite frankly, we have tougher gun laws and we can get tougher sentences. So, I think it has made a big difference in our ability to reduce the level of violent gun crime.

I am often asked, do we need additional gun laws? Obviously that is something we would always be willing to look at, but I think the evidence shows that if we continue our diligence in en-

forcing existing laws, we can make a big difference in reducing gun crime in this country.

Chairman LEAHY. Thank you,

Senator CORNYN.

Senator Feingold is next. I should note that Senator Feingold is going to chair the Constitution Subcommittee, one of the more important subcommittees of this committee.

Senator Feingold?

Senator FEINGOLD. Thank you so much, Mr. Chairman. Thank you, Mr. Attorney General.

First, let me associate myself with the remarks of my senior Senator, Senator Kohl, in raising the concerns about crime, in particular in the city of Milwaukee, and I want to thank him for his leadership on this issue. Thank you for your response and your willingness to take a real look at it.

In light of what he said about the loss of $2 million for the COPS programs in Milwaukee, and in light of what you said about Minneapolis, I hope Milwaukee is next in line for that kind of money.

Mr. Attorney General, it was a welcome change to learn that the President, with regard to the NSA program, has decided to return to the law. For more than 5 years, this administration conducted an illegal wire tapping program, including more than a year during which you and others publicly asserted that this violation of the law was absolutely essential to protecting the public from terrorists. As Senator Kennedy already mentioned, you actually questioned the patriotism of those who criticized you.

But the President has been forced to return to the law. Based on your announcement yesterday, this illegal program has been terminated. Now, that is a stunning—and I would say long overdue—change of direction.

In light of these developments, I also hope that the type of inflammatory and inaccurate rhetoric we heard from you and the President about this program is over. I was particularly concerned about a speech you gave in November which I raised with the FBI Director last month, so let me start by asking you the same question I asked the FBI Director.

Do you know of anyone in this country, Democrat or Republican, in government or on the outside, who has argued that the U.S. Government should not wiretap suspected terrorists?

Attorney General GONZALES. Sure. I mean, if you look on the blogs today there are all kinds of people who have very strong views about the ability of the government to surveille anyone, for any reason.

Senator FEINGOLD. Do you know of anybody in government that has said that?

Attorney General GONZALES. No. But that is not what I said. I have my remarks in front of me. I began by talking about how limited this program is, and what care we took in implementing this program. Then I did say, some people would argue nothing could justify the government being able to intercept conversations like the ones the program targets.

I also said, instead of seeing the government protecting the country, they see it as on the verge of stifling freedom. I then said that this view is short-sighted if the definition of freedom, one utterly

divorced from civic responsibility, is superficial and is itself a serious threat to the liberty and security of the American people.

Senator FEINGOLD. Well, that is interesting because we got a very different answer from the Director of the FBI, who had no trouble saying he did not know of anyone that took that position.

Now, this actually was not an isolated remark. During the campaign last year the President repeatedly said that the Democrats opposed wiretapping terrorists. Let me read you a quote from a campaign rally in Indiana: "When it comes to listening in on the terrorists, what is the Democrats' answer? Just say no."

In your speech on November 20, you said that critics of the program have a definition of freedom that is "utterly divorced from civic responsibility," and "is itself a grave threat to the liberty and security of the American people."

Mr. Attorney General, as I said when Director Mueller was here, to me these comments are blatantly false. I think they do a disservice to the Office of the Attorney General. Falsely accusing the majority of this committee of opposing the wiretapping of terrorists is not going to be helpful to you, to the Justice Department, to Congress, or to the American people.

Attorney General GONZALES. Senator, I did not have you or this committee in mind when I made those comments. I went on to talk about Justice Jackson's remarks in the case of *Terminello* v. *City of Chicago*, where he said, "The choice is not between order and liberty, it is between liberty with order and anarchy without either. There is danger that if the court is not temperate, is not chronologic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact." But again, I did not have in mind either you or this committee.

Senator FEINGOLD. Well, that is nice that it was not in your mind, and maybe it was not in the President's mind. But no reasonable person could interpret, during a political campaign that has to do with whether Senators, Democrats or Republicans, are elected or not elected has anything other than to do with accusing those who are on this committee, and others, of having that mindset.

So I am pleased to hear you did not have that in mind. Let me just say that the notion that somehow any of us or any one in the Democratic party does not think we should wiretap terrorists, is simply wrong.

Let me turn to the FISA statement itself. Why did you decide to seek FISA court authorization in the spring of 2005 and not earlier? Did this relate in any way to the administration learning that the New York Times was looking into the program?

Attorney General GONZALES. No, not at all.

Senator FEINGOLD. Why did you not seek the authorization earlier?

Attorney General GONZALES. Senator, we certainly would not have been prepared or be in a position to make any kind of application. I must tell you, and I want to go back and think about this in terms of, I am fairly certain—but again, I am under oath so I want to be careful how I say this—that we have had from time to time, when I was in the White House, discussions and thoughts about, is there any way to get this under FISA, not because there

was any concern that what the President was doing was unlawful. Quite the contrary. We believed, and believe today, that what the President is doing is lawful.

But because of the discourse, the concerns raised, questions asked here in this committee, we felt an obligation to see, was there a way to get this under FISA without jeopardizing the national security of this country?

Certainly when I came over to the Department of Justice I talked our folks, all right, let us go back and look at this again. Let us start over if we are going to have to. Is there a way we can do this? Again, I must take issue with Senator Specter. This is a very complicated application. In many ways it is innovative in terms of the orders granted by the judge. It is not the kind of thing you just pull off the shelf. We worked on it a long time.

Senator FEINGOLD. All right. Then once you submitted it, why did it take 2 years for the FISA court to come to its decision?

Attorney General GONZALES. It did not take 2 years, Senator, for the FISA court to come to its decision. It took us a period of time to develop what we thought would be an acceptable legal argument that would be acceptable by the FISA court, and it took us a period of time to take that argument and fit it into the operational capabilities and possibilities of NSA.

Senator FEINGOLD. How long did it actually take the court once it had your proposal?

Attorney General GONZALES. Senator, again, I do not want to get into a public discussion about the deliberations and work of the court. I will say that it took longer than a normal FISA because this was different than a normal FISA application.

So obviously the judge, looking at this, he was very, very careful in his decision that the application satisfied all the requirements of FISA, so it took a longer period of time because it was a different type of application.

Senator FEINGOLD. Well, Mr. Chairman, I see my time is up, but let me just say in conclusion that, while there will be matters to pursue both here and on the Intelligence Committee about the decision, it is an important moment in the history of our Constitution that this program has now been terminated and is now within the FISA statute. I do hope that we recognize the importance of that in terms of our constitutional history. Thank you, Mr. Attorney General.

Chairman LEAHY. Thank you.

Attorney General GONZALES. Can I make one final point?

Chairman LEAHY. Of course.

Attorney General GONZALES. On your characterization that the program was terminated, the country is no less safe today. I mean, the fact that there will be electronic surveillance of the enemy during a time of war will continue. The country will not be any less safe. It will be conducted under the FISA court.

I do not want the American people to think that somehow the President has backed off in any way from his commitment to doing what he can do under the law to protect America.

Senator FEINGOLD. Which is exactly why we did not need the TSP outside of FISA in the first place.

Attorney General GONZALES. Senator, you would be a much better lawyer than any of the lawyers at the Department of Justice by simply looking at the statute, knowing what we do, that this is something that could easily be approved by the FISA court. It took us a period of time to work on it, to develop the legal strategy, the legal analysis, and it took some time for a judge to get comfortable. It was not easy.

Senator FEINGOLD. Mr. General, I recognize that. But the idea that you did it before you had the court's approval is the startling part.

Thank you, Mr. Chairman.

Chairman LEAHY. We will take no more than a five- minute break and then we will come back. Senator Grassley is going to be next.

[Whereupon, at 11:30 a.m. the hearing was recessed and resumed back on the record at 11:35 a.m.]

Chairman LEAHY. As we reconvene, I will go over the order, because Senator Grassley was one of the first ones here, but he has also had, I would note, a very busy time in Finance this morning.

Senator Schumer will go next, and he has also been trying to cover about four other things today. And then Senator Sessions, each one of you have been doing the same thing. But let us go through those, and, Senator Grassley, the floor is yours.

Senator GRASSLEY. General Gonzales, I gave you a copy of my questions because I wanted to go through all the justification for the questions before you answered them, so I hope you have this sheet here.

The first one deals with the anthrax investigation. I wrote you in October to ask a series of questions regarding the FBI's investigation of the anthrax attacks. It has been over 5 years without any sign of real progress. It has been over 3 years since the FBI briefed any Congressman.

The FBI recently announced a policy of refusing to brief Congress about the case even though it provided briefings earlier in the investigation. And while I was at Finance, I know that you have offered to brief Chairman Leahy. And I say this only after I made a great objection to the FBI on the no-briefing policy.

In December, 33 Senators and Congressmen wrote to you to ask that you direct the FBI to provide a comprehensive briefing. That letter included signatures from several members of this Committee, the Intelligence Committee, Homeland Security, and not just the Chairs and Ranking Members. We have not received a response to that letter.

The Department's policy is unacceptable. It is kind of like thumbing the nose at congressional oversight, especially a topic that is as important as this one, and especially since Congress was the target of these attacks. Steven Hatfill, who was publicly labeled a person of interest in the investigation, has alleged in his lawsuit that the FBI and the Department of Justice personnel leaked sensitive case information about him to make the public believe that he was about to be arrested when, in fact, he was not.

It has been reported that two FBI agents were the sources of leaks about Hatfill in the New York Times, but when I asked Di-

rector Mueller last month whether anyone had been disciplined, he said no.

I believe that independent oversight is necessary to get to the bottom of these issues. You have said that you respect congressional oversight, but I do not see that your actions fit the words. So that is my first question. Now I want to go on to DOJ oversight before you answer.

Second, I understand that the Justice Department is conducting a series of training events for other agencies on how to respond to congressional oversight inquiries and hearings. I recently wrote to you asking for information about these training events, including a list of the agencies participating and copies of materials.

I asked to receive that information before this hearing so we could discuss it in more detail, but I did not get a reply. In light of the unnecessary hurdles and roadblocks that the Department has put in my way on oversight issues, my concern is that these training events may become lessons to stiff-arm Congress. So two questions on that.

And then my last issue is the False Claims Act. Third, as author of the 1986 amendments to the False Claims Act, I worked hard to ensure that we would have an effective tool against fraud and waste. Your Department reported that $18 billion has been recovered under my whistleblower amendments to the False Claims Act in the 20 years since they were passed.

In fact, $3.1 billion was recovered in the last fiscal year 2007, nearly $1 billion more than any other previous years' recovery. Can you tell us what the Department has been doing to increase recoveries?

Also, Congress passed the Deficit Reduction Act. Section 6032 of that provided financial incentives to the States to pass their own False Claims Act. It requires the Inspector General of the Department of Health and Human Services, in consultation with you, the Attorney General, to determine if a State law complies.

Back in March and April, I wrote two letters to you and Inspector General Levinson outlining the requirements of Section 6032 and highlighting necessary requirements for a State False Claims Act. Inspector General Levinson replied back in May that his office was working on guidance to States in consultation with your Department.

The formal guidance to States was issued this past August, and the OIG recently released its initial determination to various States that were submitted in accordance with Section 6032.

Of the 10 States that submitted the State False Claims Act, only three were deemed compliant. The fact that only three of ten passed muster tells me that there were some State legislatures looking to pass these laws in the next few months.

My question is then, since you did not provide a written response, what is the Department doing, in consultation with the OIG of HHS to review and comment on legislation submitted to the States?

So would you answer that series of questions on those three different points as I submitted them to you there in writing?

Attorney General GONZALES. I will do my best, Senator.

With respect to anthrax, you are correct, we have offered up a briefing to the Chairman. There is, of course—here is my view about oversight. I recognize that there is an institutional interest in the legislative branch receiving information.

Quite frankly, when you do that, it helps us do our job better. I recognize that. There is also an international interest in protecting certain kinds of information within the executive branch. I think we each have an obligation to recognize those two competing institutional interests.

As I read the case law, I think we each have an obligation to try to accommodate those competing interests, and so it is not enough for me to simply say no to a request from Congress. I do not think it is legitimate for Congress to simply say, "This is what I want and I am going to get it." I think we have an obligation to try to reach an accommodation in most kinds of cases.

Now, open investigations presents a unique set of challenges for us. The truth of the matter is my experience has been that when Congress inquires into open investigations, people quit providing candid advice. Sometimes people make decisions that they would not normally make for fear that if Congress is investigating what they are currently doing, they do not want to be criticized for not being tough enough.

I also, of course, worry about the privacy interests of the individual being investigated. Oftentimes we do investigations. That does not mean that someone has done anything criminal. We are in the process of gathering up information to see whether or not something has happened that is criminal.

So we are very, very careful and concerned about inadvertent leaks. I am not suggesting that there are intentional leaks, but sometimes there are inadvertent disclosures that hurt the privacy interests of individuals that ultimately turn out to be innocent. It is for that reason, that as a long matter of practice, we do try to resist inquiries into open investigations.

The situation with the anthrax case is different. It is different in terms of—I think it is—I would characterize it as a variance based upon extraordinary circumstances. In this case, it was letter targeted to Senator Leahy.

He has received briefings in the past, and for that reason, the Director of the FBI has offered and we are prepared to provide additional information that we can to the Chairman. So that is my response to the anthrax investigation.

With respect to DOJ oversight training, quite frankly, it is a responsibility and role by statute and by regulation for the Department to provide legal advice to the other executive branch agencies. We want to provide guidance to ensure actually greater cooperation and consultation with the legislative branch in this process.

I am told we never got your letter with respect to DOJ oversight training. I do not know if that is a problem with your staff or a problem with my staff, but I want to get to the bottom of it.

With respect to does the Department have plans to invite any congressional oversight experts to provide a legislative branch perspective at these training sessions, quite frankly, that is up to each agency. But we are their counsel as the Department, but they are obviously free to seek input from congressional experts.

Again, this is not a coordinated effort to try to coach them about how to avoid answering questions. It is to make sure that we are providing the appropriate level of cooperation, because we do have an obligation, again, based upon the case law as I read it and based upon tradition and history, to try to accommodate competing legitimate interests.

False Claims Act questions. Can you tell us what the Department has been doing to increase False Claims Act recoveries? I think our record in this area is very, very good if you look at the number of dollars that have been recovered.

I know there have been some complaints, Senator, that perhaps we are taking too long in making the decisions to get involved in some of these kinds of cases. But we take them very, very seriously, and we want to be very, very careful in the decisions that we make to be involved. But we are fully committed to this, and I think that is evidenced by the record level of recoveries with respect to these kinds of claims.

Then your question, Since you did not provide a written response either to my March 2006 letter or April 2006 letter—which I am told, again, we never got, and that is something we need to correct—what is DOJ doing, in consultation with HHS OIG, to review and comment on FCA legislation? I am told the letter has gone up to you, and you should have that. Quite frankly, sir, I do not know what the letter says. I have not reviewed it. But I am told that there has been some kind of response to you.

Senator GRASSLEY. Mr. Chairman, I would like to be involved in that briefing that you have on anthrax, if I could be.

Chairman LEAHY. Senator, I found the last briefing to be so inadequate and so uninformative, I have not sought another one because I have learned more reading the papers, especially when I read in the paper that the Department of Justice brought a number of victims of the anthrax attacks or their families to Washington to brief them. I do not want to use the mantle of "victim," but insofar as I was a target, I guess targets were not invited, victims were.

Be that as it may, if we have a briefing, as I said earlier, I would certainly want at the very least the Ranking Member involved. It should not be just a member of one party. But we can work that out.

Attorney General GONZALES. Mr. Chairman, I have encouraged the Director to try to provide as much information as we can. I would also conclude that I want to thank Senator Grassley for his amendment to increase DOJ's HIPAA funding by providing an inflationary adjustment to help investigate health care fraud. Thank you, Senator.

Chairman LEAHY. Thank you.

Senator Schumer is next. Go ahead.

Senator SCHUMER. Thank you, Mr. Chairman, and thank you, Mr. Attorney General.

Now, as has been mentioned, we learned yesterday that after more than 5 years of warrantless wiretapping, you finally obtained an order from the FISA Court. It is a secret Court, to be sure, but it is a Court nonetheless. And while many are rightly relieved that you finally decided to seek the involvement of a court, there are

still far too many unanswered questions to say that this issue has been resolved. This is better than Cheney, but we still do not know what "this" is.

So, first, let me ask you this: Do you now believe that FISA Court approval is legally required for such wiretapping? Or do you continue to believe that Court approval is merely voluntary? You indicated the latter before. If that is the case, is it not true that you could turn this on and off at will? If in a month the FISA Court did not do what you wanted, you could go right back to the old system?

Attorney General GONZALES. Senator, we commenced down this road 5 years ago because of a belief that we could not do what we felt was necessary to protect this country under FISA. That is why the President relied upon his inherent authority under the Constitution.

My own judgment is that the President has shown maturity and wisdom here in this particular decision. He recognizes that there is a reservoir of inherent power that belongs to every President. You use it only when you have to. In this case you do not have to.

Senator SCHUMER. So you do not think you are legally required to go to the FISA Court? That is correct, correct?

Attorney General GONZALES. Senator—

Senator SCHUMER. Please answer yes or no.

Attorney General GONZALES. We still—we believe—my belief is that the actions taken by the administration, by this President, were lawful in the past.

Senator SCHUMER. OK.

Attorney General GONZALES. But moving forward, our electronic surveillance collection is going to be conducted under FISA.

Senator SCHUMER. All I would submit here, sir, is that at will, just as at will you instituted this program, since you do not believe you are legally bound, you could turn it off, particularly if you got a decision that you did not want. That is one question I have.

Now, let me ask some questions about the nature of the Court approval. Yesterday, Assistant Attorney General Bradbury refused to answer whether this new program constitutes a program warrant. We need to get some information on this. Now, they did use the word plural, so I assume it is more than one warrant. But are we—

Attorney General GONZALES. Senator—

Senator SCHUMER. In other words, are the new FISA orders directed at individuals, at entire groups of individuals, or even broader brush than that?

Attorney General GONZALES. Senator, I am not at liberty to talk about those kinds of specifics because it would require me to get into operational details that I think I should not do in open session.

Senator SCHUMER. I will not ask you to get into operational details. I would like to know if there is an intention to do this on an individual basis or at least on a case-by-case basis where 5, 6, 10, 20, 100 individuals are involved, or is it broader brush than that?

Because if it is a very broad brush approval—and, again, because it is secret, we have no way of knowing—it does not do much good. Your answering that question in no way compromises any security interest. None. All it is, is a general outline of what you have done.

It is no more than what Bradbury talked about yesterday. So could you give us some idea of the breadth of these warrants?

Attorney General GONZALES. What I can tell you, Senator, is that they meet the legal requirements under FISA.

Senator SCHUMER. OK.

Attorney General GONZALES. I will also tell you, Senator, that the entirety of the Intel Committees, both in the House and Senate, have received full briefings about these orders and our application. We have provided a full briefing to Senator Specter.

We have offered a full briefing to the Chairman. And we are prepared to answer the questions that we need to ensure that they are comfortable about the application and the order.

Senator SCHUMER. But at least according to the paper, Senator Rockefeller did not get answers to these types of questions at his briefing. He said there are still too many unanswered questions about the kind—he did not say specifically about the kind I am asking.

And in your letter, here is what you say: "I am writing to inform you that on January 10th," a judge of the FISA Court issued orders authorizing the Government to target "for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or an agent of al Qaeda or an associated terrorist organization."

That clearly sounds to me like a program warrant, not an individual warrant. Is that not a program warrant?

Attorney General GONZALES. Senator, I do not know what you are reading from or what is said in the paper. And I must tell you, I am surprised if, in fact, Senator Rockefeller said—

Senator SCHUMER. This is in your letter. You signed this letter.

Attorney General GONZALES. If, in fact, Senator Rockefeller said that he does not understand the program. I view our briefings as the initial starting point of our discussions. If people do not understand, all they have to do is ask questions. It is important from our perspective for the Congress to understand what we are doing here with respect to these FISA applications. And so—

Senator SCHUMER. Heather Wilson, a Republican on the Intelligence Committee, says they are program warrants. I think we have to assume these are broad program warrants barring some comment from you, which I think is perfectly acceptable and that, you know, the reason you might not want to state it is it would open you up to criticism. And if it is a broad program warrant, it really is not very satisfying in terms of protection that the Constitution requires.

Again, can you tell us that these will be—can you give us some assurance that there will be some degree of specificity in these warrants?

Attorney General GONZALES. Senator, what I can tell you is that, again, these meet all the requirements of the FISA statute. They also include minimization procedures above and beyond what we would normally find in a FISA order to ensure that any information that should not be collected is disposed of in the appropriate way.

Senator SCHUMER. OK. Next question. Getting some of the details here, the previous program has been going on for 5 years.

That is longer than it took us to fight World War II. Your negotiations, by your own admission, have gone on 2 years. That is longer than this administration took to conceive a plan to invade Iraq—mobilize the troops, invade Iraq, and topple Saddam Hussein.

Can you give us some documentation, whether it is in camera or publicly, about why the negotiations took so long, what the change in heart was in the administration?

Attorney General GONZALES. I think as we have these additional briefings and there is a better understanding of how the application is structured and how the orders work, I think people have a better understanding of why it took so long to get this done.

Senator SCHUMER. There is a fundamental question a lot of people are asking, sir, and, that is, if FISA was always sufficient to facilitate this program, why did you not use it in the first place?

Attorney General GONZALES. Sir, we did not know that FISA was sufficient until the very moment that the judge approved the order. As I have said several times—

Senator SCHUMER. It took 5 years for that to happen?

Attorney General GONZALES. As I have said several times, we started down this road, the administration started down this road just months after the attacks of September 11th because we did not believe that FISA was available to allow the United States to engage in this kind of foreign collection in a manner that would protect the national security of our country.

Senator SCHUMER. Let me ask you a question. Did you negotiate with the FISA judges or did you just propose something at once, they looked at it, and came back to you? Or was there a lot of give and take and back and forth?

Attorney General GONZALES. Senator, I am not going to get into a discussion about our interaction with the Court on this order, as I would not on any other order.

Senator SCHUMER. Well, let me just say this because, again, you have received some plaudits here, and I am glad—as I said, this is better than what we had. But I for one cannot feel very relieved knowing that the administration's view is they can go back and reinstitute the old program on a whim, that we do not know what type of warrants are being approved by the FISA Court—is it two? Is it 10? Is it 20?—and whether it is individual; and, third, we do not know what brought this all about, how long the negotiations took, the way it came about, et cetera.

Remember, the FISA Court is a secret Court. The FISA Court has no Supreme Court review. Now, that is not your doing. That is established by statute. But that seems to me, if there were a new spirit of cooperation and understanding of the checks and balances, and balances of power, that, sir, you would be more forthcoming to try and show the American people that this is a real change.

Attorney General GONZALES. Senator, we have provided a full briefing to both Intel Committees. We have already provided a briefing to Senator Specter, have offered a briefing to the Chairman. We are prepared to provide additional information to these two individuals so that they fully understand how these orders work.

Senator SCHUMER. The number of people who have received the briefings are not very satisfied. That is what I was saying. Heather

Wilson, a Republican, and Senator Rockefeller, by his quotes in the New York times, are not very satisfied.

So for you to come tell us and tell us we cannot give you or the American people, more to the point, a briefing that does not involve secured information and we briefed these other people, and then when we hear from them they still have a whole lot of un answered questions, it is not very satisfying.

Attorney General GONZALES. Sir, if a Member of Congress is not satisfied, they ought to tell us that, and we will provide additional information and try to educate them about this very difficult application and order so that they fully understand how it works.

Senator SCHUMER. I am telling you—

Attorney General GONZALES. We are committed to do that.

Senator SCHUMER. I am telling you that I am not satisfied and would like to receive more information, either in camera or publicly.

Chairman LEAHY. And I would note that Senator Specter and I have written to the chief judge of the FISA Court asking for copies of the decisions of that Court, those that were announced publicly on Wednesday. They are apparently willing to provide those decisions for this Committee. There was some discussion with the Attorney General, who did seem overly approving of that idea or unwilling to commit to approve the idea. Be that as it may, this Committee will seek them.

I want to clear up a couple misperceptions. Talking about taking several years to work out something with FISA as though this was a big roadblock. This Congress, and this Committee especially, has amended FISA a number of times since 9/11 at the request of the administration. There has never been a difficulty in getting that done.

Also, there seems to be a misperception that, of course, if there is another terrorist attack, we would all be ready to pounce on you. The fact of the matter is that the first terrorist attack, 9/11, happened during the Bush administration, and Democrats and Republicans came together to try to protect this country.

We could have just as well taken all that time to say, "How could you let this happen on your watch?" Instead, we came together to say, "How do we make sure it does not happen a second time on the Bush administration's watch or any other administration's watch?"

We have amended FISA a number of times, but I would leave you with one thought, and we will go back to this with the Court. The law is the law. No matter the motivation, nobody is above the law, not the President, not you, not me, not anybody else.

And we will insist that the law be followed. If the law needs changes, come and tell us that. But we will follow this discussion with the FISA Court, and we will have the briefing on it.

But I would also say the Senator from Alabama has been waiting patiently all morning long, and I would now yield to him. I know that we have several Senators who have not had a chance to ask their questions, and if they are here, we will go to them following Senator Sessions. Otherwise, we will start our second round.

Senator SESSIONS. Thank you, Attorney General Gonzales, for your leadership and your hard work to defend this country and to promote the rule of law, and I mean that sincerely.

I am not surprised that when you said yes, they still are not happy. We have just had a professional complaint here. I would just note that I am of the belief that at a time in which this Congress has authorized hostile action against certain groups like al Qaeda, it is perfectly appropriate for the United States President to authorize his agents to intercept their phone calls in foreign lands and intercept international phone calls that may come into our country if one of the parties to that conversation are connected to an entity with which we are at war. I think we have been through this around and around many times.

You have said, OK, now we will go on and in light of the complaints go through this procedure, and maybe that was a good decision. Maybe it is just throwing a little more chum in the water for the sharks. I do not know. But at any rate, I thank you for trying to work with the Congress.

There has been some complaints about replacement of the United States Attorneys. I served as United States Attorney for 12 years. I am sure some people would have liked to have removed me before that. But I am well aware that the United States Attorneys serve as the pleasure of the President.

The United States Attorneys that are being replaced here, as I understand it, all have served 4 years or more, had 4-year terms. And we are now in the second term of this President, and I think to make seven changes that I think are involved here is not that many, and that the office of the United States Attorney is a very important office, and it has tremendous management responsibilities and law enforcement responsibilities that cannot fail to meet standards. And if someone is not producing, I think the President has every right to seek a change for that or other reasons that may come up. I would just—

Attorney General GONZALES. Senator, could I just interrupt you?

Senator SESSIONS. Yes.

Attorney General GONZALES. There are constant changes in the ranks of our U.S. Attorneys.

Senator SESSIONS. Absolutely.

Attorney General GONZALES. They come and go, and they leave for a variety of reasons. And so the fact that someone is leaving—I do not want to—again, I do not want to get into personal details of individual U.S. Attorneys. I do want to say, however—and I have said this publicly a lot recently, it seems—the U.S. Attorney positions are very, very important to me personally.

They are my representatives in the community. They are the face of the administration, quite frankly. They are often viewed as the leader of the law enforcement effort within a community, not just by State and locals, but by other Federal components, and so I care very much about who my U.S. Attorney is in a particular district. That is very, very important to me. And so decisions with respect to U.S. Attorneys are made on what is best for the Department, but also what is best for the people in the respective district.

Senator SESSIONS. I fully understand that, and I know in my district where I used to be United States Attorney, a vacancy occurred and someone left and an interim was appointed.

She was a professional prosecutor in San Diego, Deborah Rhodes. She won great respect in the office and brought the office together when there had been problems. And I am pleased to say Senator Shelby and I recommended her to you and you appointed her permanently, somebody who had never lived in the district before.

But I know you want the best type persons for those offices. I would just note, though, that there have been complaints about United States Attorneys where some of them are not very aggressive and they do not need to stay if they are not doing their job.

Here we had 14 House Members expressing concerns about U.S. Attorney Carol Lam in San Diego on the border there, saying in effect that she had a firm policy not to prosecute criminal aliens unless they have previously been convicted of two felonies in the district.

Well, I do not think that is justifiable.

Attorney General GONZALES. Senator, I—

Senator SESSIONS. I do not know if that had anything to do with her removal, but I know there were a series of 19 House Members wrote letters complaining about their performance, and if that is so, I think change is necessary. Go ahead.

Attorney General GONZALES. Well, I was going to say I am not going to comment on those kind of reports, quite frankly.

Senator SESSIONS. I am sure you are not.

Attorney General GONZALES. It is not fair to individuals. It is not fair to their privacy. And, quite frankly, it is not fair to others who may have left for different reasons.

Senator SESSIONS. I understand. Now, the Bureau of Justice Assistance administers the Scout Program, which is with immigration, to help fund the cost of illegal criminal activity enforcement. This month, the DOJ Inspector General released an audit titled, "Cooperation of Scout Recipients in the Removal of Criminal Aliens from the United States."

One of the questions that the Congress asked the Inspector General to examine was how many criminal offenses were committed by criminal aliens who were released from State or local custody without a referral for removal from the United States.

A pretty good question. Are these people committing crimes or not? The report came in with a staggering result. It found, "The rate at which released criminal aliens are rearrested is extremely high." Within the sample of individuals examined, 100 individuals examined, 73 had had at least one arrest after their release from State custody.

They accounted for a total—these 73 accounted for a total of 429 arrests, 878 charges, and 241 convictions. To put it another way, those 73 individuals had been arrested on an average of 5.8 times apiece after their initial release.

This is clear statistical evidence, I think, that if the Department wants to reduce recidivism, they need to take action, and one of those is to remove people who are arrested and prosecute criminal aliens.

Would you agree that that is supportive of that enforcement concept?

Attorney General GONZALES. I think people who commit crimes are much more deterred from doing so again if, in fact, they are prosecuted and locked away. Yes, sir.

Senator SESSIONS. And with regard to the proposal that would change the United States Attorney appointment we discussed earlier, I think the Feinstein amendment is not just re-establishing previous law. It goes beyond the previous law. And I think at this point we do not have a basis to make that change. Would you agree it goes beyond the previous law?

Attorney General GONZALES. Quite frankly, Senator, I am not in—I do not know what her amendment would do, but I would have concerns if her amendment would require or allow a judge to make a decision about who is going to serve on my staff.

Senator SESSIONS. If a United States Attorney is appointed by the power—a U.S. Attorney is part of the executive branch. You would bring that nomination to the Senate for an up-or-down vote, would you not?

Attorney General GONZALES. Again, I have said it before, but I will say it again. I am fully committed to work with the Senate to ensure that we have Presidentially appointed, Senate-confirmed U.S. Attorneys in every district.

Now, these are, of course, very, very important, and I do not have the luxury of letting vacancies sit vacant. And so I have an obligation to the people in those district to appoint interims. And, of course, even though there may be an interim appointment, their judgment, their experience or qualifications are still, nonetheless, very, very important to me.

Senator SESSIONS. You are exactly right. And let me ask you, on the court system in Iraq, it is something I have been very concerned about. The Department of Justice has a role in that. We have got almost, what, 150,000 soldiers over there. I believe the Department of Justice has got to do more.

I am well aware that one fine Assistant United States Attorney in my home district I hired, with a fine family, felt he ought to serve his country, and he participated in working on big trials, including Saddam Hussein's trial in Baghdad, away from his fine family.

But my experience from asking about this for a number of years leads me to believe every agency of Government has got to step up to help our military policy be successful. Will you assure us that you will do all you can to make sure that you are fulfilling your role in helping to establish a court system and a prison system that works in Iraq?

Attorney General GONZALES. We can not achieve success here without the rule of law. I think we have done a lot, and we obviously can give you a lot of facts and figures about what we are already doing. Obviously, we need to do more. And so we are looking to see what else we can do.

Senator SESSIONS. It is not an academic matter. This is life and death. If we cannot be assured that people who are arrested are not going to be released, they are not going to be tried promptly,

they are not going to be incarcerated securely, that undermines the rule of law and can undermine our entire mission over there.

And, finally, Mr. Chairman, my time is up, but I want to thank you for providing technical support to a bill that Senator Biden and I and I think Senator Feinstein and Norm Coleman have worked on called the online pharmacy bill, which people are able to order controlled substances from and through the Internet without ever being physically examined by a physician. And I think that is a major loophole.

People who are addicted to these prescription drugs, they are addicted as deeply as cocaine. And they get obsessed with getting them. They go around town buying them from multiple doctors. Frequently, they are apprehended when they do that. But if they can just buy large numbers without every seeing a physician through on-line pharmacies, then we have got a big loophole.

Thank you.

Attorney General GONZALES. Thank you. I appreciate your leadership on that, Senator. We look forward to working with you.

Chairman LEAHY. Thank you. Then-Congressman Ben Cardin served with great distinction in the House of Representatives for years as a Representative from Maryland. He is now here as a new Senator from Maryland, and I want to welcome him to this Committee. I usually have a better voice than this. It is the Attorney General who should be without a voice at this point, not me. But I now yield to Senator Cardin of Maryland.

Senator CARDIN. Senator Leahy, thank you very much for your kind comments, and thank you for your leadership on this Committee; and, Senator Specter, it is a pleasure to be on the Judiciary Committee.

Mr. Gonzales, I want to use my time to talk about the Voting Rights Act and the concerns about voter intimidation and the deceptive practices particularly against minority communities. And I would like to explore the energy of your Department in pursuing these issues.

There have been many reports nationally of problems. Problems concerning voting machines, we know about that. We have heard and seen instructions given by major political parties to the poll watchers to discriminately challenge certain voters in order to try to intimidate a vote.

We have seen material that has been given out that has been misleading as to the day of an election or as to responsibility for being arrested if you have outstanding parking violations, clearly targeted to particular communities.

But I am going to mention two specific things that happened in Maryland in this past campaign that have been brought to your attention—at least one has been brought to your attention through Senator Schumer. But I want to get your comments on it and try to explore a little bit further what is being done by your agency.

In Prince George's County and Baltimore City, the two jurisdictions in Maryland that have predominantly African-American voters and citizens, there were long lines on election day to vote. The reasons for these long lines were inadequate equipment, improper training for the supervisors, and a whole host of reasons.

I personally visited polling places in Prince George's County and in Baltimore City where, during the low peak, low times in voting, voters had to wait 2 hours in order to vote. And it was not unusual for someone to wait 3 hours in order to vote in these two counties.

We did not have similar problems in other counties in Maryland, raising a serious question as to whether those that are responsible for managing our voting system were really sincere in trying to get the maximum amount of participation on November the 7th.

The second specific issue that I want to bring to your attention that I am personally aware of is literature that was given out on the eve of the election, and we will make sure you get a copy of it. And, Mr. Chairman, I would like a copy placed in our record, if that would be agreeable.

Chairman LEAHY. Without objection, it will be so ordered.

Senator CARDIN. The literature is under the authority of a major candidate running for Governor and a major candidate running for U.S. Senate in our State. It is labeled "Ehrlich-Steele Democrats." And as I am certain you are aware, Mr. Ehrlich and Mr. Steele are Republicans, and the "Official Voter's Guide," has the photographs of three prominent African-Americans in our State.

"These are our choices," the Guide says, giving the clear impression that these three individuals have endorsed the candidacy of those that are on this literature. Two of the people in this literature, Kweisi Mfume, the former head of the NAACP, endorsed my candidacy and not Mr. Steele's candidacy for the United States Senate; Jack Johnson, the county executive for Prince George's County, endorsed my candidacy, certainly not Mr. Steele's candidacy.

The literature goes on and gives a Democratic sample ballot with all the Democrats listed, except for Mr. Ehrlich and Mr. Steele, under the authority of Mr. Ehrlich and Mr. Steele, clearly misleading voters.

To compound this, there were hundreds of individuals from Pennsylvania who were in homeless shelters who were bused into Maryland by Mr. Ehrlich and Mr. Steele to give out this literature. I talked to these individuals. They had no idea what they were doing. They just thought they were picking up a job and were surprised to find out what they were actually being bused to Baltimore and to Prince George's County to do.

This troubles me. I think there is a limit as to what you can do, and it seems to me that there has been a pattern, at least in my State, to try to diminish the voting of minorities. And I know that Senator Schumer sent you a letter, and I have been informed that you have responded to that letter although I have not seen that response. But I want to get your views here today as to what you have done to look into these matters.

I must tell you, in another role that I had in the other body, I was the Democratic leader on the Helsinki Commission, the Commission for Security and Cooperation in Europe, and we monitored elections around Europe and Central Asia.

And I must tell you, Mr. Chairman, there are practices that occur here in America that we would not tolerate in other countries. And I look to you, as the principal leader to make sure that

our justice system is available to all through empowerment and voting, through the Voting Rights Act.

And I would just like to know what resources you are devoting to make sure that this Nation encourages all of its citizens to vote and that we act against any effort to deny participation, particularly among minorities in America.

Attorney General GONZALES. First of all, Senator, let me also extend my welcome. This is the first time you and I have spoken, I think, and I look forward to working with you.

Voting is very, very important to me. The protection of the franchise is very, very important to me, because I come from a background where I did not have much, perhaps like you. And on voting, however, you are equal to everyone else, and that is a right that is so precious in our country.

And so I agree with you that it is something that we should guard zealously and ensure that we are doing what we can to ensure that everyone has a right to exercise their franchise on election day.

Having said that, I will say that, as we all know, elections are primarily a State and local function. They are not primarily a Federal function. They are run, conducted by State and local officials.

Senator CARDIN. The Voting Rights Act is a Federal law.

Attorney General GONZALES. Pardon me?

Senator CARDIN. The Voting Rights Act.

Attorney General GONZALES. No question about it. Obviously, we have the Civil Rights Division and we have the Criminal Division. The Civil Rights Division is there to ensure that no one is intimidated or discriminated against in the exercise of voting based upon their race or color. The Criminal Division is there to ensure ballot integrity, to ensure that there is no voter fraud.

I have spoken with Wan Kim certainly about the flyer. They have looked at it very, very carefully—Wan Kim being head of the Civil Rights Division—and I think the general notion is that, unfortunately, as a general matter, our Federal laws are not—I do not want to say they are really intended to, but they do not provide much in terms of tools in terms of going after campaign tactics or rhetoric by candidates. And you have to ask yourself, I mean, is that really what you want prosecutors to do in connection with campaigns.

Senator CARDIN. What I want prosecutors to do is look for a pattern of conduct.

Attorney General GONZALES. Exactly.

Senator CARDIN. And if this was the only thing that happened in Maryland—I think it is wrong. I think you should look at it. I think it is reprehensible. But if there is an effort made to deny minorities full participation in the State of Maryland, you have a responsibility to do something about that.

Attorney General GONZALES. I do have a responsibility, and I believe I am discharging that responsibility. Wan Kim and I have talked about this several times. He understands my commitment to this issue and how important it is for the Department of Justice to ensure that people are not discriminated against based upon their race or color in terms of exercising their right to vote.

And I think we have a strong record in terms of civil rights enforcement, and when these kinds of allegations are made, we, of course, investigate. If we can prosecute a case, we will do so.

In some cases, States have laws where this kind of conduct could be prosecuted. I do not know what exists in Maryland, but that would be something we would always do as well, is consult with our State counterparts to see whether or not, if we cannot prosecute, is there some law, some State law that it can be prosecuted.

So, I mean, you have my commitment—and I am happy to sit down and talk with you further about these cases and others in your State. I can tell this is something that is very, very important to you. It is important to me. And it seems to me this is something we could be allies on.

Senator CARDIN. Well, I appreciate that. This is important to the people of Maryland and important to the people of our country. I am not as concerned about getting people prosecuted as I am to make sure people have the right to vote and it is not infringed.

And I think the activism of your Department could go a long way to show that we have a concern at the national level with the Voting Rights Act that all people have the right to participate and any form of intimidation will not be tolerated, particularly when there has been a pattern to try as part of a campaign strategy to reduce the participation of minority voters. That is what happened in our State, and I look forward to your invitation, and I plan to take you up on that.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Cardin.

What I will do is begin the second round, and my intention would be, after Senator Specter and I have finished, and for the notice of other Senators, we will then recess until quarter of 2. That will allow the Attorney General time to actually get a bite to eat, but also, I am sure, if he is like all the rest of us, he probably has a hundred phone calls backed up in his office.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

The subject of local law enforcement is one which you have addressed, Mr. Attorney General, and I would like to pursue the issue with reference to my State. The city of Philadelphia has had more than 400 homicides last year, and the city of Reading was ranked as the 21st most dangerous cities in the country. And you have an excellent United States Attorney's Office covering that jurisdiction, U.S. Attorney Patrick Meehan is there.

Attorney General GONZALES. Yes, sir.

Senator SPECTER. He had been my chief of staff in Philadelphia and was district attorney of Delaware County and has done an outstanding job for you. His office received three awards for their work in prosecuting a major drug organization last year, and he needs help. I know your budgetary limitations have caused some reductions in staff there.

In taking a look at the situation—and I have seen it for many years since my days as district attorney of Philadelphia—it has been my thought that mentoring might provide the best short-term assistance to eliminate the killings and the gang warfare. It is not going to be eliminated, but it can be ameliorated.

Attorney General GONZALES. I could not agree with you more, Senator. I think you are right, absolutely right.

Senator SPECTER. And toward that end, I have contacted Superintendent Paul Vallas, a very distinguished superintendent of schools, and members of the School Board, and also talked to Governor Rendell, talked to Mayor Street, District Attorney Lynne Abraham.

Both Governor Rendell and D.A. Lynne Abraham were assistants in my office. I have worked with them over the years. And I discussed with the Mayor convening a meeting, which we are having in Philadelphia tomorrow, to pool together the mentoring resources to see how much we have and to make a plea to the citizens of Philadelphia to come forward and volunteer to be mentors.

I think if the Governor, the Mayor, and the D.A., public officials and I join together, we can get a response. And what I would like to do with you, Mr. Attorney General, is have our staffs meet and go over the resources which you see available on mentoring and then pick it up in the Department of Justice budget and in the budget of education and health care, which would have overlapping interests. And I know that you share the deep concern, and let us work together on it.

Attorney General GONZALES. Senator, I am sure you know, of course, that we have $2.5 million committed to the 222 Corridor, which really is a part within, to focus on gangs. They have submitted a plan that has three pillars—one being prevention, one being law enforcement, and the third being prison re-entry.

And so obviously the prevention piece would include education and would include mentoring. And so there is already, I think, some good work being done within the 222 Corridor. But I would look forward to working with you because I think, quite frankly, by the time they get into gangs, it is tough to get it reversed. We need to get to these kids before they join gangs.

Senator SPECTER. Mr. Attorney General, let me return to a couple of subjects we talked about this morning and see if we can not come to a meeting of the minds.

On the signing statements, let me illustrate the issue with the PATRIOT Act. You and I personally worked on the PATRIOT Act, as did our staffs, and we gave law enforcement additional powers.

Now, in return, we took additional safeguards on oversight. But when the President signed the PATRIOT Act, he reserved what he calls his right to disregard those oversight provisions.

Now, in the context where the Chairman of the Committee and the Attorney General negotiate an arrangement, is it appropriate for the President to put in a signing statement which negates the oversight which had been bargained for, which has been bargained for?

Attorney General GONZALES. Senator, I would just say that, you know, a signing statement cannot give to the President any authority that he does not already have under the Constitution.

And so to the extent that the President makes that kind of statement and informs the Congress and the American people about his interpretation, I would view that as a good thing. But there is no additional—he has that authority already. He does not need to say—

Senator SPECTER. But if he thinks those provisions derogate, inappropriately take away his constitutional authority and the act is unconstitutional, then he ought to veto it.

Attorney General GONZALES. But, Senator, I think—

Senator SPECTER. Or at least he ought not to bargain it away.

Attorney General GONZALES. There may be a feeling that, of course, the act may be totally constitutional depending on its application, and the President wants to ensure that—he wants to give direction to the executive branch as to what he thinks would be a constitutional application.

And, of course, quite frankly, the President, knowing how much work is involved in getting legislation passed, particularly pieces of legislation like the reauthorization of the PATRIOT Act, I mean, the last thing he wants to do is veto all that hard work if he does not need to. And, you know, Presidents of both parties have taken this approach.

Senator SPECTER. And then let him tell us in the negotiations that he is not going to agree to the oversight, and then we can decide whether to give him more power. He cannot get the power unless Congress gives it to him.

Attorney General GONZALES. Senator, I do not know—

Senator SPECTER. He does not have inherent constitutional authority to take power that is not granted by Congress.

Attorney General GONZALES. Unless it is granted by the Constitution.

Senator SPECTER. Well, if he wants specific law enforcement authority, there has to be an express grant by Congress.

Let me pick up one other subject, if I may, Mr. Chairman. I may go a little over time, which I do not like to do, but let me take up this habeas corpus issue very briefly.

Where you have the Constitution having an explicit provision that the writ of habeas corpus cannot be suspended except in cases of rebellion or invasion, and you have the Supreme Court saying that habeas corpus rights apply to Guantanamo detainees, aliens in Guantanamo, after an elaborate discussion as to why, how can there be a statutory taking of habeas corpus when there is an express constitutional provision that it cannot be suspended and an explicit Supreme Court holding that it applies to Guantanamo alien detainees?

Attorney General GONZALES. A couple of things, Senator. I believe that the Supreme Court case you are referring to dealt only with the statutory right to habeas, not the constitutional right to habeas.

Senator SPECTER. Well, you are not right about that. It is plain on its face they are talking about the constitutional right to habeas corpus. They talk about habeas corpus being guaranteed by the Constitution except in cases of an invasion or rebellion. And they talk about John at Runnymede and the Magna Carta and the doctrine being embedded in the Constitution.

Attorney General GONZALES. Sir, the fact that they may have talked about the constitutional right to habeas does not mean that the decision dealt with the constitutional right to habeas.

Senator SPECTER. When did you last read the case?

Attorney General GONZALES. It has been a while, but I would be happy to go back—I will go back and look at it.

Senator SPECTER. I looked at it yesterday and this morning again.

Attorney General GONZALES. I will go back and look at it. The fact that the Constitution—again, there is no express grant of habeas in the Constitution. There is a prohibition against taking it away. But it has never been the case—I am not aware of a Supreme—

Senator SPECTER. Now, wait a minute, wait a minute. The Constitution says you cannot take it away except in case of rebellion or invasion. Does that not mean you have the right of habeas corpus unless there is an invasion or rebellion?

Attorney General GONZALES. I meant by that comment the Constitution does not say every individual in the United States or every citizen is hereby granted or assured the right to habeas. It does not say that. It simply says the right of habeas corpus shall not be suspended except by—

Senator SPECTER. You may be treading on your interdiction and violating common sense, Mr. Attorney General.

Chairman LEAHY. Mr. Attorney General, just so that—I want to make one thing very clear on this habeas corpus.

Attorney General GONZALES. Sir, your mike. I cannot hear you.

Chairman LEAHY. I want to make one thing very clear on the habeas corpus, and we can go back and forth on what the case held or anything else. I feel that the Congress of the United States and the administration made a horrible mistake last year in a very short period of time and debate, basically undercut the writ of habeas corpus, the Great Writ. There are those who talked about 9/11 and why they were doing it. I talked about the year 1215, I believe it was, when it first came into our concept. But the great writ of habeas corpus was done horrible damage by the Congress in a law the President signed last year.

I just want to put everybody on notice that as Chairman of this Committee, I will do everything possible to restore all the rights under the writ of habeas corpus that were there before we passed the legislation we did, legislation I voted against. I will make every effort to restore it. I just want everybody to know that.

Now, I would like to have allies in that, but I will try to do it no matter what.

On the question of signing statements, you said that a signing statement cannot give a President more authority. Well, it also—and this President has used signing statements far more than any other President.

Attorney General GONZALES. Sir, I would disagree with that. Probably more but not far more.

Chairman LEAHY. We have actually done numbers on it. We have actually run the numbers on it, and I will put the numbers in the record. Certainly on the issues of constitutional issues, far more than anybody in the history of the ABA Task Force, so the 800 provisions of law challenged by Presidential signing statements in this administration, 86 percent of the President's signing statements have related to constitutional challenges. You talked about President Clinton; 26 percent of his did.

But the fact of the matter is while you say they cannot give him more power, he also has the duty under the Constitution to faithfully execute our laws. Now, it is one thing to make a big political thing of negotiating a piece of legislation. I will give one example.

The President, the Vice President did that with a member of this body on the question of torture. Everybody went out, declared victory on that. Congress passes the bill outlawing torture. And then quietly, on a Friday, the White House issues a signing statement saying, however—and this was after a full negotiation of the law—these parts will not apply to this President or those people acting under his direction.

The chief sponsor of the legislation made a modest one-paragraph—again, on Friday afternoon, saying, gosh, that is not what I intended, and that was the end of it. And there have been hundreds of others. So we will look at that.

Let me ask you, though, in a specific area. When the Congress reconvened this month—or convened, I should say, I reintroduced my war profiteering prevention bill. That is going to make it a crime for military contractors to overvalue goods and services with the specific intent to defraud the United States in connection with war or the reconstruction efforts in Iraq.

Now, we spent more than half a trillion dollars in Iraq so far. Last week, the President said he is going to spend at least another $1.2 billion more on reconstruction. The Special Inspector General for Iraq Reconstruction says millions of U.S. taxpayer funds remain unaccounted for because of fraud by contractors. So let me ask you about the Department's investigation on contracting fraud in Iraq.

According to Taxpayers Against Fraud, a nonprofit watchdog group, there are more than 50 Iraq fraud investigations currently ongoing in the Government. At least five False Claims Act cases involving Iraq contracting fraud have been filed under seal. But, to date, the Justice Department has not brought a single criminal case against a corporate contractor in Iraq. Why? It appears you may be avoiding investigating and prosecuting fraud. Is that the case? Why not a single one?

Attorney General GONZALES. Well, no, it is not the case.

Chairman LEAHY. It is not the case that you have not brought a single criminal case against a corporate contractor in Iraq.

Attorney General GONZALES. No. It is not the case that we are trying to avoid bringing these kinds of cases. These are difficult cases to make. In the normal case, fraud cases are difficult to make, and depending on the complexity and the size, it may take years to get them ready for trial.

Chairman LEAHY. Would they be easier with the war profiteering legislation that I have submitted, something that passed the Senate overwhelmingly the last time it came up, but I understand that at the request of the administration was taken out by the Republicans in the House.

Attorney General GONZALES. I do not know, Senator. I would be happy to look at it and let you know. But when you are talking about also investigations overseas, particularly in a war zone, it complicates our efforts. But I can tell you that we are committed—we have established a—

Chairman LEAHY. We find Halliburton gives water with E. coli in it to our troops. The press was able to find that out. We find that an enormous number of weapons we sent over there have been sold on the black market. There should be some ability to trace some of this.

Attorney General GONZALES. Well, sure there is. But, I mean, can you make a case? I mean, that is the thing. We do operate under a system of laws and procedures.

Chairman LEAHY. Well, how many prosecutors or investigators are currently assigned to investigate contracting fraud in Iraq?

Attorney General GONZALES. We can give you that number, but let me just mention we do have a procurement fraud task force where we are working with IGs and investigators, including in Iraq, to ensure that we have the best practices in place, that we are coordinated, that we are communicating with each other. And so there is a coordinated effort to go after procurement fraud generally, but also within Iraq.

Chairman LEAHY. Do you know offhand how many prosecutors—

Attorney General GONZALES. I do not, sir, but I will get you that information.

Chairman LEAHY. Can we have it before we come—

Attorney General GONZALES. I will try to do that.

Chairman LEAHY. Let me ask you another question, and then we can take a break. You know, I live about an hour's drive from Canada and go up there often, and in Vermont we tend to get a lot of Canadian news on the radio and so on.

But something that made the news here in the United States was the question of Maher Arar. That is M-a-h-e-r, A-r-a-r, in case I mispronounced it. He is a Canadian citizen. He was returning home from a vacation. The plane stops at JFK in New York and continues on to Canada. He was detained by Federal agents at JFK Airport in 2002 on suspicion of ties to terrorism. He was deported to Syria.

He was not sent on the couple hundred miles to Canada and turned over to the Canadian authorities, but he was sent thousands of miles away to Syria. He was held for 10 months.

The Canadian Commission later found that there was no evidence to support he had any terrorist connection or posed any threat, but that he was tortured in Syria. He was held in abhorrent conditions there, and those sending him back must have known he was going to be tortured.

The Canadian Government has apologized for its part in this debacle. In fact, the head of the Royal Canadian Mounted Police actually resigned over it. The country is prepared to compensate him for it.

This country has not said anything at all that we made any mistake or had any apology. Press accounts indicate the Justice Department approved his deportation to Syria. I have not heard anything clear from the Justice Department about their role in this affair.

And I understand he remains on the United States terrorist watchlist so he could not come 50 miles or 75 miles, or whatever it is, south into the United States without fear of being picked up again and sent back to Syria.

Why is he on a Government watchlist if he has been found completely innocent by this Canadian Commission, which actually had information from us?

Attorney General GONZALES. Senator, I have got some very definite views about this particular case. As you—

Chairman LEAHY. Well, go ahead.

Attorney General GONZALES. As you know, we are in litigation. What I want to do is hopefully in the next few days, I am happy to sit down with you and Senator Specter and give you more information. In fact, we may be able to publicly say more about this shortly. I am just not at liberty at this time to say—

Chairman LEAHY. Let me ask you this: Why are not you at liberty? I do not understand that. This is not a matter of Executive privilege.

Attorney General GONZALES. No, sir. Again, I am not—

Chairman LEAHY. Because only the President could claim it. You cannot.

Attorney General GONZALES. I am not suggesting that I will not be able to answer your questions. I am just suggesting I cannot do it today.

Chairman LEAHY. Why?

Attorney General GONZALES. Sir, I am not—there is not a position—I cannot represent the position of the executive branch on this particular issue, but I think in a relatively short period of time, there is more information that I should be able to share with you, and hopefully that we can share publicly.

Chairman LEAHY. Well, why was he sent to Syria instead of Canada?

Attorney General GONZALES. Well, again, Senator, I would be happy to answer these questions. I am aware of the list of questions you—I think you and Chairman Biden have submitted with respect to this particular case. I think we can say a lot more about it if you will just simply give me some additional time.

Chairman LEAHY. Can you tell me whether you took steps to ensure that he would not be tortured? Of course, he was.

Attorney General GONZALES. I believe that piece of information is public. There were steps—I think General Ashcroft confirmed this publicly that there were assurances sought that he would not be tortured from Syria. But—

Chairman LEAHY. Attorney General, I am sorry. I do not mean to treat this lightly. We knew damn well if he went to Canada he would not be tortured. He would be held and he would be investigated. We also knew damn well if he went to Syria he would be tortured.

It is beneath the dignity of this country, a country that has always been a beacon of human rights, to send somebody to another country to be tortured. You know and I know that has happened a number of times in the past 5 years by this country. It is a black mark on us.

It has brought about the condemnation of some of our closest and best allies. They have made those comments both publicly and privately to the President of the United States and others.

It is easy for us to sit here comfortably in this room knowing that we are not going to be sent off to another country to be tortured,

to treat it as though, well, Attorney General Ashcroft said we got assurances. Assurances from a country that we also say now, oh, we cannot talk to them because we cannot take their word for anything.

Attorney General GONZALES. Well, Senator, I—

Chairman LEAHY. I am somewhat upset.

Attorney General GONZALES. Yes, sir, I can tell. But before you get more upset, perhaps you should wait to receive the briefing—

Chairman LEAHY. How long?

Attorney General GONZALES. I am hoping that we can get you the information next week.

Chairman LEAHY. Well, Attorney General, I will tell you what I will do. I will meet you halfway on this. I will wait next week for that briefing. If we do not get it, I guarantee you there will be another hearing on this issue.

The Canadians have been our closest allies, the longest unguarded frontier in the world. They are justifiably upset. They are wondering what has happened to us. They are wondering what has happened to us.

Now, you know and I know we are a country with a great, great tradition of protecting people's individual liberties and rights. You take an oath of office to do that. I take an oath of office to do that. I believe in my basic core nature in that.

My grandparents when they immigrated to this country believed that. Let us not create more terrorism around the world by telling the world that we cannot keep up to our basic standards and beliefs.

So I will wait a week. I will wait a week. But I will not wait more than a week for that briefing.

We will stand in recess unless you want to say something further.

Attorney General GONZALES. Only, Mr. Chairman, that we understand what our legal obligations are with respect to when someone is either removed, extradited, or rendered to another country. We understand what our obligations are under the Convention Against Torture, and we do take the steps to ensure that those obligations are being met.

I look forward to be able to provide the briefing that you are requesting.

Chairman LEAHY. Thank you.

We will stand in recess until 2.

[Whereupon, at 12:40 p.m., the Committee recessed, to reconvene at 2 p.m., this same day.]

Chairman LEAHY. Before we start, first I will yield a minute to the Senator from Iowa, because he had something he wanted to correct.

Senator GRASSLEY. Only a minute, for my colleagues over there that have not had their first round yet.

I took what you said about not receiving letters from me, and we have checked with the Department of Justice Legislative Affairs. You received my January 9th letter by fax at 6:16 p.m. that day; my March 17th letter by e-mail at 5:41 p.m. on that day; and my April 26th letter by e-mail at 1:49 on that day. So I hope you will do that.

And then because I have to go, I am going to submit a question on agricultural concentration, and I would appreciate an answer in writing because I have a great deal of interest to make sure that we keep a competitive environment within agriculture.

Attorney General GONZALES. Thank you for the information, Senator.

Chairman LEAHY. Thank you.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chairman LEAHY. Of course.

Mr. Attorney General, let me just make a short observation, and I realize Senator Specter is back here, but you made a comment with him, speaking about habeas corpus, that troubles me.

You argued that the Constitution does not guarantee a right to habeas corpus because in a negative construction, what it literally does is prohibits the Congress from suspending the privilege or the writ of habeas corpus except in cases of rebellion or invasion.

Well, many of our most cherished rights are guaranteed by the Constitution in much the same way. For example, the First Amendment is also a negative construction. It prohibits Congress from making laws infringing on religious freedom and our freedom of speech. But you would not say that it does not guarantee free speech and religion.

The Fifth Amendment is negative. It prohibits the Government very overreaching in the deprivation of life, liberty, and property without due process of law. I mean, I could go into the Second Amendment and the Fourth Amendment.

But you see what I am doing here. They do not lay out a right. They prohibit you from taking away a right. So why would not that apply the same thing to the writ of habeas corpus?

Attorney General GONZALES. I do not disagree at all, Mr. Chairman. I was just simply making an observation that there is not an express grant. My understanding is that in the debate during the framing of the Constitution, there was discussion as to whether or not there should be an express grant, and the decision was made not to do so.

But what you see in the language is a compromise. I think the fact that in 1789 the Judiciary Act—they passed statutory habeas for the first time. They reflect maybe—I do not want to say a concern, but why pass a statutory right associated to the Constitution? Perhaps because there was not an express grant of habeas.

I believe that the right of habeas is something that is very, very important, one of our most cherished rights, and so I was simply making an observation as to the literal language that the—

Chairman LEAHY. I think one wants to be very careful in making the argument the way it is. I will continue to make the argument that the Congress made a disastrous mistake in restricting the writ of habeas corpus by legislation.

And I and I understand a number of Republicans, Senator Specter among others, will join together to try to rectify that mistake. But I am on the time of the senior Senator from Illinois, who is also the Deputy Majority Leader, Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for your service to our country and for joining us today. Thanks to all of your staff for your hard work.

I would like to ask you, Mr. Attorney General, to allow me to say a few words and then react to them if you would.

Attorney General GONZALES. Yes, sir.

Senator DURBIN. I am trying to understand in my mind what the image of America is when it comes to the treatment of prisoners who are being detained. I am afraid that in many parts of the world they believe that we have abandoned some of our time-honored principles of due process since 9/11, and they question whether the United States is now following a course of conduct that for years we have said does not define us as a Nation. Let me give you three specific examples.

First, on military commissions, Senator Specter and I prepared a bill back in 2002 trying to find a congressional answer to the construction of these military commissions which would meet the security needs of our country.

The administration decided, the executive branch, not to deal with Congress but to try to create these military commissions on their own and, unfortunately, the outcome was not good. So here we are 5 years and zero convictions at Guantanamo because the administration would not work with Congress to create military commissions.

No. 2, you gave a speech very recently—in fact, it was yesterday—before the American Enterprise Institute which raised some troubling observations. In this speech, as it was reported, you said, and I quote, "A judge will never be in a position to know what is in the national security interests of the country."

"I tried to imagine myself being a judge. What do I know about what is going on in Afghanistan or Guantanamo?"

Now, the person who wrote the article opened it by saying, "Alberto Gonzales on Wednesday warned Federal judges not to meddle in cases involving national security following a string of judicial rebukes of the administration's antiterrorism initiatives."

An observer of your statement in that article would conclude that you have not only at the executive level forsaken cooperation with the legislative branch of our Government, you are now suggesting the judicial branch cannot be trusted when it comes to issues of national security.

But it does not end there. Cully Stimson, the Assistant Secretary in the Department of Defense, took it a step further and questioned whether or not there was a right to counsel and raised the specter that if we allowed detainees to have an opportunity to be represented, it would mean that the cases would take longer and the desired result might not be attained.

Now, Mr. Stimson, in fairness, apologized for his remarks yesterday. But step back for a moment, if you will, as an average American or someone observing America under these circumstances and say, well, this is just an effort to consolidate power in the executive branch of Government, to deny right to counsel, to deny judicial oversight because they cannot be up to the job, and not to involve Congress in creating commissions that might result in more due process.

Can you understand how some could draw that conclusion from those three examples?

Attorney General GONZALES. Thank you, Senator. Can I speak about my reaction?

Senator DURBIN. Of course.

Attorney General GONZALES. Obviously, military commissions, you are right. We began the process several years ago believing, based upon previous precedent and tradition, that the President of the United States, relying upon the model in Quirin during World War II, could establish military commissions.

The Supreme Court of the United States said no, that given the fact that Congress has spoken in this area, if the President wanted to use military commissions that differed from the procedures outlined by Congress, there would have to be a necessity for that and the President had not articulated such a necessity.

And so because of that we went to the Congress and worked with the Congress to get a set of procedures for military commissions. I think that they reflect an agreement between the executive branch and the legislative branch to ensure that unlawful combatants who do not play by the rules, who are indiscriminately killing innocents, nonetheless are going to receive a fair trial as we bring them to justice.

My speech to the American Enterprise Institute, I want to make sure you get a copy of it, because the focus of the speech was to put into context in my mind the appropriate role of the judiciary in our system of Government and that there really ought to be strong deference by the judicial branch not just to the executive branch but primarily to the Congress in terms of making policy decisions, particularly with respect to national security.

You have the ability to have hearings and gather up information in deciding what is in the best interests of the country. We have embassies around the world. We have national intelligence agencies which gather up information. The Congress and the executive branch are in a much better place to determine what is in the national security interests of our country as opposed to the courts.

Clearly, I am not saying that courts do not have a role in deciding legal issues relating to terrorism cases. That is their job. I just want to make sure that they are deciding the legal issues and not making policy decisions. That was the purpose of the speech that I gave yesterday.

Finally, with respect to lawyers, I am already on record saying that we are supporting a process where lawyers will be made available in the trials at Guantanamo. My own sense is that they will be represented by the best counsel that is available. We will have good lawyers on our side. And that is the best way to ensure justice with respect to these trials.

I do share your concern about our image around the world, and I think that there are some things we probably could have done better, could have done differently. And I think we have an obligation in the executive branch to try to do a better job and try to—I do not want to say rehabilitate ourselves, but give a better explanation of what we are doing.

Senator DURBIN. Well, Mr. Attorney General, in fairness to the President when asked about mistakes said Abu Ghraib was a mistake. He concedes, and I think we all do, that the treatment of detainees was a mistake.

Now, let me ask you a specific question on that, though. When it comes to the mistreatment of detainees, we know the Defense Department has responsibility to judge the actions of military personnel. When it comes, however, to civilian personnel, whether we are talking about people who work for the CIA or other agencies, that is being handled by your Department.

Attorney General GONZALES. That is correct.

Senator DURBIN. Attorney General Ashcroft several years ago transferred pending cases to the Eastern District of Virginia. Two and a half years since the transfer, there has not been a single indictment in any cases. While soldiers have been sent to prison for abuses of detainees, our Department of Justice has not prosecuted a single individual.

Attorney General GONZALES. I think there was an individual name Basara who was, in fact, convicted. I am obviously aware of your very strong interest in this. We have responded with a letter sort of outlining—giving as much information as we can about the status of the investigations.

Quite candidly, as the letter indicates, there are very difficult hurdles that we have to deal with, with respect to these kinds of prosecutions when you are talking about trying to prosecute a case that occurred—for activities that occurred in a war zone, for example. There are unique challenges. Nonetheless, we are committed to try to bring people to justice and—

Senator DURBIN. May I ask you about a specific instance?

Attorney General GONZALES. Yes, sir.

Senator DURBIN. I know my time is up here, but the use of dogs in interrogation was part of specifically authorized activity by then-Defense Secretary Rumsfeld as well as Mr. Haynes, whose name has now been withdrawn for appointment to the circuit court.

Can you assure us that none of the civilian cases under investigation by the Justice Department involve the use of techniques that were authorized by the administration and later abandoned as inconsistent with our opposition to torture and our adherence to Geneva Convention rules?

Attorney General GONZALES. Well, Senator, I would be happy to go back and look at that before giving you that kind of assurances. But I know that our prosecutors understand that if, in fact, someone is engaged in conduct which violates the law, they are going to be prosecuted if we can make the case.

Senator DURBIN. But it has not happened. And you understand soldiers have gone to jail.

Attorney General GONZALES. Yes, sir, I do understand.

Senator DURBIN. Men and women in uniform have gone to jail, and the average American has to step back and say, Wait a minute, why would you hold the soldiers to a high standard, imprison them and convict them, and then not find a civilian involved in similar conduct responsible as well?

Attorney General GONZALES. Again, Senator, I think, you know, one is better than zero. I think there has been at least one. But these are difficult cases. We are committed to get to the bottom of it because you are correct.

You know, it is one thing for us to say—you know, when people raise the possibility that the United States is involved in torture,

what I say is, listen, the difference between the United States and a lot of other countries is that when there are allegations about mistreatment, there are investigations; and if people are not adhering to the legal standards, then they are held accountable.

I know that is what the President expects of us. That is what I have asked of our prosecutors. I am not saying this is an excuse because there is no excuse for not prosecuting cases that should be prosecuted. These do present unique challenges for us, and I can commit to you that we will continue looking to see what cases can be brought, if, in fact, there are legitimate cases to bring.

Senator DURBIN. One last short question about letters that Senator Grassley raised. Last August, Senators Kennedy, Feingold, and myself sent a letter to the President and to your attention asking him to reconsider his decision to block the Office of Professional Responsibility from investigating Justice Department attorneys who approved the NSA program engaged in misconduct. Do you believe the OPR investigation should be permitted to go forward?

Attorney General GONZALES. Senator, well, I mean, the President has made the decision as to whether or not they should be read into the program, which, of course, as announced yesterday by the President, will not be reauthorized.

I can tell you that the IG, the Inspector General of the Department, is doing an investigation with respect to the FBI's role in this program.

Senator DURBIN. I just hope that you agree with me that Mr. Bradbury's confirmation should not go forward if he is still under investigation by the Office of Professional Responsibility.

Attorney General GONZALES. Sir, I am not aware that he is under investigation by the Office of Professional Responsibility.

Senator DURBIN. I hope we can get an answer to our letter of last August.

Attorney General GONZALES. Yes, sir.

Senator DURBIN. Thank you, Mr. Chairman.

Chairman LEAHY. I agree with the Senator from Illinois—

Attorney General GONZALES. Senator, your microphone?

Chairman LEAHY. I am new at this. I agree with the Senator from Illinois. If there is such an investigation going on, we should know that, and I would want to know that definitively one way or the other before any confirmation hearing would be scheduled.

I think that the Senator from Illinois asks a legitimate question. I think it is one that could be cleared up quickly one way or the other. I think that perhaps the best way would be to respond to me and to Senator Specter on that issue.

We have also been joined by a new member of this Committee, Senator Sheldon Whitehouse from Rhode Island. Senator Whitehouse is a distinguished former Attorney General, and I appreciate very much his willingness to come on this Committee. He has already been extraordinarily helpful to the Committee in planning purposes. Senator Whitehouse, the floor is yours.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Attorney General, it is nice to see you. Thank you for being here. I would like to start with an observation in response to the colloquy between you and Senator Feinstein. As a former United States Attorney and somebody who as U.S. Attorney had very active inves-

tigations into public corruption in Rhode Island, I share a bit the concern of the removal of U.S. Attorneys under these circumstances.

And in your response, you indicated that you would never do anything for, I think you said, political reasons, and you would certainly never do anything that would impede the ongoing investigation.

I would suggest to you that in your analysis of what the Department's posture should be in these situations, you should also consider the potential chilling effect on other United States Attorneys when a United States Attorney who is involved in an ongoing public corruption case is removed from office.

They are not easy cases to do technically, as you know. They are fraught with a lot of risk. And I think that U.S. Attorneys show a lot of courage when they proceed with those cases. And any signal that might be interpreted or misinterpreted as discouraging those kinds of activities I think is one you would want to be very, very careful about.

So I would propose to you that that is a consideration you should have in mind as you make those removal and reappointment decisions.

Attorney General GONZALES. It already is, but thank you, Senator. I appreciate that.

Senator WHITEHOUSE. The other question I have is—the Chairman has been good enough to suggest that he is new at this. I am really new at this, and I would like to start really right at the very, very beginning, and that is, with the nature of executive testimony before a congressional inquiry.

You and I have both been in courtrooms and tried cases. We have both dealt with witnesses. And I have a pretty established set of expectations about what a witness is obliged to do.

First, let me ask you, Has the Department ever provided formal advice to the executive branch as to the responsibilities and obligations that a member of the executive branch accept by testifying before Congress in a hearing?

Attorney General GONZALES. If I understand your question, the Department is charged by regulation and by statute to provide legal advice to the executive branch. We have had one meeting at the Department in the last few months, I guess, with various individuals from other agencies to provide advice with respect to ensure better coordination and consultation with sharing information with the Congress. And I believe there has also been a series of sort of a smaller set of meetings with the same objective.

Our advice is—I mean our role as a Department is to- -we are the counsel for the executive branch, and our role is to give advice, and that advice is for the purpose of ensuring that we are meeting our appropriate level of accommodation and consultation and coordination and cooperation with the Congress. Yes, sir.

Senator WHITEHOUSE. Have you published anything?

Attorney General GONZALES. I have not published anything—

Senator WHITEHOUSE. Say a handout that you give to a witness that says, look, you are going up to testify before Congress, here are your responsibilities?

Attorney General GONZALES. I do not know if there was a—I certainly read something. It is very much consistent with what I sent the Chairman. I sent the Chairman a letter last week in response to a request for information that he had made. We had sent back a response. It was one that disappointed him.

Therefore, I sent back a response saying, well, let us get our staffs together and see if we can reach some kind of accommodation here. And, by the way, this is a set of principles that I intend to follow. They are a set of principles outlined in the letter from the Assistant Attorney General under Janet Reno to a gentleman named Linder. It goes through various categories in explaining—

Senator WHITEHOUSE. Rather than explaining it to me now, would you mind just sending me a copy and I can go on from there.

Attorney General GONZALES. Yes, sir.

Senator WHITEHOUSE. Because there are other questions I want to followup on a little bit. First of all, do you think whether a witness is sworn or not makes a difference in what their obligations are when they are the witness before a congressional hearing?

Attorney General GONZALES. Well, it certainly would not matter to me in terms of the answer that I would provide. I think there are statutes that would make it a crime in any event, even if you were not sworn in.

And so I think that the repercussions—the legal ramifications of being sworn in or not being sworn in, I think they are the same. There are statutes that would kick in whether or not you are sworn in or not.

Senator WHITEHOUSE. And if obviously we are aware that if somebody comes and provides an affirmative untruth or falsehood to a congressional committee, there are consequences from that.

Moving on to the next step, we have all been in courtrooms where witnesses engage in what you might call the old "bob and weave" and simply did not answer the question, and whether it is the exalted United States District Courts right down to the District Court in Rhode Island, administrative law judges all over Government, when a lawyer has a witness and is asking questions, if the witness is dodging the question, there comes a point where the lawyer is entitled to ask the judge to direct the witness to answer the question.

Is there any such authority that you believe exists in Congress to penetrate the "bob and weave" if it is happening that is akin to what you and I as lawyers have experienced in the courtroom when finally a properly propounded question that is not being fairly answered, you can kind of cut to the chase and get an answer?

Attorney General GONZALES. Sir, I do not know what that would be. Obviously, there are times where it is difficult to give the kind of response that a question may seek to solicit. It may be that for reasons of national security—

Senator WHITEHOUSE. Well, let us assume for a minute that it is not Executive privilege, it is not Fifth Amendment privilege, it is not national security. My hypothetical is that the question is simply being avoided, and we have all—

Attorney General GONZALES. It may be embarrassing or something.

Senator WHITEHOUSE.—encountered witnesses who are capable of doing that in court proceedings all our lives. And I do not think it is going to stop just because I am a Member of Congress now that people are evasive about questions. Do you think the Chairman has the authority to direct a witness to answer?

Attorney General GONZALES. I think the Chairman has a great deal of authority, and I think what would normally happen in that kind of situation is that there would be discussions, if not between the Chairman and the witness, perhaps between the individual Senator and the witness. It may not occur at during the hearing, but the fact that, for example, during our exchange you may not get an answer that you are satisfied with.

My obligation, I think, to communicate and consult with the Congress does not end when this hearing ends, and so if you are unsatisfied with the answer to a question, I think you and I should have additional discussions, quite frankly. And we will figure out whether or not we can give you the answer that would satisfy you in terms of—I mean, a responsive answer.

Senator WHITEHOUSE. I appreciate your sharing with me your sense of those ground rules, and thank you, Mr. Chairman.

Chairman LEAHY. Thank you. Let me just wrap on this.

In the wake of Hurricane Katrina, New Orleans has seen a particularly painful surge in crime. I base this just on what I see in the news. It is recovering from the devastation of the hurricane. The recovery effort was too little, too late.

Without going into the catalogue of things that went wrong, the fact is you now have a wave of violent crime that makes it—it would make it difficult for any city to get back on its feet, but certainly for a city in the State of Louisiana, it is especially difficult.

I know Senator Landrieu, the senior Senator from Louisiana, has proposed a plan, a 10-point plan, to crack down on crime in New Orleans. It is going to require a lot of new Federal manpower and resources.

Will you work with Senator Landrieu to make sure that anything that could be available from the Federal Government is available in that devastated area?

Attorney General GONZALES. I am reminded that I am speaking to Senator Landrieu tomorrow. Senator, there are some serious issues, particularly in law enforcement, in New Orleans. I think we have done a lot as a Department. I am happy to sit down with Senator Landrieu and see what else we can do. I am aware of the challenges that currently exist and still exist in Louisiana.

Chairman LEAHY. And I am not sitting here suggesting I have got an automatic road map of how to make it better. It is going to be very, very difficult. You have got criminal matters, social matters, reconstruction matters.

But that city—none of us have experienced in our homes anything that devastating, and I think as a country, just as we banded together as a country for earthquake victims and flood victims and fire victims in other parts of the Nation, that is the benefit of a nation like ours. And I would urge you to do whatever you can do to help down there, and if there is anything I can do, I will add to that.

Attorney General GONZALES. Senator, the President has been very clear in terms of our obligation to try to do what we can do to be helpful to the locals.

Chairman LEAHY. And Senator Durbin has already raised this issue about Cully Stimson. I cannot tell you how angry I was that here he is the Assistant Secretary in charge of detainee affairs at the Department of Defense, condemning lawyers for donating their legal services. I was a defense attorney before I was a prosecutor.

One of the things I knew very well: your best chance of getting justice done is you have a very good lawyer for the prosecution and a very good lawyer for the defense, and then things work well.

I think it was outrageous. I was glad to hear what you said here today. I am going to put into the record a letter from the deans from several prominent law schools who tried to teach young lawyers the value of pro bono. And I went to—I was at a law firm initially with a very—the senior partner was a very conservative Republican. I think I was about the second Democrat in 30 years ever to be put in there. And he pounded home to everybody that you did pro bono work or you did not serve in his law firm. I will put that in the record.

But, you know, even Mr. Stimson's apology, if I might say, I thought was very much too little, too late. His comments were so carefully timed to coincide with a broadside and the right to counsel and an op-ed piece published in the Wall Street Journal.

Am I correct in assuming that you feel very strongly that there should be adequate counsel on both sides in any of these issues?

Attorney General GONZALES. Certainly, Senator, with respect to the trials going on at Guantanamo, our whole structure is focused on adversary proceeding where we will be—the United States will be well represented and I am sure the detainees will be well represented as well.

Chairman LEAHY. Let us not condemn those lawyers. They are very, very good lawyers, many of whom are doing it at great person cost to themselves, who want to stand in and make sure rights are handled. They deserve our praise for doing it.

Now, I hope the disagreements today do not totally obscure my desire to work with you and make the Department of Justice a better defender of our rights, our constitutional rights.

Even when I was a law school student, I remember being invited with a dozen other students to go and meet with the then-Attorney General of the United States, Robert Kennedy. We thought it was going to be a grip-and-grin. It turned out to be at least a couple hours.

I have never forgotten that meeting. Never forgotten that meeting. Some of us went on to be prosecutors, some defense attorneys, some judges out of that dozen. All of us were inspired by his commitment that the Department of Justice defends everybody's rights.

Now, working with Senator Specter and Senator Kennedy and others in a bipartisan way, I hope we can enact fair and comprehensive immigration reform. I have had, along with others, long talks with the President who says he wants a comprehensive immigration reform.

I realize the talking points got way down the line during last fall's elections. We do not have elections this year. If we are going

to have comprehensive immigration reform, it is going to require every one of us to leave our political labels at the door and work together.

The same with rising violent crime. Many will say we have got to put money into police forces in Iraq, and that may well be. I am not here to debate that. But I do think we have to do more Federal assistance, State and local law enforcement partners. I have seen how well it works.

Attorney General GONZALES. Mr. Chairman, as you—

Chairman LEAHY. And, you know, those are just some of the areas that I think that we have to provide more to our U.S. Attorneys around the country. They are on the front lines.

We have some of the most—and this has been true with most administrations—some of the best men and women you can imagine working there. And I admire what they are doing. I believe Senator Whitehouse is a former U.S. Attorney, and we know how difficult that is.

So let us find those areas where we can work together. We will still lock horns in a number of areas, as we have in the past. But there are so many areas for the good of this country that this Committee and your office have got to work together.

Attorney General GONZALES. I agree. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

We stand adjourned.

[Whereupon, at 2:31 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C 20530

April 5, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions for the record, which were posed to Attorney General Alberto Gonzales following his appearance before the Committee on January 18, 2007. The hearing concerned Department of Justice Oversight. The Department is working expeditiously to provide the remaining responses, and we will forward them to the Committee as soon as possible.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, they have no objection to 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 on other matters.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Department of Justice Responses to Questions for the Record posed to Attorney General Alberto Gonzales Senate Judiciary Committee Oversight Hearing January 18, 2007 (Part 1)

QUESTIONS FROM CHAIRMAN LEAHY

Leahy 2 **While we are sending more resources and funds for Iraqi police, this Administration is cutting funding for state and local police. How do you explain this policy? Would you support increasing federal funding for state and local law enforcement?**

ANSWER: The Department's portion of the President's FY 2008 budget contains over $1.2 billion in discretionary grant assistance to State, local, and Tribal governments including funding for the creation of *four new, competitive grant programs:* (1) Violent Crime Reduction Partnership, (2) Byrne Public Safety and Protection (Byrne) Program, (3) Child Safety and Juvenile Justice Program, (4) Violence Against Women Grants. These programs will provide States, localities, and Tribes with considerable flexibility to address their most critical needs and allow the Department to respond in a targeted way to local up-ticks in the crime rate. Like the recently-passed joint resolution providing full-year continuing appropriations for FY 2007, the FY 2008 President's Budget also proposes to eliminate earmarks from state and local funding so that limited federal resources can be directed to the most urgent crime problems.

The Violent Crime Reduction Partnerships Program will be used to help communities suffering from high rates of violent crime address this problem by forming and developing effective multi-jurisdictional law enforcement partnerships between local, State and federal law enforcement agencies. We believe that this focused approach will allow communities to tackle their violent crime problem quickly after receiving their grant.

Leahy 3 **In recommendation #57, the Iraq Study Group recommends that the practice of embedding U.S. police trainers with Iraqi police units be expanded and that the number of civilian officers training Iraqi police be increased. In your January 16, 2007 letter, you stated that the Department's International Criminal Investigative Training and Assistance Program ("ICITAP") has deployed senior law enforcement advisors to oversee teams of approximately 250 police trainers and 80 trainers for the Iraqi Correctional System. Will the Department send additional advisors to participate in the training of the Iraqi Police Service? If so, how many advisors will the Department send?**

ANSWER: The size and functional scope of the ICITAP police training efforts are determined by the Department of Defense's Civilian Police Assistance Training Team (CPATT) and are closely controlled by the Department of State's Bureau for International Narcotics and Law Enforcement Affairs (INL). CPATT controls the number of ICITAP assets required for police program efforts and INL orchestrates ICITAP participation through budgetary control measures. Accordingly, we respectfully defer to those agencies to answer this question.

Leahy 8 **Will the Department meet its reporting requirements for this upcoming calendar year?**

ANSWER: The Department will continue to make every effort to meet its reporting requirements.

Leahy 10 **Recently released FBI documents reveal that the Nixon and Reagan Administrations ordered the FBI to run background checks on Senate witnesses who were critical of the late Chief Justice William Rehnquist when he was nominated to the Supreme Court in 1971, and later nominated to the position of Chief Justice in 1986. According to press reports, in 1971, Deputy Attorney General Richard Kleindienst directed the FBI to conduct criminal investigations of witnesses who were scheduled to testify against Chief Justice Rehnquist during his conformation hearing. The press also reports that, 15 years later, the late Senator Strom Thurmond asked John R. Bolten, then an Assistant Attorney General in the Reagan Justice Department, to investigate Democratic witnesses for the 1986 confirmation hearing. (a) Please state whether you believe that such blatant political use of the FBI is appropriate?**

ANSWER: Political use of the FBI is never appropriate.

Leahy 11 **Did the Bush Administration direct the FBI to criminally investigate witnesses that testified during the Alito and Roberts confirmation hearings, or for other judicial nominees? If so, please explain why.**

ANSWER: The Bush Administration did not direct the FBI to criminally investigate witnesses who testified during the Roberts and Alito confirmation hearings or during confirmation hearings for other judicial nominees.

Once a candidate's biographical information is submitted to the FBI by the Department's Office of Legal Policy on behalf of the White House, the FBI interviews appropriate individuals who have knowledge of the candidate in the context of a background investigation (BI). Following completion of the BI, it is provided to the Department and, along with other checks conducted by Department, is provided to the White House for review and thereafter to members of the Senate Judiciary Committee. The Committee may also make independent inquiries concerning information in the package. The American Bar Association also investigates and rates each nominee. In those rare circumstances in which a BI reveals criminal allegations

regarding a candidate or witness, the allegations are appropriately addressed independent of the BI. A 4/15/02 memorandum from the Attorney General advises that the Department will not provide information to the White House concerning pending criminal investigations except when doing so is important to the performance of the President's duties. In accordance with this protocol, the FBI does not directly advise the White House or the Senate of pending criminal or other investigations revealed in the context of a BI.

Leahy 12 **Will you give me your assurances that you will not permit the FBI to be used in this political manner while you are the Attorney General?**

ANSWER: As stated above, political use of the FBI is never appropriate. Moreover, the FBI's authority to conduct investigations is governed by several sources, including Federal regulations and Attorney General (AG) Guidelines. For example, the AG Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations (5/30/02) govern the circumstances under which the FBI's general crimes and criminal intelligence investigations may be begun, and the permissible scope, duration, subject matters, and objectives of these investigations. The FBI understands that investigations must be authorized by competent authority.

Leahy 15 **Do you believe the interrogation techniques used on Mr. Padilla are consistent with the Constitutional guarantees protecting all American citizens? For example, Mr. Padilla was denied any contact with counsel for 21 months.**

ANSWER: As you are aware, this case is currently pending in the Southern District of Florida and pursuant to Department policy we do not comment on pending matters beyond what is in the public record. The District Court recently found Mr. Padilla competent to stand trial. However, as a general matter and consistent with what we have publicly stated before, the right to counsel, among others, is a critical component of our civilian criminal justice system. This system has an extremely important role to play in the struggle against global terrorism, as shown by the successful prosecutions brought by the Department of Justice. But in limited cases, after careful consideration of a host of factors, the President has deemed it necessary to defend our Nation by detaining individuals as enemy combatants. A critical element of that detention is intelligence gathering. Accordingly, where individuals have associated themselves with terrorist forces in armed conflict with the United States, detention as an enemy combatant allows immediate, ongoing, and uninterrupted interrogations for intelligence that are critical to protecting our citizens and armed forces.

Leahy 16 **Were you aware of the interrogation techniques used on Mr. Padilla at the time you approved of his prosecution, and, if so, what was your analysis of these interrogation techniques at the time? Did you believe they violated Mr. Padilla's rights at the time you approved his prosecution? Please provide the Committee with copies of any documents regarding your review of the interrogation techniques used on Mr. Padilla.**

ANSWER: As you are aware, this case is currently pending in the Southern District of Florida and pursuant to Department policy we do not comment on pending matters beyond what is in the public record. The District Court recently found Mr. Padilla competent to stand trial.

Leahy 19 **This Committee seriously considered media shield law legislation last Congress, holding several hearings on this important issue. I plan to work on legislation this session with my colleague Senator Specter, as well as Senators Lugar and Dodd. The Department of Justice testified in opposition to the shield law bills last Congress. Are there any media shield law proposals that would be acceptable to the Department? If so, please identify those proposals.**

ANSWER: On multiple occasions over the last two years – both in written and spoken testimony before this Committee – the Department has made clear its position in opposition to proposed legislation in this area.

Specifically, the Department believes that the media shield legislation inevitably would transfer to the judiciary determinations rightfully vested in the Executive – including determinations about what evidence is "critical" to an ongoing criminal investigation or prosecution and what constitutes harm to the national security. Indeed, under the most recent version of the proposed legislation, the government would bear the burden of establishing its need for the information it seeks – a dramatic departure from existing law, which requires the party resisting a subpoena to prove that the subpoena is unreasonable and oppressive.

One of the hallmarks of the Department's own policies governing the issuance of compulsory process to the media, *see* 28 C.F.R. § 50.10, is the flexibility afforded the Department in times of emergency. The proposed legislation, however, would vitiate that flexibility by shifting final authority over core executive and prosecutorial decisions to the judiciary, and by forcing the government to bear a heavy burden of proof in order to obtain information that is essential to the investigation and prosecution of serious crimes.

For these reasons – and numerous others set forth in the Department's written and oral testimony before this Committee – the Department continues to believe that legislation in this area is both unnecessary and likely to cause substantial harm to law enforcement and national security.

Leahy 20 **In your responses to questions submitted after your July 18, 2006 testimony before the Committee, you declined "to comment upon the existence or non-existence of any investigation . . . of journalists for publishing classified information." Yet, in response to other questions related to ongoing investigations you have offered to provide briefings to the Chairman and Ranking Member, as well as provide basic information on the number and general status of investigations in other areas. Will you provide the Committee with the same non-specific information related to investigations of journalists or news organizations for publishing classified information? If so, how many of these investigations are ongoing at the Department and what is there general status?**

ANSWER: Where possible, the Department makes every effort to provide Congress with information essential to the fulfillment of its oversight responsibilities. These efforts, however, cannot extend to the provision of information that could imperil a pending investigation or wrongfully prejudice an innocent party. Moreover, there are instances in which simply affirming or denying that an investigation exists – even in general terms – can have similarly harmful effects. This is one of those instances. Accordingly, it would be inappropriate for me to comment upon the existence or non-existence of any investigation.

Leahy 21 **The media shield legislation proposed last Congress was largely based on the current DOJ guidelines for requesting information from the media. However, the statutory codification would apply these guidelines to civil cases and special prosecutors. This would be a very positive outcome. What is the Department's position on the application of these provisions to civil cases and special prosecutors?**

ANSWER: As an initial matter, we would like to address the assertion that the media shield legislation proposed in the last Congress was "largely based on the current DOJ Guidelines for requesting information from the media." Some supporters of the media shield legislation have suggested that the proposed bill is no more than a codification of the Department's own guidelines. That view is mistaken. The Department's guidelines preserve the constitutional prerogatives of the Executive branch with respect to key decisions regarding, for example, the kind of evidence that is presented in grand jury investigations and what constitutes harm to national security. The proposed legislation, by contrast, would shift ultimate authority over these and other quintessentially executive and prosecutorial decisions to the judiciary.

Furthermore, the proposed legislation would replace the inherent flexibility of the Department's guidelines, which can be adapted as circumstances require – an especially valuable attribute in a time of war – with a framework that is at once more rigid (by virtue of being codified by statute) and less predictable (by virtue of being subject to the interpretations of many different judges, as opposed to a single Department with a clear track record of carefully balancing the competing interests at stake).

It is important to note that the Department's policies, set forth at 28 C.F.R. § 50.10, apply in both civil and criminal cases alike. *See* 28 C.F.R. § 50.10(f)(4) As with subpoenas to the news media in criminal cases, we believe that the Department's policies regarding subpoenas in civil cases strike an appropriate balance between the government's interest in successfully litigating cases of substantial importance with the public interest in a free press.

Finally, in at least one recent high-profile case from which the Department was recused, a federal court concluded that the Special Prosecutor had complied with the Department's policies on the issuance of subpoenas to the news media. *See In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1152 (D.C. Cir. 2006) (noting that the District Court "found that . . . Special Counsel had fully complied with the [Justice Department] guidelines").

Leahy 22 **There have been a number of concerns raised about the Department's decision to criminally prosecute reporters for refusing to reveal their confidential sources in the BALCO case. (a) Is the Department's decision to investigate the "leak" in the BALCO case consistent the Justice Department's guidelines for issuing subpoenas to the news media? If so, what were the exigent circumstances that warranted issuing a subpoena to the reporters involved in this case?**

ANSWER: The Department's decisions related to the media subpoenas issued in connection with the BALCO matter were fully consistent with the Department's guidelines governing such media subpoenas. The conduct at issue is serious and potentially criminal, including contempt of court, perjury before the District Court, and obstruction of justice. In light of the seriousness of the conduct and the inability to complete the investigation through other means, the subpoenas were fully consistent with Department policy.

Leahy 23 **Why is the Department seeking jail time for these reporters, who simply asserted their First Amendment rights in this case, which would be for a longer term than the jail sentences for all of the BALCO defendants combined?**

ANSWER: The federal courts, including the Supreme Court, have consistently refused to recognize a First Amendment right on the behalf of a reporter to refuse to comply with a grand jury subpoena. The length of any time in jail (including no time in jail) would be completely the result of the reporter's own choice, since the reporter could eliminate any such action simply by complying with the grand jury subpoena. The Department has not sought jail time for the reporters; it has sought the information that the reporters are legally obligated to provide. Moreover, the Department agreed that the reporters should not be jailed during the pendency of their appeal.

Leahy 25 **Last year, when the President signed into law a measure reauthorizing the Voting Rights Act that had passed 390-33 in the House and 98-0 in the Senate, I commended him for committing to aggressive enforcement of the Voting Rights Act and to defending the VRA from legal attacks. In nearly 20 hearings in the House and Senate, Congress established not only that the VRA remains one of the landmark achievements of the Civil Rights Era, but that a continuing need exists for the vital voting rights protections it provides all Americans. Yet, in nearly six years of power, the Bush Administration has brought only one suit on behalf of African-American voters alleging discrimination under Section 2 of the Voting Rights Act, the key section that provides a cause of action for discrimination against minority voters. Under President Bush, the Department has brought only a handful of cases alleging discrimination in voting on behalf of Hispanic Americans. (a) Given the President's statement last year that he would aggressively enforce the Voting Rights Act and after Congress voted nearly unanimously to reauthorize it after reviewing extensive evidence of ongoing discrimination in voting against minorities why has your Justice Department not brought more Section 2 actions on behalf of minority voters?**

ANSWER: 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, the Attorney General 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, including Section 2, of the Voting Rights Act. In fact, the 18 new lawsuits we have filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years. During this Administration, moreover, we have filed approximately 60 percent of *all* cases ever filed under the minority language provisions of the Voting Rights Act, as well as approximately 75 percent of all cases ever filed under Section 208. 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 case in the Division's history on behalf of Haitian Americans; the first voting rights case in the Division's history on behalf of Filipino Americans; and the first voting rights cases in the Division's history on behalf of Vietnamese Americans. We will continue vigorously to protect *all* Americans from unlawful discrimination in voting.

Leahy 26 **I am concerned that the relative few voting rights cases brought by the Justice Department suggests that you have determined that enforcing laws to combat racial discrimination – particularly against African-American voters – is no longer a priority. If this is still a priority, why have you brought the same number of Section 2 voting discrimination cases against white voters — one — as you have against African-American voters?**

ANSWER: In this Administration, the Voting Section of the Civil Rights Division has filed a number of cases, in addition to a number of Section 5 objections, on behalf of African-American voters in various jurisdictions. The cases filed include *United States v. Crockett County* (W.D. Tenn.); *United States v. Euclid* (N.D. Ohio); *United States v. Miami-Dade County* (S.D. Fla.); and *United States v. North Harris Montgomery Community College District* (S.D. Tex.), which also involved protecting the rights of Hispanic citizens. In addition, we successfully litigated *United States v. Charleston County, South Carolina* (D.S.C.) and successfully defended that victory through appeal to the U.S. Supreme Court. *Crockett County*, *Euclid*, and *Charleston County* are all Section 2 cases.

The Department continues to seek out, investigate and, when facts warrant, prosecute cases on behalf of African-American citizens. The Voting Section continues to actively identify at-large and other election systems that violate the Voting Rights Act. Where we find such systems and where the facts support a claim, we do not hesitate to bring lawsuits. We continue to be interested in allegations of possible Voting Rights Act violations from all sources and have solicited such information widely.

Leahy 29 **At last November's Civil Rights Division Oversight Hearing, I asked Assistant Attorney General Wan Kim about a letter Senator Kennedy and I sent you last October 20 requesting a federal investigation into the activities of Republican congressional candidate Tan Nguyen. Mr. Nguyen admitted that his campaign staffer sent letters to 73,000 households, spreading misinformation about voting requirements apparently designed to suppress Latino voter turnout. At the November 16, 2006 Civil Rights Division Oversight Hearing, Mr. Kim assured me that an investigation into the Orange County case was ongoing. However, Mr. Kim has yet to respond to my written-follow question asking for a description and status report on this investigation. Can you update me on the status of the Department's investigation?**

ANSWER: Upon learning of the Orange County mailing, the Division immediately initiated an investigation. In addition, the Division also dispatched Department personnel to monitor the polls in Orange County for the November 7, 2006, elections. The matter remains the subject of an ongoing investigation. As you are aware, we are not at liberty to discuss the details of any ongoing investigation.

Leahy 31 **What conclusions do you draw about the success of the Department's efforts to combat voter intimidation and suppression from the Department's decision as expressed in the January 11 letter not to pursue charges arising from the deceptive conduct during the elections in Maryland?**

ANSWER: The Department's decisions regarding the enforcement of federal law are always based on a careful and impartial review of the relevant facts and the applicable legal standards.

Leahy 32 **"Recent news reports have brought to light the degree to which the Civil Rights Division has cut career attorneys out of the decision-making process and disregarded their recommendations, driving away many veteran attorneys, and undermining those you have not been able to replace. According to an October 6, 2005 article in Legal Affairs, "[s]ome career professionals who have left the Civil Rights Division say they left because they were shut out of the decision making process in a way that did not occur under previous administrations." For example, as reported in a November 17, 2005 Washington Post article, political appointees overruled the recommendation of career attorneys to block a Georgia voter ID law under Section 5 of the Voting Rights Act. Ultimately, federal and state courts blocked Georgia from implementing its ID requirement for voting, calling the law a "poll tax." By ignoring the advice of career attorneys in**

evaluating compliance with the Voting Rights Act, is the Justice Department allowing political considerations to trump enforcement of one of our nation's most important civil rights laws?

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, and Haitian heritage.

Our record of even-handedly enforcing federal law best demonstrates that the Division makes litigation decisions that do not turn on partisan considerations. Career staff continues to be involved in the recommendation and decision-making process of every enforcement action brought by the Division under the Voting Rights Act, including the review of every Section 5 submission. Voting Section (and other Civil Rights Division) attorneys are in fact required to prepare detailed memoranda in enforcement actions, including Section 5 preclearance decisions, setting forth the facts and law on each proposed matter. Every legal analysis, including recommendations under Section 5, must be balanced and include all relevant information. The Voting Section Chief – a 30 year veteran career attorney – expects and encourages thoughtful deliberation and recommendations from Section staff, and this career official has decisional responsibility for many matters. When the decisions come to the Assistant Attorney General for the Civil Rights Division, he also welcomes opposing views and is available for responsible, productive discussion.

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*. These cases accelerated enforcement of the rights of voters to participate free from barriers at the polls during the 2002-2004 period.

The 18 new lawsuits we filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years.

During CY 2006, the Division's Voting Section continued to aggressively enforce all provisions of the Voting Rights Act, filing nine lawsuits to enforce various provisions of the Act. These cases included a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic voters, including at least three United States citizens on active duty with the United States Army, based entirely on their perceived race and ethnicity, and challenges to election systems that discriminate against African American voters in Euclid, Ohio, and Hispanic citizens of Port Chester, New York. We also recently won a major Section 2 lawsuit against Osceola County, Florida, overturning that county's discriminatory at-large election system. The Civil Rights Division also currently is defending the constitutionality of the VRARA.

In FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history, and interposed important objections to protect minority voters in Texas and Georgia. With over 7,100 submissions, the Division handled roughly 40 percent more submissions in FY 2006 than in a normal year. The Voting Section also brought the first Section 5 enforcement action since 1998. And the Voting Section has begun a major enhancement of the Section 5 review process; soon jurisdictions will be able to submit voting changes online, making the process easier, more efficient, and more cost effective for covered jurisdictions and for the Department.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress this summer, remains strong. We filed five such lawsuits in 2006, which was only one short of the all-time record set in 2005.

The Division also had a record-breaking year with regard to enforcement of Section 208 of the Voting Rights Act. In FY 2006, the Division's Voting Section obtained 37.5%, or three out of eight, of the judgments ever obtained under Section 208 in its twenty-four year history.

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.

In CY 2006, the Voting Section also filed the largest number of suits under the National Voter Registration Act since immediately following the passage of the Act in 1995. We filed and successfully resolved lawsuits in Indiana, Maine, and New Jersey and are litigating a fourth suit filed in Missouri.

As of January 1, 2006, virtually all of HAVA's requirements became fully enforceable. In advance of this first year of nationwide implementation of the database and accessible voting machine requirements of HAVA and into this year, the Division worked hard to help states achieve timely voluntary compliance. Where that did not appear possible, the Division brought enforcement actions, filing five lawsuits under HAVA in 2006. Four suits were filed against states for failure to complete the database requirements of HAVA; two of those suits also were for violations of the accessible voting requirements. In addition, one suit was filed against a locality for its failure to meet the Election Day informational posting requirements of HAVA.

We also successfully defended three additional lawsuits challenging the congressional mandates of HAVA. In addition, in Pennsylvania, where a state court had enjoined compliance with HAVA, our formal notice to the state of our intended lawsuit assisted state officials in overturning an erroneous lower court decision, so that we did not ultimately need to file to ensure compliance in Pennsylvania.

During CY 2006, the Division also deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. On November 7, 2006, more than 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.

With regard to the preclearance of the Georgia identification law, in August 2005, the Department precleared a Georgia voter identification law, which itself amended an existing voter identification statute that had been precleared by the prior Administration. This preclearance decision followed a careful analysis that lasted several months and considered all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of state photo identification and driver's license cards and the views of minority legislators in Georgia (as well other current and former minority elected officials). The data showed, among other things, that the number of people in Georgia who already possessed a valid photo identification greatly exceeded the total number of registered voters, and that there was no racial disparity in access to the identification cards. The state subsequently adopted, and the Department precleared in April 2006, a new form of voter identification that would be available to voters for free at one or more locations in each of the 159 Georgia counties.

In *Common Cause/Georgia v. Billups*, the district court did not conclude that the identification requirement violated the Voting Rights Act. To the contrary, the court refused to issue a preliminary injunction on that ground. The court instead issued a preliminary injunction on constitutional grounds that the Department cannot lawfully consider in conducting a preclearance review under Section 5 of the Voting Rights Act. Accordingly, the court's preliminary ruling, in a matter that is still being actively litigated, does not call into question the Department's preclearance decision. In addition, the state court decision blocking Georgia's implementation of the identification requirement was issued on state constitutional grounds, and, therefore, also did not call into question the Department's preclearance decision.

Leahy 33 **According to a December 8, 2005 article in the Dallas Morning News, after public reports surfaced about the overruling of career staff, the Justice Department adopted a new policy barring career staff from making recommendations in voting rights cases. Has the Department implemented a policy to exclude the recommendations of career voting rights lawyers in certain voting cases? If so, why did the Department change this policy? Do you believe the Section 5 pre-clearance decisions of career attorneys in the Voting Section are being accorded sufficient weight?**

ANSWER: Please see our response to question 32, above.

Leahy 34 **I find it troubling that the Bush Administration has been remaking the Justice Department's Civil Rights Division by filling the permanent ranks with lawyers who have strong ideological backgrounds but little civil rights experience. Hiring for career jobs in the Civil Rights Division under all recent administrations, Democratic and Republican, had been handled by civil servants – not political appointees. However, according to a July 23, 2006 article in the Boston Globe, "in the fall of 2002, then-[A]ttorney [G]eneral John Ashcroft changed the procedures. The Civil Rights Division disbanded the hiring committees made up of veteran career lawyers" and "since 2003 [] the administration changed the rules to give political appointees more influence in the hiring process." (a) Why did the Civil Rights Division disband the career lawyer hiring committees and diminish the role of veteran career lawyers in hiring new career lawyers?**

ANSWER: We respectfully disagree with many of the assertions made in the *Boston Globe* article. There is no political litmus test used in deciding to hire attorneys in the Civil Rights Division. During the past six years, we have 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.

The *Globe* article, among other things, incorrectly suggests that a central hiring committee of career employees within the Civil Rights Division made all hiring decisions during previous Administrations; obtained limited information regarding attorneys hired in only three of the ten litigating sections in the Division; and did not obtain resumes of attorneys hired during previous Administrations in order to make an objective comparison. Most significantly, the *Globe* article was not based on any personal interviews of these attorneys to measure their interest in, and dedication to, enforcing the nation's civil rights laws.

The talented and accomplished individuals hired in the Civil Rights Division have a profound commitment to public service and law enforcement. Generalizations are often inaccurate and unhelpful in defining an individual. No attorney is hired based solely on his or her resume, but rather after a profoundly more comprehensive review, including detailed personal interviews.

In addition, veteran career attorneys continue to make hiring recommendations throughout the Department and within the Civil Rights Division. The procedure implemented by Attorney General Ashcroft throughout the Department for hiring attorneys through the Attorney General's Honors Program (HP) offers several improvements to the previous program. Prior to 2002, HP applicants paid their own way to interview in various locations across the country; they often met with a single representative from the Justice Department. The Department of Justice now pays for candidates to come to Washington, D.C., or other major cities, where they meet with both political and career attorneys for an interview. *More* individuals are now typically involved in the hiring process, not fewer. And applicants who might have otherwise been prohibited from seeking an interview because of costs and location now have equal access to the program.

Leahy 35 **Considering the laudable purpose of having career attorneys and the essential role they play in the Division, how can you justify the decision to disband the career attorney hiring committees?**

ANSWER: Please see our response to question 34, above.

Leahy 36 **The effects of this shift in the Division's hiring policy have been significant. The Boston Globe examined the resumes of "successful applicants to the voting rights, employment litigation, and appellate sections" for the past five years. According to the July 23 Boston Globe article, "[t]he documents show that only 42 percent of the lawyers hired since 2003 [] have civil rights experience. In the two years before the change, 77 percent of those who were hired had civil rights backgrounds." What steps has the Department taken to ensure that the dramatic shift away from hiring career attorneys with a civil rights background does not interfere with the ability of the Civil Rights Division to vigorously enforce anti-discrimination laws?**

ANSWER: We respectfully disagree with many of the assertions made in the *Boston Globe* article. It is also unclear what methodology the *Globe* employed in reaching its conclusions. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. Attorneys from an extremely wide variety of backgrounds and experiences have been hired to work in the Division under this Administration. For example, the Division has hired not only attorneys with significant prior civil rights experience but also attorneys with other crucial skills, such as a significant record of actual litigation or management experience.

The *Boston Globe* article ignores salient facts pertaining to the Division's hiring record during this Administration. For example, all five individuals hired as career section chiefs during this Administration had previously served as career attorneys in the Division. These five chiefs have an average of approximately 17 years of experience in the Division, and also had a wide variety of work experiences, including working in the Clinton White House, with the American Civil Liberties Union, and as Special Assistant to Acting Assistant Attorney General Bill Lann Lee. In sum, there is no political litmus test used in deciding to hire attorneys in the Civil Rights Division.

Leahy 41 **In response to the recent statistics, you announced a study to be conducted by the Justice Department in 18 cities to understand what might explain the recent rise in violent crime. Have you drawn any conclusions yet based on this study? How long before the Department expects results?**

ANSWER: The Attorney General's Initiative for Safer Communities is ongoing. The initiative has brought together local law enforcement from 18 jurisdictions throughout the country and

Department of Justice officials to investigate the factors contributing to a rise in violent crime in certain cities and identify programs that have been successful at keeping communities safer.

The Department has recently completed its city visits. This spring, with the benefit of the information received during these meetings, the Attorney General will announce additional steps the Department of Justice will take to assist state and local law enforcement to address the violent crime issues in their respective communities.

Leahy 47 **"Recent press reports indicated that the Secret Service and the White House secretly signed an agreement last spring closing from public view the records identifying visitors to the White House. This agreement was apparently signed in the midst of the Justice Department's investigation into disgraced lobbyist Jack Abramoff and related litigation concerning visitor logs referencing Mr. Abramoff. Press reports further indicate that the agreement has been used by the White House in litigation in an effort to fight public disclosure of visitor logs. (a) Did you play any role in this agreement between the Secret Service and the White House, and did the Department of Justice provide any legal basis for the agreement?**

ANSWER: We cannot comment on the confidential and privileged advice that the Department of Justice provides to clients within the Executive Branch. We can, however, discuss the legal basis supporting the agreement, which we will transmit to the Committee in a supplemental response containing Question 48.

Leahy 50 **Given concerns about resources available for corruption investigations and prosecutions, as well as this disturbing agreement with the Secret Service, can you assure me that the offices investigating and prosecuting the Abramoff case and related matters are receiving the resources and the access they need to fully and successfully investigate that matter?**

ANSWER: The investigation and prosecution of public corruption is one of the top priorities of the Federal Bureau of Investigation and the Department of Justice, and we are dedicated to providing ample resources to aggressively combat this form of crime. There is a formidable team of experienced FBI agents and career prosecutors assigned to handle the Abramoff investigation, and that team has had, and will continue to have, all of the resources needed to handle this very important matter fairly, thoroughly, and appropriately.

Leahy 53 **Would the FBI, the U.S. Attorney's offices, and the Public Integrity Section of the Department of Justice benefit from additional resources to combat public corruption? If so, what types of resources would be the most helpful?**

ANSWER: The investigation and prosecution of public corruption is a labor- and resource-intensive effort. The Federal Bureau of Investigation, the United States Attorneys' Offices, and the Public Integrity Section of the Department's Criminal Division currently devote substantial

resources to combating public corruption. The resources that contribute most greatly to this effort are investigators and prosecutors, supported by sufficient funds for investigative techniques, litigation expenses, and travel.

Leahy 67 **In January, I joined with Senator Specter in asking the Chief Judge of the Foreign Intelligence Surveillance Court ("FISC") to provide copies of the decisions of the FISC that the Department cited when it publicly announced that it would terminate the Terrorist Surveillance Program ("TSP"). During the hearing, I asked you whether you had any objection to the FISC providing these materials to the Judiciary Committee and you said that you had no objection, but wanted to consult with the President.**
(a) Do you consent to the FISC providing these materials, including the applications, affidavits, and orders, to the Committee? If not, please explain the basis for your decision, and whether you assert the documents are classified or subject to any privilege.

ANSWER: As you know, Members of the Intelligence Committees have been briefed on the new orders, consistent with their oversight authority relating to intelligence matters and the National Security Act. Copies of these highly classified documents, specifically the January 10, 2007 orders, the Government's applications, and certain exhibits to the applications (including supporting memoranda of law) have been provided to both Intelligence Committees. We note that these documents contain information involving intelligence sources and methods and that the provision of Foreign Intelligence Surveillance Act ("FISA") applications to even these Committees is an extraordinary action. For these reasons, the Intelligence Committees have agreed to strict access limitations with respect to these particularly sensitive documents.

In addition, we have taken the extraordinary step of offering briefings to the Chairmen and Ranking Members of both Judiciary Committees on this highly classified matter. We also agreed to allow the Chairmen and Ranking Members to review certain exceptionally sensitive documents, including the orders, applications, and supporting memoranda of law, in the Intelligence Committee's special facilities.

Leahy 68 **Notwithstanding the FISC court's willingness to provide these materials to the Committee, please state whether the Department has copies of these materials, and whether the Department will provide them to the Committee. If not, please explain the basis for your decision, and whether you assert the documents are classified or subject to any privilege**

ANSWER: Please see our response to Question 67, above.

Leahy 69 **Do any of these materials contain legal arguments concerning the interpretation of FISA, the Fourth Amendment, or the President's inherent authority, and, if so, would you agree to provide those portions of the materials? If not, please explain the basis for you decision, and whether you assert those portions of the documents are classified, or subject to privilege.**

ANSWER: Please see our response to Question 67, above.

Leahy 70 **To the extent you claim that the documents are classified or privileged, do you claim that the entire documents are classified or privileged, and no portions can be released to the Committee? Please explain the basis for this decision.**

ANSWER: Please see our response to Question 67, above. The materials made available to the Chairmen and Ranking Members of the Judiciary Committees are highly classified.

Leahy 71 **You also testified that, shortly after you became Attorney General, the Department redoubled its efforts to bring the TSP into compliance with the FISA laws and that the Department has been working on this effort for a long time. Please state exactly when the Department began this process and specifically what efforts were undertaken.**

ANSWER: First, we emphasize that the recent orders of a Judge of the Foreign Intelligence Surveillance Court ("FISC") did not "bring the TSP into compliance with the FISA laws." As noted in the Attorney General's letter, dated January 17, 2007, and as he reiterated in the hearing, the TSP was fully consistent with FISA.

As noted in the January 17th letter, the Department of Justice began exploring options for subjecting to FISC approval any electronic surveillance that may have occurred as part of the Terrorist Surveillance Program ("TSP") in the spring of 2005, well before the first press account disclosing the existence of the TSP. It took considerable time and work for the Government to develop the approach that was proposed to the Court and for the Judge on the FISC to consider and approve the January 10 orders. Further details on this matter have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Leahy 73 **Please state when the Department first learned of the FISC's orders with respect to these application(s).**

ANSWER: As noted in our letter of January 17, the relevant orders were issued by the FISC on January 10, 2007. The Department learned of the FISC's orders on that date.

Leahy 74 **Please state whether you were personally involved in reviewing the FISA application(s) or participated in the "negotiations" with the FISC, and, if so, please briefly describe your involvement in this process?**

ANSWER: As you know, FISA requires that the Attorney General (as that term is defined in FISA) approve applications for electronic surveillance orders under FISA based upon his finding that such applications satisfy the requirements of FISA. *See* 50 U.S.C. §§ 1804(a), 1805(f). The

Attorney General approved the applications that resulted in the orders issued by a Judge of the FISC on January 10, 2007, before the applications were filed.

Leahy 75 **Please state whether there were other Administration officials involved in this process, and, if so, please identify those officials and briefly describe their involvement in this process?**

ANSWER: As noted in our letter of January 17, 2007, the orders issued on January 10 are innovative and complex, and many attorneys in the Department of Justice and throughout the Executive Branch worked diligently to prepare the applications that resulted in these orders. Further details on this matter have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Leahy 78 **Please provide copies of any memoranda or other documents reflecting your responses to questions 44(a-f) and, if you decline to provide these materials, please explain the basis for your decision, including whether you assert the documents are classified or subject to any privilege.**

ANSWER: Please see our response to Question 67, above.

Leahy 79 **The Administration has been operating its warrantless surveillance program for five years, without any court review and amid growing concerns from Congress and the American people. You testified that it took the Department "a period of time to develop what we thought would be an acceptable legal argument and fit it into the operational capabilities and possibilities of NSA." Given the clear requirements of the FISA statute, why did it take at least two years to complete this process?" Please explain why the Department did not seek the FISC's approval of the TSP much earlier?**

ANSWER: As we have previously explained, the TSP fully complied with the law, including FISA. Nevertheless, in the spring of 2005, the Administration began exploring options for subjecting to FISC approval any electronic surveillance that may have occurred as part of the TSP. Any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protect the Nation from al Qaeda—the very speed and agility that was offered by the TSP. The orders issued by the FISC on January 10, 2007, are innovative and complex, and it took considerable time and work for the Government to develop the approach that was proposed to the Court and for the Judge on the FISC to consider and approve these orders. Further details on this matter have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Leahy 80 **You also testified that the FISA application(s) approved by the FISC was different than a normal application. Please explain how so. Does the subject FISA application(s) apply to specific individuals, locations or facilities? If not, is it more general authority to conduct surveillance of terrorism suspects?**

ANSWER: As we have explained, the contents of the FISC orders are highly classified. As noted above, the Intelligence Committees have been briefed on them, and we have offered to brief the Chairmen and Ranking Members of both Judiciary Committees on these orders.

Leahy 87 **You also testified that FISA allows for physical searches under certain circumstances. First, please identify the provision in the FISA statute that you maintain permits the Government to open Americans' mail. Second, please state whether the Government has conducted physical searches of Americans' mail based upon FISA, and if so, please state how many such searches have occurred since September 11, 2001?**

ANSWER: As you know, FISA specifically authorizes the Attorney General to seek a court order from the Foreign Intelligence Surveillance Court ("FISC") to conduct "a physical search in the United States of the . . . property, information, or material of a foreign power or an agent of a foreign power for the purpose of collecting foreign intelligence information." *See* 50 U.S.C. § 1822(b). The property that may be searched pursuant to an order from the FISC includes property that is "in transit to or from an agent of a foreign power or a foreign power." *Id.* § 1824(a)(3)(B). FISA also specifically authorizes the Attorney General, under certain circumstances, to authorize the emergency physical search of such property if he then obtains an order from the FISC authorizing the search. *See id.* § 1824(e). In addition, FISA specifically authorizes the Attorney General to "authorize physical searches without a court order . . . to acquire foreign intelligence information" if the "physical search is solely directed at . . . information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers." *Id.* § 1822(a)(1). The use of these authorities for the purpose of collecting foreign-intelligence information is highly classified, and it would be inappropriate to reveal the use of such authorities in this setting. Consistent with long-standing practice, the Department of Justice informs Congress of this information through classified semi-annual reports and through appropriate briefings pursuant to the National Security Act of 1947.

Leahy 88 **During the hearing, I also asked you about press reports in the New York Times and elsewhere stating that the Department of Defense and CIA have greatly expanded their use of non-compulsory national security letters to acquire Americans' sensitive financial records. According to the New York Times, DoD has made more than 500 requests for financial records since September 11, 2001. What legal authority are DoD and the CIA relying upon to request these records?**

ANSWER: The Department of Justice defers to the Department of Defense and the Central Intelligence Agency for a response to this inquiry.

Leahy 91 **One of the lessons from 9-11 was that the Government's law enforcement and counterterrorism agencies must better coordinate and share critical counterterrorism information. If the press reports are true, the DoD and CIA are not sharing this critical information with the FBI when it comes to their own domestic investigations. In you view, does this suggests that the Administration has failed in its efforts to improve information-sharing across the government?**

ANSWER: The FBI is actively engaged with the Department of Defense (DoD) and the Central Intelligence agency (CIA) elements that have "homeland" responsibilities to ensure that our mutual engagement and information exchange is consistent with the expectations of the 9/11 Commission and the American people. That engagement extends to operational, investigative, intelligence, process, and procedural matters, as well as to how we can best integrate our activities related to the Information Sharing Environment. One example of this is the number of FBI field offices that participate in exchanges of analysts and operational personnel with CIA and DoD entities; a number of CIA and DoD analysts are integrated in or working closely with FBI Field Intelligence Groups or serving in Joint Terrorism Task Forces (JTTFs), and in a number of State Fusion Centers, both FBI and DoD elements are included in the core intelligence presence. While we are always looking for ways to formalize and strengthen our joint targeting, joint source development, and joint reporting enterprises, we believe the successes and progress are clear.

Leahy 94 **Are there safeguards in place to ensure that state and local law enforcement agencies will protect the security of this data and not abuse it? If so, please describe these safeguards and how they will be implemented.**

ANSWER: The information is shared with other trusted federal, state and local law enforcement entities in selected geographic areas of the country so that those entities can more effectively investigate, disrupt, and deter criminal activity, including terrorism, to better protect the nation.

User role-based access is implemented to ensure that R-DEx is used for law enforcement purposes only and that access to R-DEx information only is provided to law enforcement personnel who have undergone background checks and have received appropriate training, and who have an official need for access in order to perform their professional duties. In addition, the security controls, both administrative and technological, were developed and implemented in order to reduce the risk of unauthorized access to the data.

R-DEx has an audit capability that logs the date, time, subject, and originating account of all user queries. The parties maintain these audit logs for five years or for the life of the records accessed, whichever is longer.

Memorandums of Understanding (MOUs) have been established between all information sharing partners. The MOUs govern use of all information and stipulate how recipients may use data shared via R-DEx. One stipulation states that R-DEx information may not be used as the basis for any action or disseminated for any other purpose or in any other manner outside of the agency that accessed the information, unless that agency first obtains the express permission of

the agency that contributed the information. These MOUs include sanctions for misuse of the system and/or the submitted component data. Sanctions can be applied to an individual or entire agency, depending on the circumstances and severity of the misuse.

Training is required for all R-DEx users. This training is provided to make users of R-DEx information aware of what information can be accessed from R-DEx and the procedures applicable to such access.

Leahy 97 **You also mention the Procurement Fraud Task Force. Please state how many prosecutors and investigators are assigned to this task force? What percentage of the task force's work involves contracting fraud in Iraq? Would you support creating a separate task force to focus exclusively on Iraq contractor fraud, similar to the Hurricane Katrina Fraud Task Force?**

ANSWER: The National Procurement Fraud Task Force utilizes the prosecutorial resources of six key sections or divisions within the Department including the Public Integrity Section, the Fraud Section, the Asset Forfeiture and Money Laundering Section, the Antitrust Division, the Tax Division, and the Civil Division – in addition to calling upon the 94 U.S. Attorneys' Offices across the country – to ensure that competing resource needs are balanced and meritorious cases are identified, investigated, and prosecuted efficiently and effectively in appropriate venues.

The U.S. Attorneys' Offices that are participating in the Task Force have coordinated and organized their own procurement fraud regional working groups, which are working to implement the strategies and mission of the Task Force as well as to facilitate the exchange of information among agencies at the regional level. To date, the following U.S. Attorneys' Offices have agreed to lead regional procurement fraud working groups: Central District of California, Eastern District of Virginia (through which the District of Maryland and the District of Columbia are participating), Southern District of Florida, Northern District of Alabama, District of Connecticut, the District of Massachusetts, Eastern District of Pennsylvania, Central District of Illinois; Northern District of Georgia, Northern District of Texas, Southern District of Texas and Western District of Washington.

Additionally, investigative resources are being provided by a number of federal agencies participating in the Task Force including, among others, the FBI, the Special Inspector General for Iraq Reconstruction (SIGIR) and the OIGs associated with DoD, Central Intelligence Agency, National Aeronautics and Space Administration, GSA, Department of Housing and Urban Development, Department of Justice, Department of Homeland Security, Department of Energy, Department of Veterans Affairs, Nuclear Regulatory Commission, Small Business Administration, Social Security Administration, U.S. Postal Service, Office of the Director of National Intelligence, National Reconnaissance Office, Department of State, Department of Transportation, Department of the Treasury, Department of the Interior, and Department of Agriculture. In addition, given the overwhelming size of the defense slice of the procurement pie, all defense-related investigative agencies -- Defense Criminal Investigative Service (DCIS), Naval Criminal Investigative Service, Army-CID, and the Air Force Office of Special Investigations -- are full participants.

The Task Force's emphasis is accelerating civil and criminal prosecutions, forfeitures, and other lawful means to recover ill-gotten gains from procurement fraud. The Task Force is evaluating cases involving fraud and corruption associated with the war effort and will aggressively pursue those cases with prosecutive potential. In addition, the Task Force has established a special committee to address fraud and corruption associated with the war effort. Among other things, this committee is operating its own International Contract Corruption Task Force (ICCTF) consisting of members of the law enforcement community including DCIS, Army-CID, SIGIR, FBI, and the Offices of Inspectors General for the State Department and the Agency for International Development. Agents from the ICCTF currently are deployed in Iraq, Afghanistan and Kuwait for the purpose of providing real-time investigative support on cases involving contracting fraud and corruption.

To date, the Department has charged 18 individuals criminally for fraud associated with government contracting in support of the Iraq war effort. Thirteen (13) of these individuals have been convicted (nine are awaiting sentencing). The other five individuals have charges pending either through indictments or criminal complaints. Two civil cases have been settled involving contracting in connection with the Iraq war.

Leahy 98 **On January 21, 2007, the Department of Justice's Office of the Inspector General issued a report highly critical of the Department's handling of the investigation into allegations that former Congressman Mark Foley sent sexually explicit emails to former Congressional Pages. The OIG's report found, among other things, that the FBI should have taken at least some follow-up steps with regard to these e-mails, such as interviewing the former page involved or notifying the House of Representatives authorities in charge of the page program about the allegations. Do you agree with the OIG's conclusions regarding the FBI's handling of this matter, and if so, what steps will the Department take to ensure that it handles investigations of this nature better in the future?**

ANSWER: The Department of Justice Office of the Inspector General (OIG) concluded that the FBI acted within the range of its discretion in deciding not to open a criminal investigation in July 2006 after receiving e-mails between Foley and a former page from Citizens for Responsibility and Ethics in Washington (CREW). As detailed in the OIG report, the United States Attorney's Office for the District of Columbia later reviewed these same e-mails and agreed that no further investigation was warranted.

The OIG determined that the e-mails were reviewed by three separate investigative squads and that FBI agents acted quickly and appropriately in assessing the information and providing it to the Cyber Crimes Squad where the decision was made not to pursue a criminal investigation. The OIG found that this decision was not influenced in any way by the fact that Foley was then a Member of Congress. Although the OIG concluded that the FBI acted within its discretion, the review suggests certain follow-up steps that could have been undertaken with regard to the e-mails. The OIG acknowledges that its assessment was conducted after the fact and after explicit instant messages surfaced, none of which were part of the FBI's initial evaluation.

The OIG also reviewed the accuracy of DOJ and FBI statements made to the media in October 2006 regarding the e-mails received from CREW, concluding that inaccurate information about the emails provided by CREW was disseminated within the FBI and DOJ. This information resulted in misunderstandings on the part of FBI and DOJ spokespersons and may have contributed to the provision of inaccurate information to the news media.

The FBI shares the OIG's interest in ensuring that information regarding potential criminal activity is evaluated objectively and in conformance with established policies and practices. Accordingly, the FBI will carefully examine the OIG review for any changes to existing policies or procedures that may be warranted.

Leahy 99 **The OIG also found that the information about the Foley matter provided by the FBI and the Department to the media inaccurately portrayed the information that CREW provided to the FBI, and inaccurately suggested that CREW's actions were the cause of the FBI's decision not to investigate Mr. Foley's conduct. The OIG also indicated that it was unable to identify the Department officials responsible for these inaccurate statements. Have you identified the individual(s) responsible for this conduct? If so, will the individual(s) who made these misleading statements been disciplined?**

ANSWER: According to the OIG report, three FBI media representatives were interviewed and said they "d[id] not recall making any of these statements to any reporter." The OIG report characterized what reporters were told as "incorrect information" which was "mistakenly believed" by FBI and DOJ spokespersons as a result of information provided by investigators. The OIG did not find intentional misconduct, but instead unintentional communications errors, concluding only that "these misunderstandings may have contributed to inaccurate information being provided to the media."

Leahy 100 **Maher Arar, a Canadian citizen who was returning home from a vacation, was detained by federal agents at JFK Airport in New York City in 2002 on suspicion of ties to terrorism and deported to Syria, where he was held for 10 months. A Canadian commission found that there was no evidence to support that Arar had any terrorist connection or posed any threat, but that he was tortured and held in abhorrent conditions in Syria. Why was Mr. Arar sent to Syria, rather than to Canada, where he is a citizen, which would have been easier and would have eliminated the risk that he could be tortured?**

ANSWER: The Department provided a classified briefing on the Arar matter to Chairman Leahy and Ranking Member Specter on February 1, 2007. In addition, the Department has sent classified documents regarding the Arar matter to the Senate Select Committee on Intelligence (SSCI), and notified Chairman Leahy and Senator Specter that they can view those documents via SSCI.

Leahy 101 **What steps have you taken to make sure that the United States does not send other people in the future to places where they will be tortured?**

ANSWER: Please see our response to Question 100, above.

Leahy 102 **Is the government taking any steps to apologize to Mr. Arar or to compensate him for his ordeal?**

ANSWER: Please see our response to Question 100, above.

QUESTIONS FROM RANKING MEMBER SPECTER

Specter 109 **Despite the murder wave and other gun crime resources funded through Project Safe Neighborhoods, the Philadelphia Police Department is suffering declining resources among its ballistics and firearms examiners. The Department has gone from 14 examiners to only 5. Without these examiners, the justice system remains backlogged on shooting cases. What is DOJ doing to address this problem?**

ANSWER: ATF is committed to assisting local law enforcement by helping to train firearms examiners. While the demand for such training increases each year, budget constraints allow ATF to select only a limited number of attendees for each session. As such, there are a number of rigorous criteria ATF uses to choose students for admittance into the National Firearms Examiner Academy NFEA, a 12-month program. One requirement is that each applicant be employed full-time as a firearm examiner trainee in a law enforcement laboratory. Another requirement is that the laboratory with which the applicant is affiliated must have a low examiner-to-trainee ratio. The rationale behind this requirement is that a laboratory with a low ratio is particularly burdened because the few experienced examiners must spend a significant amount of their time training the trainees, which takes away from their case work; however a laboratory with a high ratio allows its experienced examiners to spread out their training responsibilities and spend more time on their case work. ATF typically selects students from laboratories with ratios of 2 to 1 or lower. With respect to Philadelphia, 2005 was the last time they submitted an application. At that time, its laboratory has 11 examiners and 2 trainees, for a ratio of 5.5 to 1. In January 2007, ATF offered a 3-day Serial Number Restoration class, and trained 2 examiners from the Philadelphia Police Department. Another offering is scheduled for March 2007, and 3 of the 13 attendees will be from the Philadelphia.

Specter 110 **Can something be done to allow ATF to expedite firearms examination training so the Police Department can train new personnel? What is the current delay for such training?**

ANSWER: The National Firearms Examiner Academy is an aggressive 12-month program. The training curriculum was designed based upon peer review consensus, and to modify the program in any way would compromise the training standards established by field experts. The training delivery for the current fiscal year has been postponed due to the uncertainty of final budget figures. Without a final budget allocation, ATF must ensure that mandatory training needs for Bureau employees are met prior to those of our State and local partners.

Specter 115 **Other than advice in furtherance of a crime or fraud and advice that is the subject of an advice of counsel defense – both of which are expressly exempted from the memo's requirements—why does DOJ need to acquire the attorney advice given to corporations? Give examples of instances where this would be needed to effectively**

prosecute a case and where the instance isn't already covered by the crime/fraud exception or an advice of counsel defense?

ANSWER: The Department would rarely request attorney-client advice not related to an advice of counsel defense or covered by the crime-fraud exception. In fact, such instances would be extremely unusual. However, there may be instances where the advice is relevant and necessary to the investigation. For example, the Department may want the legal conclusions of an internal investigation to determine when and how officers and directors of a corporation may have been put on notice about regulatory or criminal violations. Or the Department may want the legal advice given to the corporation at the time of an employee's termination if the government concluded that employee was part of a fraud scheme, especially if the corporation is now giving the government a more benign reason for the termination. In cases where the corporation's actions are the basis for a defense or for the impeachment of corporate witnesses, the Department may also need the substance of legal advice to explain the corporation's actions and thus rebut the defense or rehabilitate the impeached corporate witnesses. Those instances would not be covered by the above exceptions.

Specter 116 **What standards does the DAG intend to use in determining whether or not to approve such a request?**

ANSWER: Before federal prosecutors, through their United States Attorney or component head, can even make a request of the Deputy Attorney General, they must establish a legitimate need for the information. If they cannot meet that test, the request to obtain the privileged information will not be authorized. To meet that test, prosecutors must show: (1) the likelihood and degree to which the privileged information will benefit the government's investigation; (2) whether the information sought can be obtained in a timely and complete fashion by using alternative means that do not require waiver; (3) the completeness of the voluntary disclosure already provided; and (4) collateral consequences to a corporation of a waiver.

Specter 117 **What safeguards are in place to prevent a routine approval of every single request made?**

ANSWER: This question assumes that the approval process is illusory. The approval process outlined in the McNulty Memorandum sets forth a specific test, the legitimate needs test, that federal prosecutors have to meet to seek any waiver of privileged materials. The United States Attorney must personally authorize a request for factual information in writing and the Deputy Attorney General must personally authorize a request for attorney-client communications in writing. Records must be kept for these approvals. These officials will review each request in good faith to determine whether the legitimate needs test is met and act accordingly. If the test is not met, the request will not be approved.

The approval process set forth in the McNulty Memorandum is very similar to other Main Justice approval requirements in the USAM which require no additional safeguards to ensure that requests are properly processed. The fact that records are maintained will allow the

Department to keep track of how many waiver requests are submitted and how many of those requests are approved over time.

Specter 120 **Can the Assistant Attorney General overrule the U.S. Attorney's decision?**

ANSWER: The United States Attorney must consult with the AAG, but the AAG cannot overrule the ultimate decision by the United States Attorney. If warranted, the AAG can always request further review from the Office of the Deputy Attorney General.

Specter 121 **Is there a standard for this type of review?**

ANSWER: The standard of review for all requests is the legitimate needs test. When the AAG is consulted, the AAG reviews the request to make a determination that the test is satisfied and to render advice to the United States Attorney requesting the consultation.

Specter 123 **This decision relies upon the fact that "Hamdan is to face a military commission newly designed . . . acting according to guidelines laid down by the Supreme Court." What is the DOJ doing to ensure that, after five years, Hamdan will have swift access to a hearing on the merits of his case?**

ANSWER: Military prosecutors charged Salim Hamdan with conspiracy and material support of terrorism on February 2, 2007. If and when those charges are approved by the Convening Authority, they will be referred for trial by military commission. Under the Rules for Military Commissions ("RMC"), that trial must begin within 120 days following the referral of charges, unless the military judge finds good cause for departing from that schedule. *See* RMC 707. We therefore would expect that the trial would be scheduled for the summer of 2007, although the exact timing of the trial may be influenced by pretrial motions and discovery over the next several months.

Specter 124 **How can you say that the Habeas Corpus Restoration Act, which I authored along with Chairman Leahy "def[ies] common sense," when we are merely seeking to restore through legislation the opinion propounded by the United States Supreme Court in Rasul v. Bush?**

ANSWER: The Supreme Court's decision in *Rasul v. Bush*, 542 U.S. 466 (2004), reflected the Court's interpretation of the existing habeas statute, not a policy judgment as to whether enemy combatants should have the opportunity to file writs of habeas corpus. Before *Rasul*, alien enemy combatants captured outside the United States during prior armed conflicts had no right to file a writ of habeas corpus under the Constitution, nor had such a right been recognized under the statute. Thereafter, in both the Detainee Treatment of 2005 and the Military Commissions

Act of 2006, Congress reaffirmed that alien enemy combatants have no entitlement to access our Nation's courts.

At the same time, we provide those at Guantanamo Bay, Cuba, with the opportunity to challenge the legality of their detention in federal court by appealing the determinations of their Combatant Status Review Tribunals. This process goes well beyond what is required for lawful prisoners of war under both international and domestic law. Accordingly, we believe it would be a mistake to open an additional, and historically unprecedented, path of litigation by amending the Military Commissions Act to provide alien enemy combatants with the opportunity to file habeas actions and civil suits against the Department of Defense.

Specter 125 **Has the Department of Justice prevented detainees, such as Mr. Khan, from disclosing facts about their detention and interrogation from their lawyers and others?**

ANSWER: No. The Department of Justice, of course, does not have control over the access to any detainee. The Department of Defense generally has permitted the detainees at Guantanamo Bay, Cuba, to have access to lawyers, where those individuals are represented by counsel and where an appropriate protective order is in place.

Majid Khan is one of the fourteen high-value al Qaeda operatives who were recently transferred from the custody of the CIA to that of the Department of Defense in Guantanamo Bay. In that regard, Khan possesses extremely classified information about the nature of the CIA interrogation program. In connection with a next-friend habeas suit filed in federal district court, an attorney retained by Khan's wife sought a court order to permit visits with Khan. Because that proposed order was insufficient to protect the classified information in question, and because the federal court had no jurisdiction over the habeas action in the first place, the Department of Justice opposed the requested order. On November 17, 2006, the district court denied the motion. Khan will have the opportunity to consult fully with counsel, subject to an appropriate protective order, in the event that a Combatant Status Review Tribunal confirms his status as an enemy combatant (and he chooses to appeal), or in the event that he is charged with an offense under the Military Commissions Act.

Specter 126 **As for matters of national security, why would Mr. Khan and other detainees be exposed to information that is classified at the TOP SECRET level?**

ANSWER: As mentioned above, Khan was detained and interrogated by the CIA as part of a program that remains highly classified. As the President explained on September 6, 2006, disclosing the details of the CIA program "would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country." Thus, Khan has been exposed to highly classified information, and appropriate steps must be taken to guard against his disclosure of that information.

Specter 127 **What would be the rationale for not allowing Mr. Khan access to a lawyer?**

ANSWER: As mentioned above, Khan is currently being held by the Department of Defense at Guantanamo Bay. In light of the classified information in his possession, we must restrict access to the detainee except where measures have been taken to protect national security. Khan will have the opportunity to consult with a lawyer in the event he appeals the determination of a Combatant Status Review Tribunal that he is an enemy combatant or that he is charged under the Military Commissions Act. *See* 10 U.S.C. § 948k(a)(3).

Specter 135 **Why didn't you disclose that DOJ was exploring ways to submit the program to the FISC?**

ANSWER: We repeatedly noted in response to questions from Members of Congress that we were continually exploring our legal options concerning the TSP. With that said, the Department of Justice does not generally disclose to Congress internal deliberations regarding legal theories, strategies, or arguments, and the disclosure of such deliberations would have been particularly problematic here, given the highly classified nature of the subject matter. Further details on this matter have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Specter 136 **Why did it take nearly two years – from spring 2005 until early 2007 – to determine that the program could be submitted to the FISC?**

ANSWER: As stated in our letter of January 17, 2007, any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protect the Nation from al Qaeda—the very speed and agility that was offered by the TSP. The orders issued by the FISC on January 10 are innovative and complex, and it took considerable time and work by the Government to develop the approach that was presented to the Court and for the Judge to consider and approve these orders. Further details on this matter are highly classified and have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Specter 137 **Was the decision to submit the program to the FISC motivated by a desire to remove jurisdiction from courts now hearing challenges?**

ANSWER: As you know from our letter of January 17, the Administration began exploring options for seeking FISC approval in this matter in the spring of 2005, well before the first press account disclosing the existence of the TSP, and well before the filing of any court challenges to the program were filed in court.

Specter 138 **Does DOJ now intend to seek the dismissal of those cases?**

ANSWER: On January 25, 2007, the Department of Justice filed submissions in the United States Court of Appeals for the Sixth Circuit in cases 06-2095 and 06-2140 arguing that the cases should be dismissed. The impact of the January 10 orders on other litigation will be assessed on a case-by-case basis.

Specter 139 **Why doesn't the administration terminate the program now?**

ANSWER: As noted in our letter of January 17, any electronic surveillance that was occurring as part of the TSP will now be subject to the approval of the FISC. As a result, the President did not reauthorize the TSP when the then-current authorization expired.

Specter 142 **How do you square this prosecution with Department of Justice regulations (28 CFR § 50.10) that say "the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues."?**

ANSWER: The Department is not prosecuting the reporters and the reporters face no criminal charges or criminal sanctions. Instead, the Department has sought only to secure information relevant to the grand jury's investigation of possible violations of criminal law by those who violated the District Court's order protecting certain materials and who may have lied to the District Court about their role in the release of protected materials. The Department guidelines identify a set of considerations and a review process that insure a careful balancing of the media's interest in broadly covering events with the public's interest in the fair administration of justice. In this case, various efforts were made to secure the necessary information before the subpoenas issued. The subpoenas, therefore, were fully consistent with the Department's guidelines related to media subpoenas.

Specter 143 **The guidelines require Attorney General approval before a federal subpoena is issued to a reporter. Did you approve the subpoena? Did DOJ first seek to get the needed information from alternative sources in accordance with Section 50.10(b)?**

ANSWER: The Attorney General approved issuance of the subpoenas. Efforts were made to secure the needed information through alternative sources before the subpoenas were issued.

Specter 144 **The guidelines provide that "[t]he use of subpoenas to members of the news media should, except under exigent circumstances, be limited to the verification of published information" and its accuracy. How does the BALCO leak investigation -- which involves steroid and banned substance use in sporting events years ago -- involve exigent circumstances? If so, why and what definition are you using?**

ANSWER: The BALCO leak investigation involves potentially serious criminal violations including violation of a District Court confidentiality order, perjury before the District Court, and obstruction of justice. The fact that the conduct here involved significant matters warranting thorough investigation is shown by the District Court's decision to formally refer the conduct to the Department for investigation.

Specter 149 **On January 9, the New York Times published an article highlighting the need for sentencing reform to prevent low-level offenders from burdening prison systems without achieving any real reduction in crime rates. Given the increase in both crime rates and incarceration rates, what changes, if any, in federal sentencing law might you suggest?**

ANSWER: The suggestion that America's prisons are filled with low-level offenders is inaccurate. According to the Bureau of Justice Statistics, of the more than 600,000 ex-offenders now returning to society from prison annually, 85% are either violent or repeat offenders or both. We think low-level offenders should not be subject to unduly harsh sentences, but we also believe federal law largely and adequately assures that this does not happen in federal criminal cases.

As to suggestions for change in federal sentencing law, we remain 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. According to the FBI UCR, the violent crime rate in 2005 was 23% lower than it was when the Guidelines went into effect, and the property crime rate was 31% lower. (2006 data are not yet available.) Both rates increased from 1987 to 1991 but have been in steady decline for over a decade until the recent slight uptick from the historical lows of 2004. Some experts have argued that the reduction in crime is directly attributable to the increased incarceration rates and that it took some time for the Guidelines to have an effect both as to the federal offenders and as a model that resulted in increased sentences at the state level.

Consistency and fairness in sentencing are important; a defendant's sentence should not depend on which judge happens to preside over the case. It is for this reason that we have favored legislation that would restore the full protections and principles of the Sentencing Reform Act in a manner consistent with the requirements of the Sixth Amendment. In *United States v. Booker*, 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. Thus, sentencing courts are no longer bound to follow the Guidelines as they once were but must consult the Guidelines and take them into account when sentencing. Under our proposed legislation, sentencing courts would once again be bound by the Guidelines minimum, just as they were 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.

Specter 151 **Mr. Attorney General, on December 12 of last year Director Mueller testified before this committee and verified that the FBI is pursuing the Weldon investigation and is, in fact, "having some success." Is the Department of Justice pursuing this investigation and have there been any conclusions as to the source of the leak and the circumstances surrounding it?**

ANSWER: An internal review of this matter is being conducted by the FBI. Pursuant to longstanding Department policy prohibiting disclosure of non-public information concerning pending matters, we are unable to provide further information at this time.
Specter152

Specter 152 **Has it been determined if the leak was politically motivated to coincide with the November election?**

ANSWER: An internal review of this matter is being conducted by the FBI. Pursuant to longstanding Department policy prohibiting disclosure of non-public information concerning pending matters, we are unable to provide further information at this time.

Specter 159 **Have the ISG recommendations been useful and would you give examples of successes and failures experienced by DOJ following ISG's recommendations?**

ANSWER: The ISG report presents many recommendations that relate to the Department's efforts in Iraq that are currently under review. To date, the Department has not made any decisions relating to those recommendations. The ISG report's recommendations relating to the Department of Justice presume dramatic realignment of several Iraqi ministries. As outlined in the letter from Assistant Attorney General Richard Hertling, dated January 16, 2007, the Department has undertaken numerous significant projects which collectively aim to provide Iraqis with the skills, experience and insight to assume responsibility for their own judicial security on or about the end of calendar year 2007.

QUESTIONS FROM SENATOR KENNEDY

Kennedy 163 **Warrantless Surveillance Programs: Please provide the following information on any and all warrantless telephone and electronic communication surveillance programs conducted by the US Government within the United States since September 2001: (a) The total number of any and all telephone and electronic communications intercepted, recorded or tracked in each year, by type of surveillance and by state or territory.**

ANSWER: As you know, operational details concerning the Terrorist Surveillance Program remain highly classified. Throughout the war on terror, the Administration has notified the Congress concerning the classified intelligence activities of the United States through appropriate briefings of the intelligence committees and congressional leadership. The full membership of each Intelligence Committee has been briefed on the TSP, as have other Members of the Congressional leadership.

Kennedy 164 **A complete list of any and all criminal convictions and indictments for terrorist-related activities, which relied upon information obtained by the warrantless telephone and electronic surveillance programs.**

ANSWER: Please see our response to Question 163, above.

Kennedy 165 **The total number of any and all warrantless telephone and electronic communication intercepts in which the subject or subjects had no connection to terrorism.**

ANSWER: Please see our response to Question 163, above.

Kennedy 166 **The total number of records generated by the warrantless surveillance programs in question that have since been destroyed.**

ANSWER: Please see our response to Question 163, above.

Kennedy 167 **The total number of records acquired via Warrantless Surveillance Programs that have been or are currently stored in databases, broken out by database, and the criteria used in approving data for storage in the databases.**

ANSWER: Please see our response to Question 163, above.

Kennedy 178 **The [Law Enforcement Officers' Safety Act] lacks adequate safeguards. It doesn't allow a police department to deny permits. The privilege to carry a concealed weapon is not one which should be handed out routinely. What is the benefit of taking such decisions out of the hands of the agencies and states that will be enforcing the law, when the law was very clearly designed to leave licensing discretion in their hands?**

ANSWER: The Law Enforcement Officers' Safety Act permits certain active and retired law enforcement officers to carry a concealed firearm notwithstanding any other provision of the law of any State or any political subdivision. The law defines who is qualified for this exemption. In particular, the law provides that a qualified law enforcement officer means an employee of a governmental agency who is authorized by the agency to carry a firearm; who is not the subject of any disciplinary action by the agency; and who meets standards established by the agency which require the employee to regularly qualify in the use of a firearm.

The law also provides certain conditions and certain exceptions. For example, the law "shall not be construed to supersede or limit the laws of any State that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park."

Congress established the criteria under which law enforcement agents can carry a concealed firearm.

Kennedy 183 **Is OneDOJ a data-mining program?**

ANSWER: OneDOJ is a concept to foster a broader exchange of existing criminal investigative data among DOJ components and trusted law enforcement partners. R-DEx is the system the Department of Justice currently uses to implement the OneDOJ concept. R-DEx is not a data mining program. R-DEx allows agents and officers to query specific items, such as vehicle descriptions, license plates, specific crime scene data, and types of weapons used in a crime. R-DEx has analytical capabilities, such as link analysis and geo-mapping of related incidents. However, these analytical capabilities are used only on data within existing law enforcement case management source systems. The information contained in source systems consists of unclassified criminal law enforcement records collected and produced by the following Department of Justice components: Federal Bureau of Investigation (FBI), Federal Bureau of Prisons (BOP), United States Marshals Service (USMS), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and Drug Enforcement Administration (DEA). R-DEx does not merge law enforcement data with commercial data sources or non-law enforcement data.

Kennedy 185 **What types or categories of information are included? Are any types or categories of information specifically excluded?**

ANSWER: The information submitted to R-DEx consists of unclassified criminal law enforcement records collected and produced by ATF and DEA (closed case information), and

FBI, BOP, and USMS (open case information), including: investigative reports and witness interviews from both open and closed cases; criminal event data (e.g., characteristics of criminal activities and incidents that identify links or patterns); criminal history information (e.g., history of arrests, nature and disposition of criminal charges, sentencing, confinement, and release); and identifying information about criminal offenders (e.g., name, address, date of birth, birthplace, physical description). The system also consists of audit logs that contain information regarding queries made of the system. Aside from the audit logs, all information in R-DEx represents copies of files from existing source systems. The following categories of information are generally excluded from the system: public corruption investigations; internal investigations; administrative and personnel investigations; regulatory matters; civil rights investigations involving color of law violations; sensitive sources, methods, and targets; and information prohibited from release by law or policy.

Kennedy 186 **Is the program effective? Please describe typical cases in which information gathered under the program leads to an investigation, arrest, or prosecution.**

ANSWER: Yes, the OneDOJ program is effective. The information shared among the Department's contributing components and with other federal, state and local law enforcement entities helps those entities to more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security.

There have been success stories from the pilot implementations of R-DEx from around the country:

(1) In Seattle, the DEA was able to find important information on four specific cases last year where part of the data was with local police and the federal agents had another piece of key data. By finding the critical link, arrests were made. In another case, results from an R-DEx search identified potential targets and associates in other criminal acts not before captured through traditional investigative tools such as the National Crime Information Center. The result significantly aided law enforcement in identifying gang-related crime trends not seen before due to local jurisdictional issues, differing reporting protocols, and in some cases, even variable spelling of potential subjects' names.

(2) A detective from the St. Louis Metropolitan Police Department performed an R-DEx query on a phone number that had been recovered from a suspect. The search provided important and relevant information not previously known. This allowed the detective to make a significant arrest in an investigation that had otherwise been stalled.

(3) In Missouri, a witness described a man with a *teardrop tattoo* who was seen leaving the scene of one of the crimes. A law enforcement official from the Missouri State Highway Patrol ran a search in R-DEx for anyone who fit the description and immediately found several matches. Locating suspects with similar descriptions across the St. Louis region would have previously taken 1 – 2 days.

Kennedy 187 **What safeguards are in place to ensure that the information included in the OneDOJ database is both complete and accurate?**

ANSWER: The Regional Data Exchange System (R-DEx) system that the Department uses to implement its OneDOJ program was developed and is operated consistent with the Federal Information Security and Management Act (FISMA). Data within R-DEx is limited to that contributed from existing records maintained by the Department's investigative components. Each DOJ contributing component has the duty, responsibility, and accountability to make reasonable efforts to ensure that the information it collects and then shares via R-DEx is accurate, complete, timely, and relevant. Within each component, investigators verify the information within the particular components records system. In addition, each component conducts periodic file reviews in order to verify the information.

Kennedy 188 **What safeguards are in place to ensure that the privacy rights and civil liberties of individuals are not violated by the OneDOJ program?**

ANSWER: The Regional Data Exchange System (R-DEx) system that the Department uses to implement its OneDOJ program was developed and is operated consistent with the Federal Information Security and Management Act (FISMA) and the Privacy Act.

Records submitted to R-DEx may be used for official criminal law enforcement and national security purposes only. R-DEx information may not be accessed or used for any other purpose, including general licensing, employment, eligibility for federal or state benefits, and background investigations. The Department retains control and ownership of the information that its components contribute to R-DEx. The Department information available via R-DEx may not be disclosed in response to a request made under any state or local access law, and is disclosable only in accordance with applicable federal law, including the Freedom of Information Act and the Privacy Act.

All users and the participating agencies of R-DEx are responsible for protecting the privacy interests of individuals identified in the system. These responsibilities are mandated in the Memorandums of Understanding (MOUs) between each law enforcement partner and are reiterated to each user through training.

Each Department component that contributes records to R-DEx is responsible for auditing access by other agencies to ensure appropriate use of the information. Each participating Department component is responsible for reviewing its own use of the R-DEx system and taking action to address any misuse.

Access to the R-DEx system is restricted to authorized law enforcement personnel who have undergone background checks and have appropriate training, and who have an official need for access in order to perform their professional duties, such as supervisors, law enforcement agents/officers, and task force members associated with agencies that have signed the MOU. In addition, limited access to the R-DEx system is provided to system administration and system security personnel for purposes of conducting system operation and maintenance tasks. All such

personnel (either government employees or contractors/subcontractors) are required to be vetted and cleared for system access and their access is required to be monitored and audited.

Kennedy 203 **Your response of January 18, to question 88 simply restates part of the Department of Justice regulation on the administration of Section 5 of the Voting Rights Act of 1965. Please clarify your response by listing the specific statute or statutes the Department used as the benchmark for its review of the 2006 Georgia voter photo ID law. In particular, please state whether the Department relied on the 2005 Georgia photo ID law, which was enjoined by the federal district court in Common Cause v. Billups, and if so, explain the reason for that reliance.**

ANSWER: In 2006, we precleared only those portions of the submitted 2006 Act that had neither been previously precleared, nor enjoined, which would thus make them legally unenforceable and incapable of administration pursuant to a court order, consistent with our long-standing practice.

As set forth in the State's submission, therefore, the only specific changes before us were that the Act:

(1) Required the State Election Board to formulate and conduct a voter education program with particular emphasis on proper voter identification subject to funding, whereas there was no such requirement before;
(2) Created and provided the requirements for issuance of the Georgia voter identification card, a new form of permissible voter identification to be available without cost or an oath requirement, as an acceptable form of identification for voting purposes, whereas there was no such form of identification before;
(3) Required each county board of registrars to provide at least one location within the county for the issuance of Georgia voter identification cards, whereas there had been no such requirement before;
(4) Required that the State Election Board provide each county board of registrars with the necessary equipment, forms, supplies, and training to produce Georgia voter identification cards referenced in (2); and
(5) Required the State Election Board to adopt rules and regulations for the administration of the Georgia voter identification card program referenced in (2).

Kennedy 204 **You failed to respond fully to question 89 in your answer on January 18. Please provide a report of your review of the Civil Rights Division's enforcement of Section 5, including a description of any involuntary transfers from the Voting Section. Where you mention involuntary transfers, please include the involuntary detail of Robert Berman to the Office of Personal Development.**

ANSWER: The Attorney General has had discussions with both the current Assistant Attorney General for the Civil Rights Division, who began serving in this position in November 2005, and with his predecessor about the Division's enforcement of Section 5. The Department remains confident that the Division is appropriately enforcing Section 5.

Generally, with regard to involuntary transfers, the authority to involuntarily reassign attorneys has been delegated to component heads, such as an Assistant Attorney General. Staffing decisions in the Division are based on the talents and interests of an individual and the needs of the Department. In this process, great weight is placed on the judgments of career section management.

There has been one involuntary transfer of a line attorney from the Voting Section to another Section within the Division during this Administration. That attorney was not specifically assigned to Section 5 enforcement but, as with most Section attorneys during the period between 2002 and 2005, was involved with some Section 5 review. He was not involved at all in the Georgia or Texas submissions referenced in question 89.

With regard to Mr. Berman, he requested and received a detail with the Administrative Office of the United States Courts, which he completed from September 26, 2005, to January 27, 2006. Mr. Berman decided to pursue this detail in connection with a program designed to better prepare employees for becoming candidates for the Senior Executive Service. Since Mr. Berman's return to the Civil Rights Division, he has served in a senior position in the Office of Professional Development based on the conclusion that this transfer would serve Mr. Berman's talents and interests and the needs of the Department, as they were understood.

Kennedy 205 **The Washington Post and other publications have reported that after it became public that the Department had overruled career personnel's recommendation against preclearing Georgia's 2005 voter photo ID law, Civil Rights Division employees were told to omit preclearance recommendations from their memoranda on Section 5 submissions. Please provide copies of all communications from the Chief of the Voting Section to employees of the Section addressing the procedures for administering Section 5.**

ANSWER: Career staff continues to be involved in the review and decision-making process of every Section 5 submission. We are not aware of any written communication announcing a change in policy of career staff involvement in Section 5 analysis. As with every legal analysis, recommendations under Section 5 must be balanced and include all relevant information. It is my understanding that each person involved in the Section 5 analysis shares his or her assessment and recommendation with senior career management, and the ultimate recommendation of the Section is made with the full awareness of the views of each staff member involved in the matter. For those Section 5 recommendations that are forwarded to the Assistant Attorney General, see 28 CFR § 51.3, it is my understanding that he is informed whenever a difference of opinion may exist.

Kennedy 206 **Enforcing Section 5 of the Voting Rights Act is one of the Department's most important responsibilities. Yet it appears that in recent years, the number of personnel, particularly civil rights analysts, assigned to the unit that reviews Section 5 submissions has declined sharply. Has the Department reduced the resources for the Voting Section's Section 5 enforcement unit? If so, please explain the reasons for this decision. Given the reduction in personnel, how does the Division plan to ensure that Section 5 submissions are thoroughly reviewed within the 60-day limit provided in the statute?**

ANSWER: Traditionally, resources devoted to Section 5 review have risen during the periods with many submissions for review of redistricting plans, as occurred during the first half of this decade, and receded as the redistricting season waned. In FY 2006, contrary to tradition, the Voting Section reviewed a record number of Section 5 submissions. The more than 7,000 submissions were approximately 40 percent over the normal Section 5 review workload. The Section responded with an "all hands on deck" effort; virtually all Section attorneys, including the Section Chief, assisted in the review of routine submissions.

Moreover, the Department has invigorated the Section 5 review process in the past couple of years. For example, the Voting Section has eliminated redundant and ministerial tasks previously handled by analysts, is better using technology to more efficiently use resources, is increasing the number and diversity of contacts with minority community members during review of a submission, and has increased Section 5 review process training of Section personnel.

Kennedy 207 **Please state: The number of Section 5 analysts who have left the Voting Section since 2004.**

ANSWER: Since January 1, 2004, six Section 5 analysts have retired, 4 have left to attend graduate school, 1 has left for a promotion, 1 has been promoted to attorney status, and 2 have moved to other Sections of the Civil Rights Division.

As of January 1 of each year, beginning in 2004, the number of analysts assigned to Section 5 review are as follows: 2004 - 14 analysts; 2005 - 12 analysts; 2006 - 14 analysts; and 2007 - 12 analysts.

Kennedy 208 **The number of Section 5 analysts currently in the Voting Section.**

ANSWER: As of April 1, 2007, there were 11 full time Section 5 analysts. There are also three attorneys who currently work full time on Section 5 review. In addition to these personnel resources devoted full time to Section 5 review, there are a number of additional personnel resources spent on Section 5 review on an ongoing basis: (1) there is an additional attorney currently working part time on Section 5 review; (2) each of the 8 paralegal specialists in the Section also now assist with Section 5 review; (3) each new Section attorney assists with Section 5 review; (4) Section support staff who are interested are provided the opportunity to assist in

Section 5 review; and (5) annually, the Section brings on board over 25 college and law school interns who assist in review of Section 5 submissions. Finally, other Section attorneys assist in the review of Section 5 submissions on an as-needed basis.

Kennedy 209 **The number of supervisory attorneys assigned to the Voting Section's Section 5 unit.**

ANSWER: There is one supervisory attorney for the Section 5 unit. Two additional attorneys are assigned on a full-time basis to review the work generated by the full-time Section 5 analysts, as well as the other non-full time personnel assisting in review of Section 5 submissions. At this time, one additional attorney is working temporarily on Section 5 review and other attorneys are assigned on an as-needed basis.

Kennedy 210 **In July 2006, the Boston Globe reported that political ideology has an increased role in the hiring of career attorneys in the Civil Rights Division. The Globe also reported that after the Department's hiring rules were changed in 2002 to reduce the input of career attorneys in the hiring process, only 42% of new attorneys have civil rights experience, while previously 77% had such experience. Do you agree that ideology and partisanship should have no role in the Department's hiring? Do you agree that civil rights experience is a significant qualification for those seeking employment as career attorneys in the Civil Rights Division.**

ANSWER: We respectfully disagree with many of the assertions made in the *Boston Globe* article. It is also unclear what methodology the *Globe* employed in reaching its conclusions. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. Attorneys from an extremely wide variety of backgrounds and experiences have been hired to work in the Division under this Administration. For example, the Division has hired not only attorneys with significant prior civil rights experience, but also attorneys with other crucial skills, such as a significant record of actual litigation or management experience.

The *Boston Globe* article ignores salient facts pertaining to the Division's hiring record during this Administration. For example, all five individuals hired as career section chiefs during this Administration had previously served as career attorneys in the Division. These five chiefs have an average of approximately 17 years of experience in the Division, and also had a wide variety of work experiences, including working in the Clinton White House, with the American Civil Liberties Union, and as Special Assistant to Acting Assistant Attorney General Bill Lann Lee. In sum, there is no political litmus test used in deciding to hire attorneys in the Civil Rights Division.

Kennedy 212 **At the November 2006 hearing on oversight of the Civil Rights Division, former Deputy Assistant Attorney General Robert Driscoll testified that a number of new attorneys had been hired to work in the Special Litigation Section during the current Bush Administration. Please state: (a) How many new attorneys have been hired to work in the Civil Rights Division's Special Litigation Section since 2001?**

ANSWER: Fifty attorneys were hired to work in the Special Litigation Section between 2001 and 2006. Three of these attorneys were hired by the previous Administration. An additional six attorneys were hired by the Special Litigation Section from other Civil Rights Division sections.

Kennedy 213 **How many of these attorneys had litigation experience in federal court before they were hired?**

ANSWER: The Department does not track this information.

Kennedy 214 **How many of these attorneys had experience in civil rights cases?**

ANSWER: The Department does not track this information.

Kennedy 215 **How many were members of the Federalist Society?**

ANSWER: The Department does not track this information.

Kennedy 216 **In 2003, the Department announced a diversity initiative to improve its personnel policies with respect to all employees, including minorities and women. The Department hired an outside consultant, KPMG, which examined the Department's practices, interviewed a large number of employees, and issued a report of its findings, which included concerns by minority and female attorneys and staff that they did not receive equal opportunities with respect to assignments and promotions. After the report was completed, the diversity initiative seems to have been abandoned. Please state whether the Department remains committed to the principle of diversity in its workforce, and what, if anything, has been done in response to the recommendations in the consultant's report.**
ANSWER: The Department of Justice is committed, as it has always been, to an open work force with equitable opportunities for all employees. Pursuant to the 2003 initiative, during the past four years the Department has developed and implemented a number of new programs and initiatives to promote transparency and to address essential elements of employment impacting attorneys in our work force.

These new initiatives include:

- increased outreach to students and lawyers about careers at Justice via the creation of a Deputy Director for Recruitment and Outreach;

- the requirement that components advertise all career attorney vacancies on the Department's Internet web site;
- the development and implementation of a management training program that provided coordinated diversity training to more than 300 department managers and several component heads;
- the establishment of an SES career development program that includes attorneys and other staff who may wish to apply and develop the skills necessary to assume these positions;
- the establishment of an Attorney Student Loan Repayment Program open to all Department attorneys with qualifying student loans on a competitive basis; and
- the creation of a Mentor Program for new Department attorneys and Assistant United States Attorneys.

Currently, the Department is developing additional management training programs and an improved Exit Survey system to assist in identifying what factors influence attorneys who leave the Department and what steps we can take to encourage them to stay.

Kennedy 217 **Recently, anonymous postings have appeared on the internet website criticizing the Civil Rights Division's only African American Section Chief and other Division employees. Some of these postings appear to have racial overtones, and contain information suggesting that they may have been posted by a Department employee. Is the Civil Rights Division aware of these internet postings, and has the Department taken any steps to determine whether they were made using a Department of Justice computer?**

ANSWER: The Civil Rights Division is aware of the internet postings to which you refer, and we can assure you that the Department is taking appropriate action with respect to this matter.

Kennedy 220 **For each calendar year since 2001, please list the number of section 5 analysts in the Voting Section and the number of Section 5 submissions received by the Voting Section.**

ANSWER: There were 14 Section 5 analysts in the Voting Section in 2001, 15 in 2002, 13 in 2003, 14 in 2004, 12 in 2005, and 14 in 2006. There are currently 12 Section 5 analysts in the Voting Section. The Voting Section received 4,227 Section 5 submissions in 2001; 5,910 in 2002; 4,829 in 2003; 5,211 in 2004; 4,699 in 2005; and 7,080 in 2006.

Kennedy 221 **What criteria does ATF use to decide which gun dealers to inspect? Does ATF focus its inspections on gun dealers with the largest number of crime gun traces?**

ANSWER: ATF uses several criteria in determining which Federal firearms licensees to inspect each year. ATF considers, for example, the number of firearms traces (especially the number of unsuccessful traces), the number of multiple sales transactions, and the geographical location of the states from which the firearms were manufactured or lawfully transferred prior to the

firearms' recovery at a crime scene. Local offices may also assign inspections based upon information received locally (e.g., allegations of wrongdoing received from purchasers, employees, or the public).

Where a licensee is inspected and violations are found, ATF meets with the licensee and explains the nature of the violations uncovered and the licensee has the opportunity to ask questions and learn how to avoid violations in the future. ATF conducts recall inspections of all firearms licensees with whom such a conference was held. ATF also plans to inspect all licensed pawnbrokers by the end of FY 08 because of the high correlation between firearms recovered in crime and pawnbroker transactions.

Kennedy 222 **In light of the inordinate length of time that it takes to revoke the license of lawbreaking gun dealers, does the Department support reducing the burden of proof to revoke a license from a "willful" violation to a "knowing" violation, one that would not require years of repeat offenses to revoke a license? Does ATF support repealing the Federal law that requires it to stay license revocations through lengthy administrative appeals?**

ANSWER: The Gun Control Act (GCA) employs the "willful" standard for revocation of licenses held by manufacturers, importers, dealers and collectors. As courts have explained, willful violations require ATF to prove the licensee intentionally violated a known legal duty or acted with indifference to a known obligation.

Since 1986 and the passage of the Firearms Owners Protection Act, ATF has revoked Federal firearms licensees for "willful violations" of the Gun Control Act. The courts have repeatedly upheld revocations of licenses based on the current willfulness standard.

There is no Federal law requiring the issuance of a stay during the appeal process. The current Federal regulation pertaining to revocation procedures provides ATF with discretion to grant a stay where "justice so requires" and ATF finds this authority sufficient to issue or deny a stay of revocation where appropriate.

Kennedy 223 **In light of the atrocious record of these and other gun dealers who have had their licenses revoked and the failure to bring charges against them, does the Department's failure to bring such charges suggest that the laws regulating gun dealers need to be strengthened?**

ANSWER: The Gun Control Act contains sufficient authority to pursue criminal charges against Federal Firearms licensees who have violated the law. ATF conducts criminal investigations and—working with the United States Attorneys' Offices-- pursues criminal charges when appropriate.

Kennedy 225 **Given the value of trace data to Congress, law enforcement agencies, researchers and the public, does the Department support ending these legislative restrictions on ATF's disclosure of crime gun trace data? If not, why shouldn't the public know as much as possible about how guns get into the hands of criminals, with appropriate exemptions for ongoing investigations, as ATF has done in the past?**

ANSWER: Both ATF and the Department of Justice are in favor of protecting law enforcement sensitive trace data from disclosures unrelated to law enforcement investigations. By way of background, a form of the disclosure restriction has appeared in ATF's annual appropriation since 2003. The restriction was originally passed in support of ATF's long-standing policy of disclosing firearms trace results only to the law enforcement agency that recovered the crime gun and requested ATF to trace the firearm. *See, e.g.*, H.R. Rep. No. 575, 107th Cong., 2d Sess. 20 (2002). This policy recognizes the legitimate interest of the law enforcement agency that provided the investigative information to ATF concerning the traced crime gun in deciding how to utilize and whether to disseminate sensitive law enforcement information that could jeopardize pending investigations. These law enforcement concerns would not be present with respect to releases of aggregate trace-related information that does not provide information relative to a specific investigation.

Kennedy 226 **Why shouldn't ATF have maximum flexibility in sharing crime gun trace information with other law enforcement agencies and Congress? Isn't it true that the release of the aggregate number of FN Herstal Five Seven firearms traced to crime would not hinder law enforcement investigations?**

ANSWER: ATF has the flexibility to share crime gun trace information with a law enforcement agency or a prosecutor as pertains to their geographic jurisdiction. The current restriction also allows for the disclosure of statistical information concerning total production, importation, and exportation by each licensed manufacturer and importer. ATF's primary law enforcement concern is the disclosure of data that could impact ongoing investigations, i.e., by linking the traced firearm to the firearms dealer, retail purchaser(s) and possessor(s), and where the crime occurred, which is prohibited under the current restriction. The release of the "aggregate" number of FN Herstal Five Seven firearms traced would not hinder law enforcement investigations.

Kennedy 227 **Please explain whether this review of California license revocations was initiated by ATF and why ATF is conducting this review. Please provide a copy of any "ATF guidelines and policy" concerning license revocations. Please explain ATF's procedure for conducting this review and how and when the results of this review will be disseminated to the public.**

ANSWER: At the request of an industry association, ATF initiated a review of license revocations in California. Partnerships are critical to ATF's success; therefore, ATF takes very seriously concerns from members of the industry concerning alleged abuse of discretion in pursuing administrative actions such as license revocations.

ATF has thoroughly reviewed each case requested by the association and has found that, in every case, ATF field officials acted appropriately in pursuing license revocation, or, as the case may be, a lesser sanction, for apparent willful violations of the law. ATF typically does not release the results of internal deliberations and has no plans to do so in this case. ATF's license revocation policies are not released to the public under the Freedom of Information Act because such release could reasonably be expected to interfere with pending or prospective enforcement proceedings.

Kennedy 228 **Please state the number of federal firearms license revocations in California and nationwide each year from 2000 to the present, and any actions that ATF is planning to take as a result of this review.**

ANSWER:

FFLs Revoked	National Totals	CA Totals
2000	37	4
2001	22	2
2002	22	0
2003	21	4
2004	54	4
2005	104	4
2006	115	19

ATF has thoroughly reviewed each case brought to its attention by the industry association and has found that, in each instance, ATF field officials acted appropriately in pursuing license revocation, or, as the case may be, a lesser remedy, for apparent willful violations of the law. ATF does not anticipate taking any further action at this time.

Kennedy 229 **Did anyone at ATF or the Justice Department bring to the gun industry's attention what NSSF calls an "apparent spike" in license revocations? Has ATF or the Justice Department met with or spoken with any representatives of NSSF, gun dealers, or manufacturers, or gun lobby groups such as the National Rifle Association, concerning gun dealer revocations or this review of dealer revocations? If so, with whom has ATF or the Department met or spoken, and when did these meetings or conversations occur?**

ANSWER: ATF routinely discusses firearms compliance-related matters with industry members and other interested parties. For example, ATF makes a presentation and hosts a booth at the Sporting and Hunting and Outdoor Trade Show, holds quarterly meetings with major firearms industry trade groups, and communicates with the firearms industry and the public through newsletters, web postings and other media. Further, ATF field offices regularly hold firearms seminars throughout the country (in FY 06, ATF conducted approximately 120 firearms industry seminars).

Kennedy 234 **Does the Department attach a high priority to ensuring that the NICS system operates as effectively as possible to prevent sales of guns to criminals?**

ANSWER: Yes.

Kennedy 239 **Please state the number of cases that the ATF has referred to prosecutors for Brady Law violations in each year from 2003 to 2006, and the number of convictions obtained in each of these years.**

ANSWER: Please see the chart, below.

NICS/Brady Cases		
	Referred to US Attorney	**Convictions**
Year	**Cases**	**Defendants**
2003	363	161
2004	307	154
2005	293	133
2006	222	101

Kennedy 240 **Are you satisfied with the Bush Administration's record of failing to prosecute 99% of the cases where criminals have committed a federal crime by lying about their criminal records in attempting to obtain guns?**

ANSWER: The Administration takes gun crime seriously and the Department of Justice has made the aggressive prosecution of those who violate our nation's gun laws a top priority. In the six years since Project Safe Neighborhood's inception, the Department has filed twice as many federal firearm cases than in the six years prior to Project Safe Neighborhood. The Administration maximizes limited resources by targeting the most serious offenders who lie on criminal background checks, especially those who have used that lie to successfully obtain a firearm. It is paramount to note that the overwhelming majority of the individuals who lie on the background check form are prevented from illegally buying firearms from federally licensed firearm dealers. In short, the system works. Individuals who are ineligible to possess firearms are denied firearms by the National Instant Background Check System (NICS). Moreover, in the small number of cases in which NICS is able to obtain information about a purchaser's prohibited status only after the sale, NICS refers the case to the Bureau of Alcohol, Tobacco, Firearms and Explosives for retrieval of the firearm.

QUESTIONS FROM SENATOR BIDEN

Biden 243 **Can you assure the members of the Senate Judiciary Committee and the Senate Select Committee on Intelligence that if the Administration revives the so-called Terrorist Surveillance Program or initiates any program that intercepts without Article III or FISA Court approval the communications of American citizens in the United States, you will inform all members of both Committees?**

ANSWER: Throughout the War on Terror, the Administration has notified the Congress concerning the classified intelligence activities of the United States through appropriate briefings of the intelligence committees and congressional leadership. The Administration is committed to this process and will continue to provide such briefings.

Biden 244 **The so-called Terrorist Surveillance Program was begun in October 2001. You noted in your January 17, 2007 letter to Judiciary Committee Chairman Leahy and Ranking Member Specter that, "In the spring of 2005 ... the Administration began exploring options for seeking such FISA Court approval." Why did it take the Administration three-and-a-half years to explore options for obtaining FISA Court approval?**

ANSWER: As explained in our letter, the orders are innovative and complex. The President has been committed to making maximum use of the authorities provided by FISA, and taking full advantage of developments in the law. Further details on this question have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Biden 245 **Your January 17, 2007 letter also stated that "any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to the approval of the Foreign Intelligence Surveillance Court." Can you assure the American people that all national security related interception of communications will now be overseen by the FISA Court?**

ANSWER: We take your question to refer to electronic surveillance, as that term is defined in FISA, that is conducted by the Executive Branch for foreign intelligence purposes. FISA itself expressly authorizes electronic surveillance without court order under certain circumstances. *See, e.g.*, 50 U.S.C. § 1802; 50 U.S.C. § 1805(f). Outside of these circumstances, we are not aware of any electronic surveillance that is being conducted without FISA Court approval or the approval of a federal court under Title III.

Biden 246 **Please provide me and my appropriately cleared staff a copy of the FISA Court orders referenced in your January 17, 2007 letter to Judiciary Committee Chairman Leahy and Ranking Member Specter.**

ANSWER: Please see our response to Question 67, above.

Biden 253 **On November 30, 2001, you wrote an op-ed touting the Administration's decision to implement military commissions, saying they can "dispense justice swiftly." But more than five years after September 11, 2001, the Administration has not successfully tried a single person under the military commission system. If the Administration's objective was to "dispense justice swiftly," why did the Administration not seek to utilize a more established legal forum?**

ANSWER: As that op-ed noted, military commissions were, and remain, necessary not only to administer justice efficiently, but also to deal with issues relating to classified information and the availability of witnesses. Those issues would make it difficult in many cases to simply utilize the federal courts. Moreover, we must take issue with the suggestion that military commissions are not well established: George Washington used military commissions during the American Revolution, President Lincoln used military commissions during the Civil War, and President Roosevelt used military commissions during World War II. The commissions established pursuant to the President's initial order went above and beyond the process provided in those historical examples.

In those past conflicts, the United States was successful in relying on military commissions "to dispense justice swiftly." In this case, the detainees charged before military commissions succeeded in using the federal courts to stop military commission trials before they could even begin. Such a challenge was historically unprecedented and reflects the more assertive role that the courts have assumed in recent decades. Now that Congress has clarified the governing law under the Military Commissions Act, we are hopeful that the trials will move forward expeditiously.

Biden 254 **Why did the Administration choose not to work with Congress immediately after September 11, 2001, to ensure that the Administration's approach to the trial of terrorist detainees was firmly supported by law?**

ANSWER: As the Supreme Court recognized in *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), the President's power to convene military commissions is firmly supported by both the Constitution and the law of war. *See id.* at 2774. In our Nation's history, Congress had never established a statutory system of military commissions, and indeed, Article 21 of the Uniform Code of Military Justice expressly preserved the President's authority to conduct such trials apart from the court-martial system. Following the Supreme Court's decision in *Hamdan*, the Administration worked with Congress to establish a statutory structure under the Military Commissions Act.

Biden 255 **Have you learned any lessons through this experience? If so, please explain those lessons learned.**

ANSWER: We have learned that the institutions of American democracy are strong and flexible enough to respond to the threats posed by the War on Terror. The Military Commissions Act reflects an extended conversation among the Executive Branch, Congress, and the Supreme Court that has resulted in a fair and appropriate system for the trial of captured terrorists in this armed conflict.

Biden 261 **How many DEA agents and non-agents do you expect to retire in the next two years? How does the Department intend to ensure that DEA retains the personnel, resources, and capabilities to do its job as current agents and non-agents resign and retire, and new personnel are not hired to assume their duties?**

ANSWER: Our retirement statistics for the last four Fiscal Years are as follows:

Fiscal Year	03	04	05	06
Agents	86	86	99	95
Non-Agents	93	110	123	114
Total	179	196	222	209

The population is aging at a steady rate, and in light of the decrease in retirements during FY 06, we project between 230 and 300 retirements (for both agents and non-agents) for each of the next two Fiscal Years. The chart below displays total annual losses of employees due to all factors, including resignations, retirements and other employee actions.

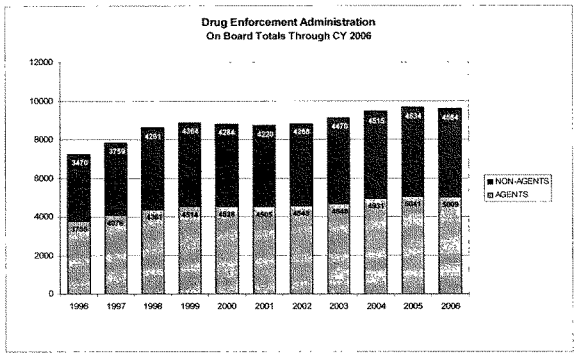
Series Category	03	04	05	06	Total
Other	271	321	315	327	1234
Special Agent	158	149	156	157	620
Total	429	470	471	484	1854

DEA will stretch its resources using the "force multiplier" effect of its agent force, task force officers and technological investments in order not to lose ground gained in past years. In doing so DEA will continue to support its most critical programs such as priority drug investigations, the drug flow prevention strategy and financial investigations. Relying on the cooperative partnerships nurtured around the country, DEA will continue to carry out its core missions and enforcement efforts.

Biden 264 **Please provide data in the form of a chart regarding DEA agent and non-agent personnel for the years 1996-2006. Please also list specifically: (1) the number of personnel employed under each category (agent and non-agent) for each year; (2) the cost of each agent and non-agent; (3) the percentage of the President's DEA budget request that relates to these positions; and (4) the percentage of appropriated funds that were dedicated to salary and expense for these DEA agents and non-agents.**

ANSWER: Please see the four charts, below.

264 (1) – The number of personnel employed under each category (agent and non-agent) for each year.



264 (2)- Cost of each agent and non-agent for each fiscal year covering the period:
(FY 1996 - FY 2006)

	Special Agent			Non-Agent		
	Pay & Benefits	Other Expenses	Total	Pay & Benefits	Other Expenses	Total
FY 1996	93,992	55,396	149,388	56,860	27,120	83,980
FY 1997	94,473	60,784	155,257	57,151	29,758	86,909
FY 1998	99,580	62,407	161,987	60,240	30,552	90,792
FY 1999	103,314	60,908	164,222	62,500	29,818	92,318
FY 2000	110,161	62,183	172,344	66,641	30,443	97,084
FY 2001	117,854	69,970	187,823	71,295	34,255	105,549
FY 2002	125,397	76,317	201,714	75,858	37,362	113,221
FY 2003	130,273	81,933	212,206	78,808	40,111	118,919
FY 2004	139,104	80,915	220,019	84,150	39,613	123,763
FY 2005	144,990	83,127	228,117	87,711	40,696	128,407
FY 2006	151,633	83,443	235,076	91,730	40,851	132,580

Notes:
1. Pay and Benefits obligations were obtained via DEA's Financial System. Please note that DEA converted to a new financial system in FY 1998, and as a result, FY 1996 and FY 1997 figures are based on estimates.
2. Other expenses (non-pay and non-benefits) were obtained using the recurring costs from DEA's new position cost modules. Via this methodology, approximately 50% of DEA's non-pay and non-benefits obligations are tied to FTE. Other expenses exclude program costs not directly tied to a position.

264 (3)- Percentage of FY 2007 President's Budget request that relates to these positions:

	Special Agent			Non-Agent		
	Pay & Benefits	Other Expenses	Total	Pay & Benefits	Other Expenses	Total
FY 2007	30%	18%	48%	17%	8%	25%

Note: Of the FY 2007 President's Budget, 48% (30% Pay & Benefits; 18% Other Expenses) funds Special Agent positions, and 25% (17% Pay & Benefits; 8% Other Expenses) funds non-Special Agent positions.

264 (4)- Percentage of appropriated funds that were dedicated to salary and expense for these DEA agents and non-agents for each fiscal year covering the period: (FY 1996 - FY 2006)

	Special Agent			Non-Agent		
	Pay & Benefits	Other Expenses	Total	Pay & Benefits	Other Expenses	Total
FY 1996	32%	19%	51%	17%	8%	25%
FY 1997	32%	19%	51%	17%	8%	25%
FY 1998	30%	19%	49%	16%	8%	25%
FY 1999	31%	18%	49%	18%	8%	26%
FY 2000	31%	18%	49%	18%	8%	26%
FY 2001	31%	19%	50%	18%	8%	26%
FY 2002	31%	19%	50%	18%	9%	26%
FY 2003	31%	20%	51%	18%	9%	26%
FY 2004	32%	19%	51%	18%	8%	26%
FY 2005	33%	19%	53%	18%	8%	26%
FY 2006	32%	17%	49%	17%	8%	25%

Notes: Please see the notes that accompany Part 2 of Question 264.

Biden 272 **I recently introduced legislation, entitled the Homeland Security Trust Fund Act of 2007, to create a homeland security trust fund that will set aside $53.3 billion for the exclusive purpose of investing in our homeland security. With this funding, I propose to implement the 9/11 Commission Recommendations, fully fund the COPS program, hire 1,000 new FBI agents, and invest in critical infrastructure protection. What priorities would you fund with the benefit of the additional resources contemplated by the legislation?**

ANSWER: On Monday, February 5, 2007, the President transmitted his FY 2008 budget request to the Congress. The President's Budget contains the details of the Justice Department's resource requirements, including a total of $3.3 billion in counterterrorism and homeland security-related program needs for the FBI, DEA, ATF, the litigating components (including the U.S. Attorneys and the National Security Division), and the Office of Justice Programs (including the COPS program), as well as other DOJ components engaged in protecting the Nation from acts of terrorism. Of the Department's total FY 2008 budget, some $227 million is requested to fund program enhancements in these components. These investments, as detailed in our FY 2008 budget request, represent the priorities that would benefit from additional resources.

Biden 273 **"Several years ago, the Voting Section of the Civil Rights Division began tracking the time spent by its attorneys and staff on each case to facilitate responses to congressional inquiries and congressional oversight requests. To facilitate this Committee's oversight efforts, please provide the following information concerning the work of the Voting Section staff: a) For each year between January 2003 and the present, identify the total number of staff hours, broken down by job title (e.g., Chief, Deputy Chief, Trial Lawyer, Paralegal, Civil Rights Analyst, etc.) for the following ("litigation" includes pre-filing settlement negotiations and time spent developing and implementing any consent decrees or memoranda of agreement):**
(1) Investigations under Section 2 of the Voting Rights Act ("VRA");
(2) Litigation under Section 2 of the VRA;
(3) Investigations under Section 203 of the VRA;
(4) Litigation under Section 203 of the VRA;
(5) Investigations under Section 208 of the VRA;
(6) Litigation under Section 208 of the VRA;
(7) Investigations under the National Voter Registration Act ("NVRA");
(8) Litigation under the NVRA;
(9) Investigations under the Help America Vote Act ("HAVA");
(10) Litigation under HAVA;
(11) Investigations under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA")
(12) Litigation under UOCAVA;
(13) Investigations for failure to comply with Section 5 of the VRA;
(14) Section 5 enforcement actions;
(15) Investigations in response to Section 5 declaratory judgment actions;
(16) Litigation of Section 5 declaratory judgment actions;
(17) Investigation of bailout actions under Section 4(a) of the VRA;

(18) Litigation of bailout actions under Section 4(a) of the VRA;
(19) Federal observer coverage;
(20) Review of submissions under Section 5 of the VRA;

ANSWER: The Voting Section uses the Interactive Case Management System, as does every litigating section in the Civil Rights Division. ICM does not provide for accurate calculation and/or categorization of the information requested. The Department of Justice is in the process of developing a Department-wide Litigation Case Management System (LCMS). The LCMS is projected to improve the flow of case information across components in the Department. The Division's ICM system will be replaced by LCMS in the next few years.

Biden 274 **"For each activity identified in (a), specify the number of staff hours broken down by job title (e.g., Chief, Deputy Chief, Trial Lawyer, Paralegal, Civil Rights Analyst, etc.) and case (if applicable) for all actions primarily for the benefit of the following groups (e.g., a Section 2 case brought on behalf of African-American voters). Jurisdictions currently under investigation that have not been sued need not be identified by name, but the staff time spent on all such investigations should be included separately.**
(1) African-Americans;
(2) Latinos;
(3) American Indians;
(4) Alaska Natives;
(5) Asian-Americans; and
(6) Arab-Americans.

ANSWER: Please see our response to question 273, above.

Biden 276 **Do you support a congressional effort to ban it?**

ANSWER: President George W. Bush has said that "racial profiling is wrong and we will end it in America." In 2001, the President directed the Attorney General to review the use of race by federal law enforcement agents and to develop specific recommendations to end racial profiling. Implementing that directive, the Department of Justice issued racial profiling guidelines in 2003, becoming the first Administration in history to generally prohibit the use of racial profiling by federal law enforcement officials.

QUESTION FROM SENATOR FEINSTEIN

Feinstein 285 **Are there mechanisms in place to allow individuals to correct records in the OneDOJ database if it collects false or inaccurate information about them? If so, what are they? If not, why not?**

ANSWER: Each Department component that contributes data to R-DEx is responsible for making reasonable efforts to ensure that information contributed is accurate, complete, timely, and relevant. Individuals seeking to contest or amend information maintained in the R-DEx system are entitled to do so in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a. The R-DEx Privacy Act system of records notice, 70 Fed. Reg. 29,790, 39,792 (July 11, 2005), amended in non-pertinent part, 70 Fed. Reg. 72,315 (December 2, 2005) and 72 Fed. Reg. 4532 (January 31, 2007), sets forth procedures for individuals seeking to contest or amend information maintained in R-DEx. In the system notice, it is noted that certain information may be exempt from contesting record procedures in accordance with the exemption established for criminal law enforcement information in subsection (j)(2) of the Privacy Act , 5 U.S.C. § 552a(j)(2). In accordance with the Privacy Act, the Department has published an exemption regulation applicable to R-DEx at 28 C.F.R. 16.33 (2006).

QUESTIONS FROM SENATOR FEINGOLD

Feingold 289 **On January 17, 2007, you sent a letter to the Chairman and Ranking Member of the Senate Judiciary Committee informing them that the President had decided to terminate the NSA wiretapping program and bring it under recently issued FISA court orders. Section 601 of FISA requires that the Department provide the following, as part of its next semi-annual report: "a summary of significant legal interpretations of [FISA] involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice," and "copies of all decisions (not including orders) or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this Act." Because of the significance of these materials, and the Committee's strong interest in them, please provide them immediately. If you are not willing to do so, explain why not.**

ANSWER: Please see our response to Question 67, above. The Department also will continue to submit semi-annual reports consistent with 50 U.S.C. § 1871.

Feingold 290 **Please answer the following questions about the FISA court's orders. To the extent that your answers require the disclosure of classified information, please provide them in the appropriate setting. (a) You told the Senate Judiciary Committee that the President is still "doing what he can do under the law to protect America." What circumstances caused you to conclude that the NSA wiretapping program could be conducted under FISA without undermining American security interests?**

ANSWER: As we stated in our letter of January 17, any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protect the Nation from al Qaeda—the very speed and agility that was offered by the TSP. The orders issued by the FISC on January 10 will allow the necessary speed and agility while providing substantial advantages. Further details on this highly classified matter have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Feingold 292 **Your letter referred to the FISA court issuing "orders." How many orders did the FISC issue?**

ANSWER: The contents of the orders (including the number of orders) are highly classified. However, the highly classified orders have been provided to the Intelligence Committees, and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Feingold 293 **Do you currently have plans to file more applications with the FISA court under this new framework?**

ANSWER: As you know, FISA requires periodic renewals of orders issued authorizing electronic surveillance. *See* 50 U.S.C. § 1805(e). The Government anticipates filing applications for renewals of the January 10, 2007 orders.

Feingold 294 **Are the court's orders based on the court's determination that probable cause exists with respect to particular identified individuals, to identifiable groups of individuals, or to some other classification?**

ANSWER: As we have explained, further details concerning the FISC orders cannot meaningfully be provided in this format without exposing highly classified operational details. Further details concerning the orders have been provided to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Feingold 295 **The FISA statute requires that each FISA court order contain findings that there is probable cause to believe that the specific target of the electronic surveillance is a foreign power or an agent of a foreign power, and that each of the facilities or places at which the electronic surveillance is directed is being used or is about to be used by a foreign power or an agent of a foreign power. Were each of these requirements met in this case?**

ANSWER: Yes.

Feingold 296 **During your testimony, you mentioned that the relevant FISA applications are "different than a normal FISA application." If you are utilizing individualized orders, as FISA contemplates, how do the FISA orders your letter discusses differ from standard FISA orders?**

ANSWER: Please see our response to Question 294, above.

Feingold 297 **I understand that the Department filed your January 17 letter in the pending lawsuit in the Sixth Circuit Court of Appeals, which is currently considering whether the wiretapping program is unconstitutional. What effect does the Department think this letter will have on that and other pending lawsuits?**

ANSWER: On January 25, the Department of Justice filed submissions in the United States Court of Appeals for the Sixth Circuit in cases 06-2095 and 06-2140 arguing that the cases should be dismissed. The impact of the January 10 orders on other litigation will be assessed on a case-by-case basis.

Feingold 298 **Does the Department intend to seek to dismiss the constitutional challenge currently pending before the Sixth Circuit on the NSA wiretapping program?**

ANSWER: On January 25, the Department of Justice filed submissions in the United States Court of Appeals for the Sixth Circuit in cases 06-2095 and 06-2140 arguing that the cases should be dismissed.

Feingold 300 **According to the New York Times' Executive Editor, Bill Keller, the Bush Administration knew the New York Times was investigating this program a year before the story broke on December 16, 2005. Your letter states you first sought FISA authorization in the spring of 2005, which would apparently have been after you knew the New York Times investigation was under way. When you were before the Judiciary Committee on January 18, 2007, you said your decision to seek FISA Court approval for the NSA wiretapping program did not relate to the New York Times investigation of the program. Instead, you said, you were moved to seek FISA approval "because of the discourse, the concerns raised, questions asked in [the Judiciary] Committee." However, the New York Times story was not published until December 16, 2005, so there was no public discourse or Committee questions about the program in the spring of 2005. With that in mind, do you wish to add to your ANSWER to my question? Why did you decide to seek FISA Court approval in the spring of 2005?**

ANSWER: Our January 17 letter does not state that the Administration first sought FISA authorization in the spring of 2005. Rather, our letter states that "[i]n the spring of 2005 – well before the first press account disclosing the TSP – the Administration began exploring options for seeking . . . FISA Court approval" of the electronic surveillance being conducted as part of the TSP. As you know, the first press account of the TSP was published in December 2005, and the FISC did not issue orders until January 10, 2007. During the time period between when TSP was publicly disclosed and the FISC orders were issued, substantial public discourse took place. This discourse, of course, was one of the factors that contributed to the ultimate decision to seek FISC orders, but the fact is that the Administration began exploring options for obtaining such authorization well before the TSP was publicly disclosed. Further details concerning the orders have been provided to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Feingold 301 **When you were last before the Committee in July 2006, I asked you to provide the Judiciary Committee with some basic information about the Administration's legal theories, as they evolved from 2001 to 2005, regarding the NSA wiretapping program. At that time, you would not commit to providing this information to the Committee. I also received a letter on January 16, 2007, from the Office of Legislative Affairs indicating that you will not do so. (a) Given your letter of January 17, 2007, will you now provide this information to this Committee? If not, why not? What privilege do you rely on in refusing to comply with a legitimate oversight request?**

ANSWER: With respect to the FISC orders, see response to Question 67. To the extent your question concerns the Terrorist Surveillance Program (TSP), operational details concerning the TSP remain highly classified. Throughout the war on terror, the Administration has notified the Congress concerning the classified intelligence activities of the United States through appropriate briefings of the intelligence committees and congressional leadership. The full membership of both intelligence committees has been briefed on the TSP.

Feingold 302 **Please explain to what you were referring in your January 17, 2007, letter when you used the phrase "developments in the law."**

ANSWER: Please see our response to Question 294, above.

Feingold 304 **Is it the position of the Justice Department that after the Military Commissions Act, individuals who are picked up inside the United States and detained as enemy combatants, and who are not U.S. citizens, cannot challenge their detention in court through habeas proceedings?**

ANSWER: We believe Congress answered that question in section 7 of the Military Commissions Act (MCA), which provides that "[n]o court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." 28 U.S.C. § 2241(e)(1). We would expect, however, that any individual picked up inside the United States and detained as an enemy combatant would be given a hearing before a CSRT, with a subsequent appeal to the United States Court of Appeals for the District of Columbia Circuit. That appeal would provide for federal court review of the lawfulness of the detention of the individual in a manner that fully satisfies the constitutional right to habeas corpus, even if that right applied.

Feingold 305 **The Defense Department recently issued its rules for trial by military commission. (a) What role did the Justice Department play in drafting these rules? Who, specifically, was involved?**

ANSWER: The Department of Defense had the primary responsibility for issuing the Manual for Military Commissions. The MCA provides that the Secretary of Defense shall consult with the Attorney General in issuing those rules, and accordingly, members of the Department of Justice worked with the Department of Defense on the Manual. *See* 10 U.S.C. § 949a(a).

The initial draft was prepared by career military lawyers from the Office of Military Commissions within the Department of Defense. Attorneys from the Department of Justice then worked with that Office and representatives from DOD's Office of General Counsel, the service general counsels, and the Judge Advocates General in further developing the draft. The results of that work were submitted for comment to other interested departments in the Executive

Branch, and the final product was submitted for review and approval by the Secretary of Defense.

Feingold 306 **To what extent did Justice Department officials working on these rules consult with Judge Advocates General with experience in military trials?**

ANSWER: As noted, representatives of the Judge Advocates General worked closely with other attorneys at the Department of Defense and the Department of Justice in preparing the Manual for Military Commissions. These rules were developed through an exhaustive and collaborative interagency process, which drew upon the experience of military lawyers and civilian lawyers at both departments.

Feingold 307 **What other agencies and officials were involved in developing these rules?**

ANSWER: In addition to the Department of Justice, we understand that the Department of Defense received input from other interested departments and agencies in the Executive Branch, including the Department of State, the Central Intelligence Agency, and the Office of the Director of National Intelligence.

Feingold 308 **Has the Department engaged in contingency planning for any future attack inside the United States?**

ANSWER: Yes. The Department participates actively in interagency planning to prepare for a future attack in the United States. Pursuant to Homeland Security Directive (HSPD) – 5, the Department participated in the development of the National Response Plan to align Federal coordination structures, capabilities and resources into a unified, all-discipline, and all-hazards approach to the management of domestic incidents, including terrorist attacks. A copy of this plan, including its Terrorism Incident Law Enforcement and Investigation Annex, is publicly available on the Department of Homeland Security home page at www.dhs.gov/nrp. Every United States Attorney's Office nationwide has a critical incident plan in place as well. Since September 11, 2001, these plans have been strengthened and an annual exercise requirement was added to them. The Department also plans and participates in exercises throughout the year, at the intergovernmental and interagency level, as well as within the Department itself, to work to ensure preparedness in the event of an attack.

Feingold 309 **Does it have written plans for steps to take in the event of another attack, including such steps as arrests, detentions, or legislative proposals? Have you considered how to respond to an attack effectively without alienating the communities that may be important to helping with an investigation? If so, please describe those plans and supply a copy of them.**

ANSWER: As described in the answer to question 308, above, the Department has undertaken extensive activities with the goal of preventing, containing, and responding to another attack. The Department regularly evaluates whether additional authorities or other legislation is needed to better protect the country against the threat of terrorism, but none of the Department's legislative proposals are contingent on the occurrence of another terrorist incident. The Department is engaged in ongoing outreach efforts to the Arab-American and Muslim communities on civil rights issues. This effort was particularly intense at critical junctures, such as the three months after 9/11 or during events such as the conflict in Lebanon and the London bombings, but is part of a sustained and ongoing process of outreach. The Department participates in a Department of Homeland Security rapid response protocol that brings together government officials and community representatives within hours after an incident. This protocol was, for example, activated after the London terror arrests in August 2006, and allowed government officials to help dispel rumors, as well as to hear community concerns about public rhetoric and the government response.

Feingold 319 **Do you support legislation banning racial profiling?**

ANSWER: President Bush has said that "racial profiling is wrong and we will end it in America." In 2001, the President directed the Attorney General to review the use of race by federal law enforcement agents and to develop specific recommendations to end racial profiling. Implementing that directive, the Department of Justice issued racial profiling guidelines in 2003, becoming the first Administration in history to generally prohibit the use of racial profiling by federal law enforcement officials.

Feingold 322 **If the reports are true, do you believe that barring the Ismails from entering the U.S. was legal? If so, under what legal authority?**

ANSWER: Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

Feingold 323 **If the reports are true, did you or anyone else under your authority participate in the decision to keep the Ismails out of the country, including giving advice on whether such actions would be legal?**

ANSWER: Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

Feingold 325 **Have any charges been filed against Muhammad or Jaber Ismail?**

ANSWER: Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

Feingold 327 **Do you believe that the law could benefit from any legislative improvements? Please provide detailed recommendations for what areas might benefit from further reform.**

ANSWER: The statistics indicate that the PLRA is successfully striking an appropriate balance between discouraging meritless suits while allowing inmates with substantive claims to litigate in the federal courts without prepayment of filing fees. The jurisprudence regarding the PLRA's application is fairly well-settled at this juncture, providing ample guidance to litigants. Accordingly, we do not believe that the PLRA requires amendment at this time.

Feingold 328 **The Commission specifically suggested four improvements: 1) eliminating the physical injury requirement; 2) amending the rules governing filing fees and attorneys fees; 3) revising the settlement requirements; 4) changing the exhaustion rule. Which of these, if any, do you think would be worthwhile?**

ANSWER: We believe the PLRA is functioning effectively and we do not support the amendments proposed by the Commission.

The physical injury requirement codified at 42 U.S.C. § 1997e(e) discourages the filing of unsupported claims for mental and emotional injuries, and accomplishes Congress' purpose in limiting unmeritorious prisoner lawsuits. This requirement comports with well-settled tort principles and the Supreme Court's decision in *Memphis Community School Dist. v. Stachura,* 477 U.S. 299, 309-10 (1986), which held that a constitutional tort plaintiff could not recover for the abstract "value" or "importance" of a constitutional right. *Id.* at 309-10; *see also Carey v. Piphus,* 435 U.S. 247, 255 (1978) (holding constitutional tort plaintiff must prove actual injury to be entitled to recover damages).

The PLRA's filing fee provisions permit inmates to pay the filing fee over time – a right not afforded to other plaintiffs in federal courts. This approach strikes a good balance between giving inmates access to the courts and deterring frivolous suits. As several courts of appeals have noted, the filing fee provisions of the PLRA, codified at 28 U.S.C. § 1915, serve a valuable purpose by exposing inmates to the same financial risks and considerations faced by other litigants. *See, e.g., Lyon v. Krol,* 127 F.3d 763, 764 (8th Cir. 1997); *Leonard v. Lacy,* 88 F.3d 181, 185 (2d Cir. 1996). Also, the PLRA's provisions on attorneys' fees, codified at 42 U.S.C. § 1997e(d)(2)-(3), allow attorneys who represent inmates who prevail in suits filed under 42 U.S.C. § 1983 to be fairly compensated for their services.

The PLRA generally requires that consent decrees including prospective relief be narrowly drawn, extend no further than necessary to correct the violation of a federal right, and be the least intrusive means necessary. Moreover, the PLRA requires courts to give substantial weight to any adverse impact on public safety or the operation of the criminal justice system. *See* 18 U.S.C. § 3626(a)(1), 3626(c)(1). These provisions permit parties to litigation raising broad challenges to prison conditions to resolve those cases via settlement, while at the same time ensuring that prison administrators retain appropriate flexibility to accomplish their critical mission of protecting public safety.

With regard to the PLRA's requirement that inmates permit prison officials to administratively resolve their grievances before filing suit, subsequent to the publication of the Commission's report, the Supreme Court decided two cases interpreting 42 U.S.C. § 1997e(a), *Woodford v. Ngo,* 126 S. Ct. 2378 (2006) and *Jones v. Bock,* 75 U.S.L.W. 4058 (U.S. Jan. 22, 2007). Combined with the Supreme Court's decision in *Porter v. Nussle,* 534 U.S. 516 (2002), those opinions have appropriately resolved the main concerns regarding the PLRA's exhaustion requirement.

QUESTIONS FROM SENATOR SCHUMER

Schumer 331 **At the hearing on January 18, 2007, you refused to answer whether the orders signed by a judge or judges of the FISA Court authorized individual warrants or broader program warrants. Please answer that question. If you do not, please explain what national security interest would be jeopardized by answering that general question.**

ANSWER: As we have explained, further details concerning the FISC orders—including the legal theories underpinning those orders—cannot meaningfully be provided in this format without exposing highly classified operational details. Further details concerning the orders have been provided to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Schumer 332 **At the hearing on January 18, 2007, I asked you whether – notwithstanding the apparent decision finally to conduct the NSA surveillance program within FISA – you believed that you were legally required to go to the FISA court. You evaded the question. Please answer directly and provide an answer beyond merely stating that "moving forward," it is the Administration's intent to work within FISA. Do you believe that FISA court approval is legally required to conduct electronic surveillance of the type you have described or do you believe court approval is merely voluntary?**

ANSWER: With respect, the Attorney General did not "evade" questions concerning whether the Administration was legally "required" to obtain the orders issued by a Judge of the FISC on January 10, 2007. The Administration was not required to do so. As we have consistently explained, the TSP was fully consistent with the law.

Schumer 333 **If and when the Administration were to conduct electronic surveillance outside of FISA once more, how would members of Congress and the public discover that fact?**

ANSWER: At the outset, we note that the TSP was fully consistent with FISA, for reasons that have been explained in detail to this Committee. With that said, throughout the war on terror the Administration has notified the Congress concerning the classified intelligence activities of the United States through appropriate briefings of the intelligence committees and congressional leadership. The Administration will continue such notifications to the appropriate committees and Members of Congress.

Schumer 334 **Do you commit to advising the full Congress and the American people if and when the Administration ever decides to conduct electronic surveillance outside of FISA?**

ANSWER: Please see our response to Question 333, above.

Schumer 335 **Often during your prior testimony before the Committee, you have been careful to limit your statements to "the program the President described." With respect to the announcement that the TSP program will shortly be terminated, will you confirm that when that happens, the Administration will thereafter not be conducting any electronic surveillance collection of any sort outside of FISA, whether or not it is of the type you or the President have previously described?**

ANSWER: As you know, not all electronic surveillance is subject to the provisions of FISA. For example, electronic surveillance is also authorized by statute under Title III. The President is committed to using all lawful tools to protect our Nation from the terrorist threat. However, as noted in our letter of January 17, 2007, any electronic surveillance that was occurring as part of the TSP is now subject to the approval of the FISC. We are aware of no programs of electronic surveillance, as that term is defined in FISA, that are being conducted by the executive branch for foreign intelligence purposes pursuant to the Authorization to Use Military Force, or pursuant solely to the President's authority under Article II of the Constitution. We note that FISA itself expressly authorizes electronic surveillance without court order under certain circumstances. *See* 50 U.S.C. § 1802; 50 U.S.C. § 1805(f).

Schumer 336 **In the same vein, will you confirm that the Administration does not intend to conduct any electronic surveillance collection of any sort outside of FISA, whether or not it is of the type you or the President have previously described?**

ANSWER: Please see our response to Question 335, above.

Schumer 337 **Some have suggested that your surprise announcement that the NSA surveillance program would now be conducted within the FISA law and with the supervision of the FISA court is that it is, among other things, an attempt to head off any pending legal challenge to the NSA surveillance program. Indeed, one of your own officials was quoted in the media as saying that current challenges to the constitutionality and legality of the program are "now moot." Does the Department of Justice plan to file any motion or application in any court arguing that such challenges are moot or otherwise without merit in light of the decision to terminate the so-called Terrorist Surveillance Program? If so, please describe such intentions.**

ANSWER: At the outset, we respectfully disagree with your statement that the TSP was not "conducted within the FISA law." As the Department has repeatedly explained to this Committee, the TSP was fully consistent with FISA. On January 25, the Department of Justice filed submissions in the United States Court of Appeals for the Sixth Circuit in cases 06-2095 and 06-2140 arguing that the cases should be dismissed.

Schumer 339 **Your letter, dated January 24, 2007, announced that the FISA Court had issued one or more orders in connection with the NSA surveillance program. Given that those applications were ex parte and may (because you have not denied it) involve warrants or orders that did not issue on an individualized basis, is there any mechanism for further judicial review of the constitutionality and legality of those already-issued orders?**

ANSWER: FISA requires periodic renewals of all orders issued pursuant to its provisions. *See* 50 U.S.C. § 1805(e). This statutory renewal process provides for ongoing judicial review of the orders.

Schumer 340 **Your January 17, 2007 letter also claims that this new program is the result of "taking full advantage of developments in the law." Please explain to which developments you refer, with specific citations to case law and other legal authority.**

ANSWER: As we have explained, further details concerning the FISC orders cannot meaningfully be provided in this format without exposing highly classified operational details. Further details concerning the orders have been provided to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Schumer 343 **In order to resolve its recommendation to the FBI, the Office of the Inspector General asked that the FBI provide, by December 1, 2006, an update on the status of improvements to the FBI's Correctional Intelligence Initiative. Did the FBI provide this information to the IG by the deadline of December 1, 2006? Please provide me with a copy of this update on the Correctional Intelligence Initiative.**

ANSWER: Attached as an Enclosure is the FBI's update regarding the status of completed and pending improvements regarding the Correctional Intelligence Initiative, highlighting those enhancements or accomplishments that will directly assist the Bureau of Prisons (BOP).

Schumer 344 **In the same study of prison policies and practices, the Inspector General reported that detention center personnel receive only a single page of information when a terrorist suspect is sent into their custody. In one shocking incident, staff at the Metropolitan Correctional Center in New York learned only from a news report that one of their inmates was a high-level al Qaeda operative trained in martial arts and urban warfare. What specific steps, if any, are you taking to improve information sharing between the FBI and BOP to ensure that the FBI is providing the BOP with the information that prison staff need to manage terrorist inmates safely and securely?**

ANSWER: Foremost in our efforts to ensure a fully effective intelligence partnership with the BOP is the comprehensive access to FBI intelligence information resources afforded BOP staff assigned to the National Joint Terrorism Task Force and to a number of local JTTFs. We have recently provided Intelligence Analyst (IA) training to BOP intelligence staff, and we will

continue to provide this training as appropriate. We are also in the process of developing additional instructions to all FBI field offices emphasizing intelligence sharing procedures with BOP facilities.

Schumer 347 **The Inspector General's September 2006 report on federal prisons' mail and telephone monitoring also found that your Department has no mandatory review process to determine whether SAMs are needed for inmates suspected or convicted of terrorism-related crimes. To close this gap in security, the Criminal Division merely needs to make a simple change to the U.S. Attorneys' Manual. Has this been done yet? If not, can you commit to a firm date when this change will be made?**

ANSWER: The United States Attorneys' Manual (USAM) has not been changed to create a specific mandatory procedure for reviewing each terrorism-related prisoner to determine whether special administrative measures (SAMs) should be sought. A proposal for a USAM change specifically mandating such a procedure is currently under discussion by appropriate Department officials. We will complete those discussions as soon as possible.

The Department of Justice is dedicated to considering and addressing all issues that involve the protection of our nation from acts of terrorism. The appropriate use of SAMs in terrorism-related prosecutions is one such issue. The Department's terrorism prosecutors have been directed to vigilantly consider the appropriate use of SAMs in every terrorism-related matter. Furthermore, several existing USAM provisions require prosecutors to notify, consult with, and obtain the approval of the National Security Division at several stages of terrorism-related cases. This procedure ensures appropriate Department oversight over each terrorism prosecution.

Schumer 354 **The campaign season and midterm elections of November 7, 2006, were marred by many instances of wrongdoers cynically attempting, probably with some success, to intimidate or deceive voters headed to the polls with the aim of disenfranchising these voters. According to media reports, these attempts ranged from calls to Virginia voters wrongly telling them that they were not registered, to deceptive flyers distributed by the Ehrlich and Steele campaigns in southern Maryland, to an armed man who harassed Hispanic voters outside a polling place in Arizona. I believe that the Department of Justice should be using all available means to respond to these despicable tactics.**
How many investigations, if any, is the FBI conducting that pertain to questionable or illegal tactics used during the midterm election of November 7, 2006, and the campaign season leading up to it?

ANSWER: Specific facts indicating that a violation has occurred are required in order for the FBI to initiate an investigation into allegations of election-related crimes. The initiation of each investigation must be supported by the Public Integrity Section, Election Crimes Branch or the Criminal Section of the Civil Rights Division. As a result, the FBI does not initiate investigations related to "questionable" tactics; only allegations involving violations of applicable federal law. Between 1/1/06 and 11/30/06, the FBI opened 38 formal investigations

involving alleged federal election law violations related to activity leading up to and surrounding the 11/7/06 election. These investigations encompass allegations of campaign finance violations, ballot fraud, voter intimidation, and voter fraud.

Schumer 355 **Please list all completed or ongoing FBI investigations, if any, into tactics used during the campaigns or elections of November 7, 2006, and for each case give the location and nature of the conduct being investigated.**

ANSWER: Longstanding Department policy generally precludes the FBI from commenting on the existence or status of ongoing investigations. In addition to protecting the privacy interests of those affected, the policy serves to avoid disclosures that could provide subjects with information that might result in the destruction of evidence, witness tampering, or other activity that would impede the FBI's investigation.

The following election crime investigations related to the 11/7/06 national election were opened by the FBI on or after 1/1/06 and closed on or before 12/22/06.

- Diebold software theft: investigation by the Baltimore Division into the possible theft of Diebold Election Systems, Inc., electronic voting machine software.
- Ohio State Medical Association (OSMA) Political Action Committee (PAC) embezzlement: investigation by the Cincinnati Division regarding allegations of an $83,000 embezzlement from the OSMA PAC and related false filings with the Federal Election Commission.
- Lieberman "denial of service" website attack: investigation by the New Haven Division regarding allegations of an attempted "denial of service" attack on Senator Joseph Lieberman's official Internet website immediately prior to the Democratic primary in August 2006.
- Multiple voting referral (Galesburg, Illinois, Election Department): investigation by the Springfield Division of allegations of multiple voting by a specifically identified individual.
- Harrington felon voting: investigation by the Tampa Division of taunting letters from a convicted felon who claimed to be regularly voting, despite his previous disqualifying federal felony conviction.

Schumer 359 **During Assistant Attorney General Wan Kim's appearance before the Senate Committee on the Judiciary on November 16, 2006, he indicated that voting-related enforcement is divided between the Civil Rights and Criminal Divisions due to historic "concerns that Federal prosecutors being involved in voter access issues would lead to intimidation of voters at the polls." Federal criminal prosecutors, including Assistant United States Attorneys, reportedly have served as election monitors under the auspices of the Department of Justice. Please explain how you reconcile deploying prosecutors as election monitors with the historic division between the Civil Rights and Criminal Divisions.**

ANSWER: A person's status as an Office Personnel Management employee, an attorney, or a prosecutor does not conflict at all with his or her sole function on Election Day as an observer or monitor. When Assistant United States Attorneys, prosecutors in the Criminal Section of the Civil Rights Division, or other Department attorneys and staff monitor elections, they are under the supervision and control of the Voting Section of the Civil Rights Division. Such monitoring is focused solely on the enforcement of the federal civil voting rights statutes for which the Voting Section is responsible. Any investigation of federal criminal statutes is kept separate from the enforcement of federal civil voting rights laws and is conducted under the supervision of the appropriate prosecuting office. Non-Voting Section personnel provide necessary resources that allow the Section to investigate and deter discrimination in far more places than would be possible otherwise. These personnel also add to the language skills available to the Section and enhance our ability to obtain evidence of mistreatment of language minority voters.

Schumer 360 **Currently, what Department of Justice Division or official is ultimately responsible for protecting the right to vote in America?**

ANSWER: The Attorney General of the United States bears the ultimate responsibility to enforce the federal laws that protect the right to vote in the United States.

Schumer 361 **As an organizational alternative to this historic division, the Department could unify its voting rights activities under a single manager to provide accountability and programmatic coherence. Of course, any such reorganization should be structured to ensure that voter protection activities by DOJ prosecutors will not unintentionally inhibit the exercise of the right to vote. In your view, what would be the costs and benefits of unifying the Department of Justice's voter protection activities under a single manager?**

ANSWER: The Department has historically concluded that the responsibility to ensure voter access, on the one hand, should be distinct from the responsibility to police voter fraud, on the other. For example, the Criminal Division has a great deal of institutional expertise in prosecuting all types of fraud, including voter fraud, while the Civil Rights Division is best situated to deal with issues of discrimination at the polls.

Schumer 362 **Can you suggest any restructuring of the Department's activities that would enhance your ability to protect the right to vote?**

ANSWER: The Department is constantly reevaluating its structure and performance. We welcome ideas on how we can better enforce federal law.

Schumer 363 **Currently, under 18 U.S.C. § 594, the maximum sentence of imprisonment for voter intimidation is 1 year imprisonment. Do you believe that a higher maximum penalty would be appropriate for this crime?**

ANSWER: The Department has not been presented with a specific legislative proposal in this regard but will enforce, as appropriate, any legislation that is enacted into law.

Schumer 374 **Recently released papers revealed that the FBI conducted background investigations of witnesses who were scheduled to appear at the confirmation hearings of the late Chief Justice Rehnquist. Did the FBI or any other law enforcement agency engage in any investigation of any actual or potential witness in connection with the confirmation hearing of then-judge John Roberts?**

ANSWER: To the best of our knowledge, neither the FBI nor any other law enforcement agency investigated actual or potential witnesses in connection with the confirmation of Judge Roberts. Additionally, as indicated in our answer to Question 10, above, political use of the FBI is never appropriate.

Schumer 375 **Did the FBI or any other law enforcement agency engage in any investigation of any actual or potential witness in connection with the confirmation hearing of then-judge Samuel Alito?**

ANSWER: To the best of our knowledge, neither the FBI nor any other law enforcement agency investigated actual or potential witnesses in connection with the confirmation of Judge Alito.

Schumer 379 **Please explain what specific steps, if any, you and/or Director Mueller are taking to raise the percentage of agents who have proficiency or advanced proficiency in Arabic.**

ANSWER: The FBI has a variety of training programs designed to improve the language abilities of onboard Special Agents (SAs). For example, in October 2005, the FBI established a year-long overseas Arabic language training program for SAs, with instruction concentrating on practical Arabic for professional use and including familiarization with Arab customs and traditions and with the culture of Islam. Six SAs completed the first program in November 2006.

In addition to this program, the FBI provides shorter-term Arabic language training to SAs on a regular basis. In FY 2006, 34 SAs at various levels of proficiency were provided with survival, full-time, and immersion Arabic language training. For FY 2007, 72 SAs at varying levels of proficiency have submitted applications for Arabic language training programs at DOS's Foreign Service Institute, Middlebury College, and commercial schools with which the FBI has contracts. Approval of these training requests will depend on available funding.

The FBI is in the process of developing an interactive self-study computer-based "survival" Arabic language training program that will target the specific language needs of SAs, providing them with a strong foundation in language skills on which to build higher-level proficiency. The FBI has also originated a self-study computer-based program both to teach agents to Romanize Arabic names according to Intelligence Community (IC) standards and to predict nonstandard Romanizations that may be encountered. In addition, the FBI has created new listening and speaking exams that can test for dialect-specific Arabic ability, including Egyptian, Palestinian (Levintine), Algerian, and Iraqi, and we are considering adding other dialects. In the past, all SAs studying Arabic and those applying for SA positions were tested only with exams that measured ability in the Modern Standard Arabic. These exams were not always indicative of true useful speaking or comprehension ability.

The FBI's recruitment and marketing strategies targeting Arab Americans for FBI recruitment have greatly expanded to include the following initiatives:

- A strategy to expedite the testing of SA candidates possessing fluency in Middle Eastern languages has been implemented and will continue throughout FY 2007 and 2008. This strategy immediately identifies new applicants possessing language fluency and expedites all FBI testing and processing of these critically skilled language candidates.

- The FBI has dedicated staff who are solely responsible for the development and implementation of targeted Middle Eastern recruitment strategies. These strategies include building relationships (national and regional outreach to both the public and private sector and to the academic community); education (dispelling myths and misconceptions); direct recruitment; candidate referrals, special career invitational events; collegiate recruitment; high school information sessions and career days; enhanced advertising and marketing; and the promotion of cultural awareness.

- The National Recruitment Program has been restructured to ensure greater accountability and targeted recruitment programs have been implemented nationwide.

- A Middle Eastern Recruitment Task Force has been developed, comprising respected member of Middle Eastern Professional Organizations, a Middle Eastern Advertising Agency, and current Middle Eastern FBI SAs. The Task Force held its first meeting on 11/13/06 and will meet monthly throughout FY 2007 to develop targeted recruitment strategies and to ensure these strategies are implemented with measurable results. The Task Force will also develop plans to build relationships with Middle Eastern communities and to provide appropriate training to FBI personnel and recruiters in all 56 field offices.

- The FBI is using the services of both Allied Media (a Middle Eastern Marketing Agency) and Bernard Hodes Advertising Agency to develop and implement a robust marketing strategy targeting Middle Eastern linguists for the SA position. This marketing campaign includes special career invitational events and Internet and direct marketing strategies.

- In 2006, the FBI developed the Middle Eastern Foreign Language Honors Internship Program, a targeted internship program designed specifically for students fluent in critical Middle Eastern languages. This program creates an immediate pipeline of SA candidates fluent in Middle Eastern languages.

- Advertisements have been placed in various mediums, including Al Manassah Weekly, Al Arab Weekly, Arab American Business, Copts.net, Arab American News, Aramica, The Arab Voice, Al Hureya, Al Akhbar, Al Nahar, Al Offok, Al Arabi, Detroit Chaldean Times, Arab World, Al Nashra, The Beirut, The Foreign Affairs Journal, Language Magazine, Arab American Business Journal, The Arab American Chaldean Council, Al Sahafa newspaper, Dandana Arabic Television.

- In partnership with numerous Middle Eastern organizations, the FBI hosted "An Evening with the FBI - Career Invitational" on 10/25/06 at FBI Headquarters (FBIHQ). The participating organizations invited selected members of their communities who qualified and were interested in SA positions to attend the event, and 80% of the attendees spoke a critical foreign language.

- The FBI continues to identify and participate in career and job fairs throughout the country in an effort to reach Middle Easterners interested in SA positions.

Schumer 380 **Earlier this year, the DOJ Inspector General reported that nearly 1 in 3 intelligence analyst positions at the FBI were not filled. The FBI was reportedly aiming to hire 880 new intelligence analysts by the end of this year, yet Director Mueller's testimony prepared for his last appearance before the Senate Committee on the Judiciary stated that the FBI hired only 370 analysts in FY 2006. How many intelligence analyst positions at the FBI remain to be filled, and can you commit to a date by which all of these positions will be filled?**

ANSWER: The FBI has a funded staffing level of 2,579 IAs (hollow work-year reductions are not represented in this FSL total), with an onboard complement of 2,193 IAs. Currently, we have 25 IA applicants who have completed the background investigation (BI) process and are waiting to receive letters of appointment to the FBI. Additionally, 162 IA applicants are in the BI process, and we expect that this number will yield approximately 80 new IAs, who will be eligible for hire in FY 2007. We are continuing our efforts to recruit and hire top level candidates to the FBI and are working to assess and develop workforce strategies to retain and attract applicants to the specific job skills and backgrounds needed to fill our remaining vacancies through a targeted recruitment approach.

Schumer 381 **What percentage of intelligence analysts left FBI employment in FY 2006?**

ANSWER: In FY 2006, the overall attrition rate of FBI IAs was 9%, which includes individuals who were removed, who retired, and who left the IA position but remained with the FBI. Excluding retirements and removals, the attrition rate for IAs leaving the FBI was 4.3%.

Schumer 383 **What specific steps, if any, are you and/or Director Mueller taking to remedy the current situation and to ensure that top FBI officials have a basic understanding of Islam and of Middle Eastern cultures?**

ANSWER: It is important that all FBI investigators understand the dynamics that shape the terrorist threat facing our country. The FBI has placed particular emphasis on understanding Muslim culture and the Islamic religion and has also made it a priority to ensure that our work force understands the bases of violent Islamic extremist ideologies. This dual effort is evidenced by the counterterrorism and cultural training made available to our employees. This training teaches us to interact better with Muslim communities and to build the trust critical to effective community policing. Within the counterterrorism program, the provision to our counterterrorism workforce of the correct tools and relevant knowledge is one of our highest priorities. The current senior leaders in the FBI's Counterterrorism Division (CTD) have acquired this familiarity through their daily work, their past interactions with Muslim communities during field assignments, and study in this area. These leaders are also knowledgeable regarding terrorists' operational methods and their criminal activities. Because management and leadership qualities are as important as substantive expertise, it is also important that CTD managers come to their jobs with lengthy and in-depth experience managing high-profile investigative and intelligence efforts.

Since 9/11, the FBI's counterterrorism program has grown quickly and is the FBI's top investigative priority. This rapid growth has been fueled by a reallocation of our best investigators, managers, and leaders to the counterterrorism mission. We have also refocused our recruiting and hiring to attract individuals with skills critical to our counterterrorism and intelligence missions. These new recruits have included hundreds of IAs, translators, and SAs.

Schumer 384 **In April 2005, a DOJ Inspector General review of eight FBI field offices, conducted over three days, found that three of these offices failed to review their high-priority FISA interceptions within 24 hours.**
Please state the FBI's current rule regarding how quickly FISA interceptions must be reviewed.

ANSWER: FBI policy is to review within 24 hours those intercepts under the Foreign Intelligence Surveillance Act (FISA) in the highest priority counterterrorism and counterintelligence cases (those in which the subject potentially presents a direct threat of violent terrorist activity).

Schumer 385 **Please describe what is entailed by such a review of a FISA interception.**

ANSWER: A review is completed when the linguist or analyst determines whether a session contains a threat to safety and/or security or contains actionable intelligence. If the reviewer determines there is a threat or actionable intelligence contained in the session, this information is immediately reported to parties that can act on the information.

Schumer 386 **Please explain what specific steps, if any, you and/or Director Mueller are taking to clarify the rule on reviewing FISA interceptions and to ensure that field offices are abiding by this rule.**

ANSWER: The FBI disseminated policy in 2004 and in 2006 reiterating the rule that a session is not considered reviewed until the threat information/actionable intelligence or lack thereof has been determined. This policy is reinforced through repeated FISA training.

Schumer 387 **As you know, the United Kingdom has a domestic agency, known as MI5, that is devoted to counter-intelligence and national security. Some have called for the creation of a similar agency in the United States.**

Do you think that creating an agency like MI5 would make our domestic counterterrorism efforts more effective?

ANSWER: Please see our answer to Question 388, below.

Schumer 388 **What would be the costs and benefits of using an MI5 model instead of our current counterterrorism model?**

ANSWER: The FBI believes there is no reason to separate the functions of law enforcement and domestic intelligence, as would occur if the MI-5 model were adopted. On the contrary, combining law enforcement and intelligence affords us ready access to every weapon in the government's arsenal against terrorists, allowing us to make strategic and tactical choices between the use of information for law enforcement purposes (arrest and incarceration) or intelligence purposes (surveillance and source development).

The benefits of this approach have been clearly borne out. Since 9/11/01, the FBI has identified, disrupted, and neutralized numerous terrorist threats and cells, and we have done so in ways an intelligence-only agency like the United Kingdom's MI-5 cannot.

Because of its personnel, tools, and assets, the FBI is uniquely suited for the counterterrorism mission. These resources include:

- A worldwide network of highly trained and dedicated SAs;
- Intelligence tools to collect and analyze information on threats to national security;
- Law enforcement tools to act against and neutralize those threats;
- Expertise in investigations and in the recruitment and cultivation of human sources of information;
- Longstanding and improving relationships with those in state and local law enforcement, who are the intelligence gatherers closest to the information we seek from these communities; and
- Nearly a century of experience working within the bounds of the United States Constitution.

For these reasons, the FBI believes the United States is better served by enhancing the FBI's dual capacity for law enforcement and intelligence gathering/analysis than by creating a new and separate domestic intelligence agency, which would constitute a step backward in the war on terror, not a step forward.

Experience has taught the FBI that there are no neat dividing lines distinguishing criminal, terrorist, and foreign intelligence activities. Criminal, terrorist, and foreign intelligence organizations and activities are often interrelated or interdependent. FBI files contain numerous examples of investigations in which information sharing between counterterrorism, counterintelligence, and criminal intelligence efforts and investigations was essential to the FBI's ability to protect the United States from terrorists, foreign intelligence activities, and criminal

efforts. Some cases that begin as criminal cases become counterterrorism cases, and vice versa. The FBI must sometimes initiate parallel criminal and counterterrorism or counterintelligence cases to maximize the FBI's ability to identify, investigate, and address threats to the United States. The success of these cases is entirely dependent on the free flow of information between the respective investigations, investigators, and analysts.

That said, the FBI is in the process of adopting some aspects of MI-5. One of the benefits inherent in an intelligence organization like MI-5 is its ability to establish a "requirements" process where current intelligence requirements are reviewed (whether they be terrorism, international crime, cyber crime, etc.) and knowledge gaps are identified. The next step is to get the intelligence collectors (in this case, FBI SAs from around the country) to fill in those gaps. The FBI has adapted and is incorporating this kind of intelligence requirements process, not just with respect to terrorism but for all programs. This process is invaluable in helping to better prioritize FBI resources and to identify the gaps in understanding.

In arguing that a separate domestic intelligence agency should be created, Judge Posner asserts that "the bureau's conception of intelligence is of information that can be used to obtain a criminal conviction." We emphatically disagree with this assertion. In the nearly 5 years since the attacks of 9/11/01, the FBI has evolved from a law enforcement agency focused on investigating crimes after the fact into an intelligence and law enforcement organization focused largely on preventing terrorist attacks. We have entered an era of unprecedented information sharing among the law enforcement and intelligence communities and we are continuing to build on our success in strengthening our intelligence capabilities.

The most recent step in the FBI's evolution is the establishment of its National Security Branch (NSB), which combines the capabilities, resources, and missions of the CTD, the Counterintelligence Division, and the Directorate of Intelligence (DI) under one leadership umbrella. The NSB will build on the FBI's strengths, ensure the integration of national security intelligence and investigations, promote the development of a national security workforce, and facilitate a new level of coordination with others in the IC.

Three major assessments of the FBI's intelligence capabilities have agreed that the FBI should retain its domestic intelligence responsibilities: the report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission), the assessment by the National Academy of Public Administration (NAPA) of the FBI's evolving emphasis on intelligence functions, and the report of The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (WMD Commission). In its March 2005 report, "Transforming the FBI: Progress and Challenges," the NAPA Panel on FBI Reorganization wrote: "This Panel, like the 9/11 Commission, is convinced that the FBI is making substantial progress in transforming itself into a strong domestic intelligence entity, and has the will and many of the competencies required to accomplish it. That Panel recommended that the FBI continue to be the key domestic intelligence agency responsible for such national security concerns as terrorism, counterintelligence, cyber, and transnational criminal activity."

The WMD Commission also examined the FBI's intelligence program and concluded in March 2005 that it had been significantly improved since 9/11/01. The commission rejected the need for a separate agency devoted to internal security without any law enforcement powers, recognizing that the FBI's hybrid intelligence and investigative nature is one of its greatest strengths and emphasizing the importance of the ongoing effort to integrate intelligence and investigative operations. At the same time, the commission noted that the FBI's structure did not sufficiently ensure that intelligence activities were coordinated with the rest of the IC. Accordingly, the commission recommended the creation of a "National Security Service." In response to the President's directive endorsing that recommendation, the FBI created the NSB.

Schumer 389 **I have previously questioned Department of Justice personnel about reports of FBI personnel's non-compliance with the Attorney General's guidelines on to confidential informants. To address these concerns, Director Mueller pledged that new training would be implemented as a part of the Confidential Human Source Re-engineering Project by the fall 2006. Has that training been implemented? If not, please explain why and provide a deadline for when it will be implemented.**

ANSWER: The formal training regarding the Confidential Human Source Re-engineering Project has not yet been implemented. For the past two years, the DI Human Source Re-engineering Team has worked to revise and simplify policies and processes associated with the management of confidential human sources. The principal results of this effort are the December 2006 AG Guidelines, consolidated FBI policy, and the Validation Standards Manual that flows from the AG Guidelines and the validation standards of the Office of the Director of National Intelligence. These extensively cross-referenced documents have been developed to standardize processes and ensure agency-wide compliance in terms of source management, operation, administration, and validation. Although we originally anticipated beginning training in the fall of 2006, we had to revise our training schedule because much of our time was devoted to revising the draft AG Guidelines. Only after the revised those Guidelines were signed in mid-December 2006 could detailed planning for the required training program begin. We plan to deliver this training beginning in April 2007.

The training phase of the DI's Re-engineering Project is being addressed by the Policy Implementation Team, which is composed of representatives from the FBI's Training and Development Division and DI, as well as contractors from the MITRE Corporation. The core team is augmented by an attorney from the FBI's OGC, an IA from the Criminal Investigations Branch, a member of the NSB's Communications Unit, and confidential file room personnel from the Washington Field Office. This team works in close coordination with a team representing the information technology system (Delta) that is being designed in order to ensure consistency between the information technology piece and the policy implementation piece and to facilitate the administration of the re-engineered source management processes.

The implementation plan includes Bureau-wide training for all employees (FBIHQ and the field) who are involved in human source matters. Most immediately, this plan proposes an initial three-day train-the-trainer conference on 4/15-27/07 (two consecutive sessions) for all Human Sources Coordinators and other confidential file room personnel. FBIHQ entities with a

role in Human Intelligence (HUMINT) will also be required to attend one of these sessions. The training is designed to be very interactive, consisting of an overview of the Human Source Re-engineering Project, presentations on the new and old AG Guidelines, a detailed presentation on the new validation standards policy and manual, inspection implications, and integrated case scenarios.

The newly trained trainers will be responsible for training personnel in their respective field offices and others who work with HUMINT (such as Special Agents in Charge (SACs), Assistant SACs, Chief Division Counsel, and IAs) will receive revised blocks of instruction during management and program conferences. The New Agents Training curriculum is also being revised to accommodate training in this regard.

Schumer 390 **In Director Mueller's written responses to questions I submitted following his appearance at a May 2006 oversight hearing, he stated that it was too early to determine the value of the FBI's new wInsight software tool to improve tracking of project costs. Is the wInsight program now fully functional?**

ANSWER: Yes. The wInsight software suite used by the FBI's Sentinel Program became fully operational in October 2006. Since then, wInsight has been available to multiple Sentinel managers to access data and analyze Sentinel's Earned Value Management (EVM) performance through the FBI's unclassified intranet.

Schumer 391 **If yes, please state whether the wInsight tool is meeting the FBI's expectations and requirements for project cost tracking.**

ANSWER: Please see our answer to Question 392, below.

Schumer 392 **If it is not yet fully functional, when do you expect that it will be sufficiently implemented to determine whether the Inspector General's concerns have been resolved?**

ANSWER: The wInsight tool is meeting the FBI's expectations. The Sentinel EVM System includes wInsight as a primary EVM data collection and performance analysis tool. The Sentinel EVM system has proven to be an excellent means of capturing accrued costs and the value of work accomplished, months before they appear in an invoice from Lockheed Martin. This gives the FBI an early view into work accomplished versus work planned in terms of value associated with that work.

EVM data is briefed to the FBI Director weekly and to the DOJ's Department Investment Review Board monthly. EVM data is also provided at least quarterly to the eight Congressional committees and/or Subcommittees that have Sentinel oversight. In addition, as it becomes available, EVM data is provided to GAO auditors, DOJ's OIG, and DOJ EVM auditors.

Schumer 396 **What future changes, if any, do you intend to make to respond to concerns about politicization of the hiring process?**

ANSWER: We do not intend to make any future changes in response to concerns about politicization. However, we have included a large number of career employees to participate in the Honors Program hiring process.

QUESTIONS FROM SENATOR DURBIN

Durbin 397 **I am concerned about the Justice Department's commitment to enforcing our nation's civil rights laws. I was pleased that the President signed Congress's re-authorization of the Voting Rights Act last summer, but it is one thing to have civil rights laws on the books and another thing to enforce them. In six years, the Bush Administration has filed only one lawsuit on behalf of African Americans. Last week, the Justice Department went to trial to enforce the Voting Rights Act on behalf of white voters. The 1965 Voting Rights Act has never been used to vindicate Caucasian voting rights, until now. Where is this bastion of discrimination against white voters? In Noxubee County, Mississippi, a county with a long history of discrimination against African Americans. As a prominent black Republican lawyer recently told the Washington Post: "Majority rule came to South Africa before it came to Noxubee County."**

The Justice Department has also used the Voting Rights Act to approve state photo ID laws that have an adverse impact against minority voters, the poor, and the elderly. Such laws constitute a "poll tax" according to a federal judge in Georgia. It has been reported in the Washington Post that decisions in these and other voting rights cases have been influenced by a cadre of political appointees in the Justice Department with partisan Republican backgrounds who, in several instances, have overruled the recommendations of career attorneys. At your nomination hearing in 2005, you testified that you would give "special emphasis" to the protection of voting rights. Mr. Attorney General, what efforts have you made, if any, to try and take politics out of the Justice Department when it comes to enforcing our voting rights laws?

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, and Haitian heritage. As the Jackson, Mississippi, *Clarion-Ledger* editorialized on January 31, 2007, "Discrimination is discrimination – and it's wrong in whatever color it comes. That's the law."

Our record of even-handedly enforcing federal law best demonstrates that the Civil Rights Division ("Division") makes litigation decisions that do not turn on partisan considerations. Career staff continues to be involved in the recommendation and decision-making process of every enforcement action brought by the Division under the Voting Rights Act, including the review of every Section 5 submission. Voting Section (and other Civil Rights Division) attorneys are in fact required to prepare detailed memoranda in enforcement actions, including Section 5 preclearance decisions, setting forth the facts and law on each proposed matter. Every legal analysis, including recommendations under Section 5, must be balanced and include all relevant information. The Voting Section Chief – a 30 year veteran career attorney – expects and encourages thoughtful deliberation and recommendations from Section staff, and this career official has decisional responsibility for many matters. When the decisions come to

the Assistant Attorney General for the Civil Rights Division, he also welcomes opposing views and is available for responsible, productive discussion.

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*. These cases accelerated enforcement of the rights of voters to participate free from barriers at the polls during the 2002-2004 period.

The 18 new lawsuits we filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years. During CY 2006, the Division's Voting Section continued to aggressively enforce all provisions of the Voting Rights Act, filing nine lawsuits to enforce various provisions of the Act. These cases included a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic voters, including at least three United States citizens on active duty with the United States Army, based entirely on their perceived race and ethnicity, and challenges to election systems that discriminate against African American voters in Euclid, Ohio, and Hispanic citizens of Port Chester, New York. We also recently won a major Section 2 lawsuit against Osceola County, Florida, overturning that county's discriminatory at-large election system. The Civil Rights Division also currently is defending the constitutionality of the VRARA.

In FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history, and interposed important objections to protect minority voters in Texas and Georgia. With over 7,100 submissions, the Division handled roughly 40 percent more submissions in FY 2006 than in a normal year. The Voting Section also brought the first Section 5 enforcement action since 1998. And the Voting Section has begun a major enhancement of the Section 5 review process; soon jurisdictions will be able to submit voting changes online, making the process easier, more efficient, and more cost-effective for covered jurisdictions and for the Department.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress this summer, remains strong. We filed five such lawsuits in 2006, which was only one short of the all-time record set in 2005.

The Division also had a record-breaking year with regard to enforcement of Section 208 of the Voting Rights Act. In FY 2006, the Division's Voting Section obtained 37.5%, or three out of eight, of the judgments ever obtained under Section 208 in its twenty-four year history.

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.

In CY 2006, the Voting Section also filed the largest number of suits under the National Voter Registration Act since immediately following the passage of the Act in 1995. We filed and successfully resolved lawsuits in Indiana, Maine, and New Jersey and are litigating a fourth suit filed in Missouri.

As of January 1, 2006, virtually all of HAVA's requirements became fully enforceable. In advance of this first year of nationwide implementation of the database and accessible voting machine requirements of HAVA and into this year, the Division worked hard to help states achieve timely voluntary compliance. Where that did not appear possible, the Division brought enforcement actions, filing five lawsuits under HAVA in 2006. Four suits were filed against states for failure to complete the database requirements of HAVA; two of those suits also were for violations of the accessible voting requirements. In addition, one suit was filed against a locality for its failure to meet the Election Day informational posting requirements of HAVA. We also successfully defended three additional lawsuits challenging the congressional mandates of HAVA. In addition, in Pennsylvania, where a state court had enjoined compliance with HAVA, our formal notice to the state of our intended lawsuit assisted state officials in overturning an erroneous lower court decision, so that we did not ultimately need to file to ensure compliance in Pennsylvania.

During CY 2006, the Division also deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. On November 7, 2006, more than 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.

With regard to the preclearance of the Georgia identification law, in August 2005, the Department precleared a Georgia voter identification law, which itself amended an existing voter identification statute that had been precleared by the prior Administration. This preclearance decision followed a careful analysis that lasted several months and considered all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of state photo identification and driver's license cards and the views of minority legislators in Georgia (as well other current and former minority elected officials). The data showed, among other things, that the number of people in Georgia who already possessed a valid photo identification greatly exceeded the total number of registered voters, and that there was no racial disparity in access to the identification cards. The state subsequently adopted, and the

Department precleared in April 2006, a new form of voter identification that would be available to voters for free at one or more locations in each of the 159 Georgia counties.

In *Common Cause/Georgia v. Billups*, the district court did not conclude that the identification requirement violated the Voting Rights Act. To the contrary, the court refused to issue a preliminary injunction on that ground. The court instead issued a preliminary injunction on constitutional grounds that the Department cannot lawfully consider in conducting a preclearance review under Section 5 of the Voting Rights Act. Accordingly, the court's preliminary ruling, in a matter that is still being actively litigated, does not call into question the Department's preclearance decision. In addition, the state court decision blocking Georgia's implementation of the identification requirement was issued on state constitutional grounds, and, therefore, also did not call into question the Department's preclearance decision.

Durbin 398 **What assurance can you make to African Americans that the Justice Department will do a better job of enforcing their voting rights?**

ANSWER: The Department is committed to the vigorous and even-handed enforcement of the Voting Rights Act on behalf of all Americans, including African Americans. In this Administration, the Voting Section of the Civil Rights Division has filed cases on behalf of African-American voters in many jurisdictions, including: *United States v. Crockett County* (W.D. Tenn.); *United States v. Euclid* (N.D. Ohio); *United States v. Miami-Dade County* (S.D. Fla.); and *United States v. North Harris Montgomery Community College District* (S.D. Tex.), which also involved protecting the rights of Hispanic citizens. We also successfully litigated *United States v. Charleston County, South Carolina* (D.S.C.) and successfully defended that victory through appeal to the U.S. Supreme Court.

The Department continues to seek out and prosecute cases on behalf of African-American citizens. The Voting Section continues to actively identify at-large and other election systems that violate the Voting Rights Act. Where we find such systems and where the facts support a claim, we do not hesitate to bring lawsuits. We are interested in allegations of possible Voting Rights violations from all sources and have solicited such information widely. The Department, of course, vigorously enforces all of the provisions of the Voting Rights Act. During FY 2006, the Voting Section filed 17 new lawsuits, which is double the average number of lawsuits filed in the preceding 30 years. In FY 2006, the Voting Section also processed the largest number of Section 5 submissions in its history and interposed important objections to protect minority voters in Texas and Georgia. During this Administration, moreover, we have filed approximately 60 percent of all cases ever filed under the minority language provisions of the Voting Rights Act, as well as approximately 75 percent of all cases ever filed under Section 208. 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.) and *United States v. City of Boston* (D. Mass.). We have filed the first voting rights case in the Division's history on behalf of Haitian Americans; the first voting rights case in the Division's history on behalf of Filipino Americans; and the first voting rights cases in the Division's history on behalf of Vietnamese Americans. We will continue vigorously to protect all Americans from unlawful discrimination in voting.

Durbin 399 **Last summer, an article in the Boston Globe entitled "Civil rights hiring shifted in Bush era" raised troubling questions about the hiring practices of the Justice Department's Civil Rights Division. The article said:**

"For decades, [career attorney hiring] committees had screened thousands of resumes, interviewed candidates, and made recommendations that were only rarely rejected. Now, hiring is closely overseen by Bush administration political appointees to Justice, effectively turning hundreds of career jobs into politically appointed positions."

The Boston Globe article reported that 26% of the lawyers hired into key sections of the Civil Rights Division since 2003 are members of the Federalist Society, and 17% are members of the Republican National Lawyers Association. The article also indicated that only 42% of lawyers hired into the Civil Rights Division since 2003 had any civil rights experience, while 77% hired in 2001 and 2002 had such experience. And of the 42% who had civil rights experience, half of those attorneys gained that experience by defending allegations of discrimination or fighting affirmative action. Mr. Gonzales, are you concerned about the politicization of the Civil Rights Division hiring process? Please explain.

ANSWER: We respectfully disagree with many of the assertions made in the *Boston Globe* article. It is also unclear what methodology the *Globe* employed in reaching its conclusions. There is no political litmus test used in deciding to hire attorneys in the Civil Rights Division. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. Attorneys from an extremely wide variety of backgrounds and experiences have been hired to work in the Division under this Administration. For example, the Division has hired not only attorneys with significant prior civil rights experience, but also attorneys with other crucial skills, such as a significant record of actual litigation or management experience. In addition, veteran career attorneys continue to make hiring recommendations throughout the Department and within the Civil Rights Division.

The *Globe* article, among other things, incorrectly suggests that a central hiring committee of career employees within the Civil Rights Division made all hiring decisions during previous Administrations; obtained limited information regarding attorneys hired in only three of the ten litigating sections in the Division; and did not obtain resumes of attorneys hired during previous Administrations in order to make an objective comparison. Most significantly, the *Globe* article was not based on any personal interviews of these attorneys to measure their interest in, and dedication to, enforcing the nation's civil rights laws.

The talented and accomplished individuals hired in the Civil Rights Division have a profound commitment to public service and law enforcement. Generalizations are often inaccurate and unhelpful in defining an individual. No attorney is hired based solely on his or

her resume, but rather after a profoundly more comprehensive review, including detailed personal interviews.

The *Boston Globe* article ignores salient facts pertaining to the Division's hiring record during this Administration. For example, all five individuals hired as career section chiefs during this Administration had previously served as career attorneys in the Division. These five chiefs have an average of approximately 17 years of experience in the Division, and also had a wide variety of work experiences, including working in the Clinton White House, with the American Civil Liberties Union, and as Special Assistant to Acting Assistant Attorney General Bill Lann Lee. In sum, there is no political litmus test used in deciding to hire attorneys in the Civil Rights Division.

Durbin 400 **What steps have you taken, if any, to take politics out of the hiring of career attorneys in the Civil Rights Division?**

ANSWER: Please see our response to question 399, above.

Durbin 401 **"The Justice Department has taken some troubling positions in civil rights cases that have come before the U.S. Supreme Court. In two recent cases, your department filed briefs endorsing a very restrictive view of Title VII, the nation's primary employment discrimination law. In the area of education, you have supported positions that would turn Brown v. Board of Education on its head. In the University of Michigan cases, the Supreme Court rejected your attempt to stop affirmative action on our college campuses.**

And in two cases that are pending before the Supreme Court this year, the Justice Department filed amicus briefs on behalf of white parents in opposition to voluntary school integration programs. The Justice Department briefs argue that the Seattle and Louisville public school districts should not be permitted to use race as a factor in attempting to achieve a degree of racial diversity in their schools. If the Justice Department prevails, it would likely result in the re-segregation of America's high schools and elementary schools.

Mr. Gonzales, why did the Bush Administration file amicus briefs in the Seattle and Louisville cases? Why did you feel it was in the United States Government's interest to tell local school districts that they could not try and integrate their schools?

ANSWER: The Department's position was set forth clearly in the briefs that we filed in these cases, including our statement of interest. A copy of these briefs can be found at: http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-0908.mer.ami.html (Seattle) and http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-0915.mer.ami.html (Louisville).

Durbin 402 **When you were debating internally what position to take in the Seattle and Louisville cases, what position did you personally advocate? Do you agree with the position taken by the Bush Administration in these cases?**

ANSWER: Disclosure of the requested information would violate the Department's long-standing policy against revealing internal deliberations.

Durbin 403 **In your briefs to the Supreme Court in the Seattle and Louisville cases, you argued that the use of race to try and achieve integrated schools is just as invidious as old-fashioned racial discrimination and segregation. Do you truly hold that belief?**

ANSWER: The Attorney General supports the position set forth in the briefs.

QUESTIONS FROM SENATOR GRASSLEY

Grassley 404 **I am a strong supporter of the False Claims Act, the law under which whistleblowers can sue those who have defrauded the federal government by filing false claims. These whistleblowers are key to uncovering waste, fraud, and abuse in the government and returning money to its rightful place, saving the American taxpayer millions of dollars. Your department reported that $18 billion has been recovered under my whistleblower amendments to the FCA in the 20 years since they were passed. In fact, $3.1 billion was recovered in FY06 under the FCA, nearly a billion dollars more than any other previous year's recovery. Can you tell us what the Department has been doing to increase these recoveries? Can you also tell us what kind of return that is on what is invested in these investigations? How much is being recovered for every dollar spent?**

ANSWER: The Department has always taken an aggressive approach in fighting fraud, waste, and abuse, and whistleblowers have certainly been a significant part of that fight. As you know, settlements and judgments under the False Claims Act have grown exponentially in the years since Congress amended the statute in 1986, significantly enhancing the *qui tam* provisions under the Act. Of the $18 billion recovered since 1986, $12 billion has been recovered in the last seven years. Since fiscal year 2000, the Department has recovered an average of $1.7 billion a year, with a record $3.1 million in fiscal year 2006. It is difficult to pinpoint our return on investment, but it is certainly good. False Claims Act litigation is handled jointly between Civil Division attorneys and U.S. Attorneys' Offices, along with the intensive efforts of agency lawyers, investigators, auditors, and others essential to the Department's success, each with its separate budget. It would be misleading to single out the Department's costs alone to measure return, but there can be no question that the return is high.

Regarding the Department's efforts, we have endeavored to form good relationships with whistleblowers who have brought claims of fraud against the Government supported by substantial evidence. Even when those claims are based on a mere suspicion, we work tirelessly to investigate each claim thoroughly before deciding whether to intervene or decline. We have also formed teams or task forces to handle similar claims brought in an array of cases against an industry, such as the pharmaceutical cases and the Iraqi procurement cases. This team approach establishes a reservoir of expertise and fosters cross-pollination of ideas. But, above all, we hire the best lawyers available, who are dedicated to protecting the public and whose goal in every case is to obtain the best resolution possible in the interests of justice and the United States.

Grassley 405 **Is there something more we can do here in Congress to enable you to continue or increase these investigations and recoveries?**

ANSWER: First, keep the False Claims Act strong. The False Claims Act remains one of our most effective tools in fighting fraud, both as a means of recovering funds paid as a result of fraud and as a deterrent to those who would commit fraud. From time to time, various groups have proposed amendments that would weaken the False Claims Act and make enforcement of

its provisions more difficult. We will remain vigilant in our review of such proposals and trust that we can work with Congress in keeping the False Claims Act strong.

Second, we urge Congress to pass the President's budget which includes increased funding for our enforcement efforts. With increased spending in health care, defense, homeland security, and disaster relief, it is now more critical than ever that our enforcement resources keep pace in order to address fraud adequately in those areas.

Grassley 406 **Are there other things Congress has considered doing, such as a limitation on extensions of the 60-day seal in qui tam cases, which would hamper your ability to fully investigate and prosecute the cases?**

ANSWER: We are unaware of any proposals currently being considered by Congress that would hamper our ability to fully investigate and prosecute cases, although limiting extensions of the seal to investigate what are often complex fraud allegations with criminal implications certainly would pose obstacles. We would also be wary of the establishment of reporting or other requirements which would affect the manner in which False Claims Act matters were required to be settled.

Grassley 407 **During your confirmation hearings to be Attorney General in 2005, the number of cases, brought to it by whistleblowers, the Department was joining was between 17 – 25%. You explained in your answers to my written questions that in FY03, it was 18%, and 25% in FY04.**
Can you tell me what percentage of these cases DOJ has joined in FY05 and FY06?

ANSWER: In FY05, the Department intervened in 24.8% of *qui tam* cases, and in FY06, 24.2%.

Grassley 408 **Of the cases that were declined by the Government, how many produced significant recoveries? What were the dollar amounts recovered in those cases?**

ANSWER: In FY05-06, the United States recovered $42.6 million in declined cases (as compared to over $2.5 billion in intervened or otherwise pursued cases). Recoveries ranged from $2,000 to $9.6 million, with the majority being well under $1 million. Settlements exceeded $1 million in only seven *qui tam* cases in which the Government declined to intervene.

Grassley 409 **Also during your confirmation hearings, you promised to increase the Department's commitment to qui tam cases and the whistleblowers who aid in those investigations. This commitment includes interpretation of the laws that foster qui tam, filing briefs in support of these interpretations, increased interaction with relators and their attorneys, and improved publication of successful recoveries. Can you tell me how your Department has improved in these areas in the nearly two years you've been at its helm?**

ANSWER: Our commitment to *qui tam* cases is first and foremost demonstrated by the $368 million in settlement and judgment proceeds awarded to relators in FY05-06, and also in the overwhelming success we have in such suits. Even in *qui tam* cases the Department declines, the Department continues to give support to relators in the form of *amicus* briefs to assist courts in interpreting the False Claims Act. The Department has spent extensive time monitoring *qui tam* cases pursued by relators and filing *amicus* briefs supporting the legal positions advanced by the relators in such cases. During the past year alone, the Department filed several dozen *amicus* briefs in the district and appellate courts (where we often also appeared at oral argument) arguing that cases pursued by relators were improperly dismissed due to erroneous interpretations of the False Claims Act, including whether and to what extent the Act contains a presentment requirement, the test for determining when a false statement or misrepresentation is material, and the proper standard for assessing damages. In addition, in *United States ex rel. Stone v. Rockwell International Corp.*, a case in which the United States intervened, the Department filed an *amicus* brief in the Supreme Court and appeared at oral argument defending the relator's right to receive a share of the Government's recovery. In that case, the defendant challenged the relator's right to proceed on the ground that there had been a prior public disclosure of the relator's allegations and the relator did not qualify as the original source of those allegations. In its *amicus* brief, the Government argued that the relator did qualify as an original source and urged the Supreme Court to uphold the Tenth Circuit's ruling that the relator was a proper relator under the False Claims Act.

We also continue to foster relations with relators and their counsel in other ways as well. For example, we recently amended our agreement that we typically enter into with relators and their counsel regarding information sharing. We made these changes specifically to address concerns by the relator bar.

We also participate in TAF's annual conference on *qui tam* litigation. As you know, TAF (Taxpayers Against Fraud) is a private, non-profit organization dedicated to promoting and facilitating *qui tam* litigation for whistleblowers and their counsel. We provide our more senior staff as speakers to this conference and send our more junior attorneys as participants.

Regarding publication of successful recoveries, as a matter of policy, we issue press releases in virtually all significant settlements. In *qui tam* cases, we are careful to attribute the source of the claims to the *qui tam* relator and to identify the relator award, if known at the time of settlement. In our year-end press release, we again identify our most significant recoveries and the awards made to the relators in those cases. In addition to touting the Department's successes, we regard this press release as a means of promoting the importance of *qui tam* litigation and the partnership we have with the whistleblowers who file these cases.

Grassley 410 **As you know, the President signed into law a bill many of us here on Committee worked hard on, the Adam Walsh Child Protection and Safety Act, on July 27 of last year. Can you tell us how this bill has helped in your efforts to prosecute child sex offenders so far?**

ANSWER: The Department of Justice was pleased to work with you on the Adam Walsh Act. While the Act is still relatively new, it has helped us in the following ways:

First, new 18 U.S.C. § 3509(m) is helping prosecutors keep contraband – images of child pornography – in the care, custody, and control of either the government or the court during the pendency of criminal proceedings. While defendants are currently challenging this new statute, we are cautiously optimistic that ultimately the courts will recognize that just as any other item of contraband, images of child pornography should properly remain in the custody of the government or the court.

Second, new 18 U.S.C. § 4248 provides us an important new tool to protect society from sexually dangerous persons by providing for civil commitment of these persons. As of March 2, 2007, the Bureau of Prisons had certified 26 sexually dangerous persons. While this statute has also been challenged, we are aware that one district court has rejected that challenge, finding it constitutional facially as well as applied. We look forward to continuing to use this new authority.

Third, the amendment to 18 U.S.C. § 3142 providing for electronic monitoring as a mandatory condition of pre-trial release for specified sex offenses involving minors is an additional means to protect society in those cases where courts find pre-trial release is appropriate. This amendment has also been challenged, with conflicting results so far in the courts. We are hopeful, however, that ultimately the courts will find that this amendment is constitutional.

Fourth, new 18 U.S.C. § 2250 establishes a new federal offense for failure to register as a sex offender. The United States Marshals Service has been engaged, in coordination with the Federal Bureau of Investigation and the National Center for Missing & Exploited Children, in efforts to identify and locate unregistered sex offenders. We are aware of two defense challenges to indictments under the new statute, both of which have been rejected by the courts. In one of these cases, the defendant has already pled guilty. We anticipate additional cases as the Marshals Service has, as of February 20, 2007, arrested 33 fugitives in investigations of Section 2250 violations since the enactment of the statute.

Fifth, the creation of the SMART Office within the Department of Justice's Office of Justice Programs has enabled us to provide guidance to states and other jurisdictions concerning their sex offender registration and notification programs, and to provide guidance to state legislators regarding updating of current applicable legislation. The SMART office is actively engaged in training front line state and federal law enforcement professionals, state prosecutors and other relevant parties regarding SORNA requirements. The SMART office is looking forward to the publication of guidelines that will assist jurisdictions in the implementation of the Adam Walsh Act.

Grassley 413 **Attorney General Gonzales, you probably know that I've been concerned about concentration in agriculture for quite some time. Just this past September, I wrote a letter to the Antitrust Division expressing my serious reservations with the proposed merger between Smithfield Foods and Premium Standard Farms. I'm concerned about reduced market opportunities, possible anti-competitive and predatory business practices, and increasing agribusiness consolidation. For example, in the pork industry, expanded packer ownership of hogs, exclusive contracting and captive supply are adversely impacting the ability of small independent producers and family farmers to compete in the marketplace. I'm concerned about fewer competitors, vertical integration, as well as less choice for consumers. So I wasn't particularly happy when a January 8, 2007 Legal Times article questioning the Antitrust Division's merger enforcement record was brought to my attention. I'd like some assurances that the Justice Department is doing all it can to enforce the antitrust laws, by challenging problematic deals, as well as being aggressive in going after anti-competitive business practices. How do you respond to the allegations that the Justice Department's Antitrust Division is not challenging anti-competitive mergers?**

ANSWER: The Department has a strong commitment to effective merger enforcement. In the last year, the Antitrust Division has achieved tangible results in improving its ability to identify and investigate thoroughly mergers that threaten harm to competition, and to block such mergers when appropriate. In its 2006 fiscal year, the Antitrust Division filed ten merger enforcement actions in federal district court, and in response to Division investigations, an additional six transactions were restructured by the merging parties in a manner that preserves competition without the Department needing to go to court. This represents the highest level of merger enforcement activity in the last five years. Consequently, we disagree with the allegations referenced in the question.

Grassley 414 **What is the status of the Justice Department's review of the Smithfield Foods/Premium Standard Farms merger?**

ANSWER: The Department is reviewing the proposed Smithfield Foods/Premium Standard Farms merger to determine whether it would likely harm competition in any affected market. While we cannot comment in detail on an ongoing investigation, it can be noted that the parties to this merger have publicly disclosed that they have received "second requests" for information from the Antitrust Division. The Antitrust Division is conducting a thorough analysis of the proposed merger. If it determines that the proposed merger would substantially lessen competition in any affected market, we will take appropriate enforcement action to prevent such harm.

Grassley 415 **How is the Justice Department going to be pro-active in its efforts to police anti-competitive activity in the agriculture industry?**

ANSWER: The Department takes concerns expressed by agricultural producers about competitive problems very seriously, and accordingly, the Department has been actively involved to protect competition in the agricultural sector with aggressive antitrust enforcement. Two of the Antitrust Division's litigating sections usually handle matters involving agriculture, including mergers and conduct aimed at exercising market power, and over many years of activity in the field, these sections maintain expertise specific to many agricultural industries. They are on the lookout for anticompetitive practices in the agricultural sector of our economy. In addition, the Antitrust Division's Special Counsel for Agriculture, who engages in special outreach and contact with producers and the agriculture community, works with the litigating sections to evaluate and, if appropriate, investigate complaints they learn about from that community and other sources. Finally, the Department has a longstanding practice of consulting with and sharing information and expertise with the Department of Agriculture.

Grassley 416 **Will the Justice Department work with the U.S. Department of Agriculture to address concerns that are raised by family farmers and independent producers about possible anti-competitive and abusive business practices?**

ANSWER: We are committed to preventing anticompetitive mergers or conduct from harming the agricultural marketplace, and when the facts warrant it, we take appropriate enforcement action. We have had a longstanding practice of consulting and sharing expertise with the Department of Agriculture, as memorialized in the 1999 "Memorandum of Understanding between the Antitrust Division, Department of Justice and the Federal Trade Commission and the Department of Agriculture Relative to Cooperation with respect to Monitoring Competitive Conditions in the Agricultural Marketplace." Pursuant to the Memorandum of Understanding, for many years the Department has consulted with the Department of Agriculture when appropriate regarding a number of mergers or business practices to get their views on how agricultural producers stand to be affected by the merger or practice in question, and to take advantage of USDA's knowledge and expertise in our efforts to understand the workings of often complex agricultural markets. In addition to cooperation on specific investigations, upper management of the Antitrust Division and the USDA meet intermittently to share information on agricultural issues that affect competition under our respective missions. Moreover, we have held several antitrust training sessions for USDA employees, including having an economist from USDA work on detail for several months at the Antitrust Division.

Grassley 417 **Please explain what steps the Justice Department has taken, in conjunction with its responsibility to oversee the operations of the FBI, to investigate and determine the source of leaks to the media of sensitive case information to the media in the Amerithrax case. Have any reporters been questioned about stories citing anonymous FBI sources?**

ANSWER: Pursuant to the longstanding Department policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

Grassley 418 **Have the phone records of FBI personnel been reviewed to determine whether and when they had contact with reporters?**

ANSWER: Pursuant to the longstanding Department policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

Grassley 419 **If the Justice Department has not taken these steps to determine who is responsible for the media leaks in the Amerithrax case, then please explain why not and describe how the Department expects to hold any individuals responsible for inappropriate disclosures.**

ANSWER: Pursuant to the longstanding Department policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

Department of Justice Responses to Questions for the Record posed to Attorney General Alberto Gonzales Senate Judiciary Committee Oversight Hearing January 18, 2007 (Part 1)

Answer #343 Enclosure

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No

January 25, 2007

The Honorable Paul A. Price
Assistant Inspector General
Office of the Inspector General
Evaluation and Inspection Division
Department of Justice
Suite 6100
1425 New York Avenue, NW
Washington, D.C. 20530

RE: OIG Recommendation 14, Status Update

Dear Mr. Price:

This letter is in response to the Office of the Inspector General (OIG) review of the "Federal Bureau of Prisons' Monitoring of Mail for High-Risk Inmates", A-2005-006, specifically Recommendation number 14. This Recommendation states "The FBI should continue to develop and reinforce procedures for interacting with the Bureau of Prisons (BOP) regarding international terrorist inmates, including monitoring of inmates, intelligence gathering, and sharing information and intelligence." The FBI agrees with this Recommendation and will continue to develop procedures regarding information sharing with BOP.

The FBI provided you with a letter dated September 22, 2006 in which we outlined our continuing efforts to improve and expand information sharing with the BOP. The purpose of this letter to provide you with a status report regarding our ongoing efforts.

Central to the success of the Correctional Intelligence Initiative (CII) is effective training for correctional staff in the skills necessary to accomplish the program goals. The following training initiatives have recently been completed or are well under way:

1. During the week of December 4-8, 2006, the FBI Center for Intelligence Training in Quantico, VA provided Intelligence Analyst Training for 20 BOP staff assigned as Special Investigative Agent and Linguists from ADX

Florence, Colorado; Intelligence Officers and Intelligence Research Specialists from the Joint Intelligence Sharing Initiative (JISI); the BOP's Chief of Intelligence, Central Office; the Chief, Intelligence Analysts, and Linguists from the Counter Terrorism Unit, Martinsburg, WV; and the Deputy Chief of the Sacramento Intelligence Unit.

2. The FBI held the 2006 National CII Coordinators Conference on December 12-13 at the National Counter Terrorism Center in McClean, Virginia. This training was based on the "train the trainer" concept. CII Coordinators from each FBI field office who will conduct the outreach and training for all correctional agencies within their geographical area, to include BOP facilities were in attendance.

3. An electronic communication (EC) issued on December 7, 2006 which directed all FBI field offices to develop formalized CII Outreach and Training Plans by March 1, 2007. Field offices were directed to include target dates, performance measures, CII program updates, and required reporting dates.

Progress continues to be made in the following areas:

- Continued FBI support of BOP intelligence needs with regard to vetting and screening of contractors and volunteers, information on terrorist offenders entering BOP custody, and special monitoring of BOP offenders under Special Administrative Measures (SAMs) controls.

- Continued comprehensive access to FBI resources through BOP staff assigned to the National Joint Terrorism Task Force (NJTTF) and respective JTTFs.

- FBI support to the new BOP Counterterrorism Unit (CTU) recently opened in Martinsburg, WV. Specifically, the FBI will assess the staffing of two personnel and identify necessary databases to support the mission.

- Provide guidance to all FBI field offices to clarify and expand intelligence sharing initiatives regarding terrorism matters between the FBI, BOP, and other state, county, and private correctional agencies.

- Provide continued CII training at various state, regional and national conferences. Completed CII training at recent conferences which BOP attended have included the 2006 Major Gang Task Force National Training Conference in Indianapolis, IN on September

12, 2006; FBI Boston regional training conference on September 28, 2006; and the FBI Atlanta regional conference on December 18, 2006. A CII presentation will also be made at the pending American Correctional Association (ACA) Winter Conference in Tampa on January 24, 2007, and as well as the scheduled National JTTF Conference during fiscal year 2007.

- The FBI will continue to support BOP efforts regarding internal intelligence training by providing speakers and resources as appropriate.

We believe the above noted steps will help ensure that the FBI continues our current emphasis on our ever-expanding intelligence partnership with the BOP regarding terrorism matters.

Sincerely,

Joseph Billy, Jr.
Assistant Director
Counterterrorism Division

QUESTIONS FROM SENATOR CORNYN

Cornyn 427 **"The REAL ID Act of 2005, Pub. L. 109-13, amended section 242(a)(2)(B) of the Immigration and Nationality Act (INA) and clarified the limitations on judicial review of certain agency determinations. Motivated in part by concerns raised by the U.S. Supreme Court in INS v. St. Cyr, 533 U.S. 289 (2001) – namely that an alien might face removal from the U.S. without having the opportunity to obtain any judicial review, especially of questions of law or constitutional claims – Congress passed the REAL ID Act to ensure that the alien could raise such claims in the appropriate forum, the Circuit Courts of Appeal. The REAL ID Act also was designed to reduce the piecemeal district court and Circuit Court litigation, which permitted criminal aliens to take advantage of multiple opportunities for judicial review and for the purpose of ultimately delay their removal from the United States. The REAL ID Act corrected this anomaly and required that all statutory and constitutional challenges to agency determinations raised by criminal aliens had to be funneled into a single forum – the Circuit Courts of Appeal.A survey of recent litigation addressing the jurisdiction stripping provisions of section 242(a)(2)(B) of the INA reveals confusion on the extent to which the REAL ID Act amendments affected district court jurisdiction to review agency determinations. Certain district courts have found that, in the context of the enumerated provisions in section 242(a)(2)(B)(i) of the INA (e.g., adjustment of status, cancellation of removal, voluntary departure and request for waivers of inadmissibility), they lack any jurisdiction to review agency determinations, whether or not the decisions were based on discretionary or statutory grounds. Other district courts have found that they retain jurisdiction over statutory or constitutional claims, even if the agency decision involves an exercise of discretion. As a result of the confusion on this issue, it appears that the anomaly the REAL ID Act was designed to correct has returned. Aliens, especially those who DHS may not be able to place in removal proceedings due to ongoing investigations or national security interests, have another opportunity to continue litigating their cases in multiple forums and ultimately delay their departure from the United States. Are additional amendments needed to section 242(a)(2)(B) of the INA to address this problem?**

ANSWER: Yes. Section 242(a)(2)(B) should be amended to read as follows:

"(B) Discretionary determinations and certain factual determinations. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the individual determination, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

> "(i) any individual determination regarding the granting of status or relief under section 212(h), 212(i), 240A, 240B, or 245 of this Act; or

"(ii) any discretionary decision or action of the Attorney General or the Secretary of Homeland Security under this Act or the regulations promulgated hereunder, other than the granting of relief under section 208(a) of this Act, irrespective of whether such decision or action is guided or informed by standards or guidelines, regulatory, statutory, or otherwise."

This would ensure that constitutional claims and questions of law would be reviewable in the court of appeals when DHS denies an alien adjustment of status, removal proceedings are commenced, and adjustment of status is denied before the Executive Office for Immigration Review. Discretionary decisions and factual findings would not be reviewable either in the district court or the court of appeals.

Cornyn 428 **If yes to # 1, what specific language should be amended and what impact would such changes have on DOJ attorney resources and workload?**

ANSWER: Please see the response question 427, above. There is likely to be some reduction in the workload if this provision is enacted.

Cornyn 429 **Are there additional agency determinations, whether made by DOJ or DHS, that Congress should specifically enumerate in the statute to eliminate judicial review at the district court level and limit judicial review at the Circuit Courts of Appeals?**

ANSWER: Yes. Section 242(a)(2)(C) should be amended as follows:

"Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal (irrespective of whether relief or protection was denied on the basis of the alien's having committed a criminal offense) against an alien who is removable by reason of having committed a criminal offense covered in section 212(a)(2) or 237(a)(2)(A)(iii), (B), (C), or (D) of this Act, or any offense covered by section 237(a)(2)(A)(ii) of this Act for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 237(a)(2)(A)(i) of this Act."

This would ensure that judicial review for criminal aliens is limited to constitutional claims and questions of law in the court of appeals irrespective of whether the alien was denied relief or protection based on having committed a criminal offense. Such criminal aliens also would not be able to seek judicial review in district court.

QUESTIONS FROM SENATOR CORNYN

Cornyn 420 **Can you update me on the efforts of the VCIT in general, as well as the efforts of federal law enforcement in working on the kidnappings of the Laredo Missing?**

ANSWER: The ATF is currently operating a VCIT through its field office in Laredo, Texas. The VCIT was established in October 2005. As a result of the VCIT efforts, ATF has established very successful partnerships with every local, state, and Federal agency in the area. The FBI, Laredo Police Department, and the Webb County Sheriff's office are currently the lead agencies addressing kidnappings and missing persons along the U.S.-Mexico border. Since 2005, ATF has assisted with several investigations involving attempted kidnappings, attempted murders, and a variety of other criminal acts related to the ongoing rivalry between two major drug cartels fighting for control of the northern border, specifically Nuevo Laredo, Tamaulipas, Mexico and Laredo, Texas. ATF has been successful in working with the Assistant United States Attorney's Office in the Southern District of Texas in applying Gun Control Act and National Firearms Act statutes against numerous criminal aliens and members of local organized gangs who engage in criminal conspiracies that enhance major Drug Trafficking Organizations' operations, i.e. kidnappings, murder for hire, straw purchases, and general firearms and ammunition trafficking.

Additionally, in response to your inquiry regarding violence in the Laredo region, we are attaching our responses to Questions for the Record, dated March 3, 2006, which were posed to the Federal Bureau of Investigation following a House Committee on the Judiciary Subcommittee hearing.

Cornyn 421 **Please describe the level of cooperation the Mexican government is providing to our law enforcement officials related to the violence along the Texas/Mexico border?**

ANSWER: The Department of Justice continues to strive to investigate and prosecute "narco-violence" at the Southwest Border. Recently, the Government of Mexico has demonstrated its commitment to quelling this violence and to working cooperatively with U.S. law enforcement to this end. In January 2007, Attorney General Gonzales and Mexican Attorney General Medina Mora met in Mexico City to explore ways to deepen our law enforcement cooperation, particularly as it relates to the "narco-violence" at our shared border. Several avenues for strengthening our bilateral cooperation were agreed upon, for example, the Mexican Secretary of Public Security will visit one of our Bureau of Prisons maximum security institutions and learn of our regulations to reduce contact of high security inmates with their criminal cohorts, and the Acting Director of the Bureau of Alcohol, Tobacco, and Firearms will travel to Mexico City this month to meet with Attorney General Medina Mora and his staff to discuss arms trafficking concerns. In addition, in January, the Government of Mexico extradited to the U.S.

15 fugitives who had been sought for extradition to the U.S., including the leader of the Gulf Cartel (Osiel Cardenas Guillen) who is believed to be responsible for fomenting a great deal of the narco-violence at the border, two high level members of the Tijuana Cartel, and Hector Palma Salazar, a former leader of the Sonora group. In addition, the group included other traffickers, a defendant sought for trafficking in persons, two accused of homicide, and one charged with sexual assault on minors. The cooperation level between law enforcement of our two countries is the strongest in recent memory.

The foundation for this improvement was laid over the past several years. For example, in October 2005, the Attorneys General from Mexico, the United States, the State of Tamaulipas in Mexico, and the State of Texas met in San Antonio, Texas to discuss and launch a series of law enforcement initiatives aimed at strengthening the coordinated attack on border narco-violence. The commitment demonstrated and bilateral efforts agreed upon at the time resulted in improved operational responses on both sides of the United States/Mexico border and the Mexican Government has continued to come through on that commitment. Coordination of law enforcement information-sharing between Mexican and United States law enforcement agencies, as it relates to forensics, prison security, victim/witness security, cross-border currency flows, and firearms trafficking, was also the subject of a bilateral initiative stemming from the October 2005 meeting. For instance, Mexican law enforcement has and continues to share with United States agencies critical real-time information and intelligence on criminal organizations operating along the border. Mexican law enforcement has also coordinated with the United States on search warrants, surveillance points on cartel targets, and operation checkpoints in Nuevo Laredo. In October 2005, the governments also agreed to establish points of contact and a regular course of meetings to improve and expedite information sharing opportunities to combat cross-border firearms trafficking. To that end, Mexican law enforcement has, among other efforts, been provided remote electronic access to trace seized firearms through the ATF databank, which has allowed the ATF to pursue rogue dealers in the U.S. who sold those weapons later used in drug trafficking and other violent crimes in Mexico.

In addition, as part of the U.S.-Mexico Senior Law Enforcement Plenary (SLEP), the two countries have regular meetings to coordinate initiatives, learn the progress of technical working groups, and overcome obstacles in our efforts against international criminal organizations. In October 2006, Mexican and United States SLEP officials met in Washington, D.C. where SLEP working group representatives reported on efforts against major drug trafficking groups, chemical controls, interdiction, firearms trafficking, fugitives and mutual legal assistance, money laundering and asset forfeiture, cybercrime and intellectual property violations, as well as on bilateral training and technical assistance and prisoner transfers. Among those bilateral efforts was the increased cooperation between DEA and Mexican law enforcement, particularly SIEDO (the Organized Crime Unit of the Mexican Attorney General's Office), in the sharing of information from judicially-authorized wiretaps, which in turn has resulted in an increased number of arrests in both Mexico and the United States. SLEP working group representatives also reported that in both 2005 and 2006, Mexico set new records for the number of fugitives extradited to the United States. Deportations from Mexico of

fugitives wanted in the United States also increased over these time periods, further enabling United States prosecutions. Mexican SLEP representatives also reported they have established a tip-line to deal with persons involved in trafficking activities and have proposed an outreach program in which Mexican consulates would contact the Mexican community living in the United States to educate their citizens about the dangers of trafficking in persons and how they could help law enforcement efforts. Human trafficking along the border with Mexico continues to be a serious concern for both countries.

The Department of Justice and the entire federal law enforcement community will continue to explore with Mexican law enforcement opportunities that maximize efforts on both sides for disrupting and dismantling those criminal organizations responsible for the violence along our border.

Cornyn 422 **Does the FBI or the VCIT need any additional resources or authorities in dealing with these types of cross-border crimes?**

ANSWER: The Department of Justice will work with the Office of Management and Budget and the Congress to identify the programs and budgeting needed for the FBI to continue to fulfill its responsibilities.

Cornyn 423 **What is FBI doing to reduce the background check backlog?**

ANSWER: The FBI is sensitive to the impact of the delays in processing name check requests and is doing all it can to streamline the current process. Prior to 9/11/01, annual incoming workload averaged 2,500,000 name checks requests per year, while the current incoming workload is approximately 3,600,000 name checks per year. Below are the short-term and long-term strategies the FBI is employing to address name check requests Short-term strategies:

- The FBI's National Name Check Program Section (NNCPS) is partnering with its customer agencies to obtain contractor and/or personnel support. For example, in July 2006, the Office of Personnel Management (OPM) provided contractors cleared at the Top Secret level to work on OPM's name check requests. NNCPS is working closely with USCIS to develop a similar strategy to reduce its backlog.

- The NNCPS continues to improve its Name Check Dissemination Database, eliminating the manual preparation of duplicative reports.

- The NNCPS has established standard operating procedures and implemented a new NNCP Employee Development Training Program to decrease the time it takes new employees and contractors to learn the Name Check Program processes.

- The NNCPS has begun to build an Electronic Records System comprised of scanned paper files. Efficiencies will be realized when retained files can be stored and accessed electronically.

- In an effort to ensure a more secure and timely method of sending and receiving data, the NNCPS is continually exploring innovative means of streamlining the incoming product and automating the exchange of data with our customers.

Long-term strategies:

- The FBI is developing a central repository of records in digitized form, called the Central Records Complex. Currently, when information is needed, paper files must be retrieved from one or more of over 265 locations throughout the FBI. The Central Records Complex will simplify both the storage and production of these documents.

- The FBI is conducting a fee study to permit adjustment of the fee schedule to reflect the cost of providing name check services, allowing the FBI to scale resources proportionally with workload demands.

Cornyn 424 **What is FBI doing to address the potential national security concerns that may be raised because of the delays in providing responses on background checks?**

ANSWER: For terrorism-related national security threats, the National Name Check Program (NNCP) backlog delays should not raise the concern of an undetected terrorist at large in the U.S. for the following reason. It is USCIS practice to first run an applicant's name through the Interagency Border Inspection System (IBIS). If the applicant is a known or suspected terrorist (KST) who has been watch listed as such pursuant to terrorist watch list nomination and notice protocols established by HSPDs 6 and 11, his or her name will generate an IBIS "hit," which will be immediately referred to the Terrorist Screening Center (TSC) for verification in the Terrorist Screening Data Base and further referral to the FBI's Counter-Terrorism Division (CTD) for appropriate follow-up. CTD operational response personnel refer the matter to the FBI field office where the KST is being investigated or, if another agency nominated the KST for the watch list, to that agency. In other words, any watch listed KST applicant will not be placed in the NNCP process. In addition, it is common practice in many USCIS field

offices to also contact the local FBI field office if they receive an IBIS "hit." For these KST applicants, USCIS works directly with the TSC and FBI CTD to ensure that USCIS is provided the most complete information known about them for use as appropriate in the USCIS adjudication process. DHS, the FBI and the TSC recently completed and signed a Memorandum of Understanding (MOU) to memorialize this process.

Applicants who may pose non-terrorism national security threats (e.g., economic espionage) and applicants who are not watch listed as KSTs but may be included in FBI terrorism investigations (as, for example, associates of KSTs) are referred to the NNCP process. For those and all other USCIS applicants in the NNCP process, USCIS and NNCP personnel are working on re-engineering the background process to expedite it and make it more efficient. This effort will also be memorialized in an MOU in the near future.

Cornyn 425 **What actions has DOJ taken to ensure that DHS receives expedited responses to background checks and that these responses contain sufficient information for the agency to make a decision on any immigration benefit?**

ANSWER: As explained in the response to Question 423 above, the FBI is actively engaged with USCIS in improving the background check process. The goal of USCIS and FBI efforts is to ensure that the most complete information available is disseminated to USCIS to enable the agency to perform its work. FBI and USCIS work within legal parameters in these efforts. At the same time, we are working to streamline the process by which information is gathered and shared. While FBI understands that USCIS has a need to know the derogatory information in order to perform its mission, the FBI is faced with certain legal and policy barriers that restrict the dissemination and use of some information in USCIS adjudication, such as grand jury information in purely criminal case files. We have met with USCIS numerous times and will continue to do so until the process is enhanced to our mutual satisfaction.

Cornyn 426 **When will DOJ provide DHS, particularly USCIS, with systems access to all FBI information that it needs to make defensible decisions on requests for immigration benefits (adjustment of status, employment authorization, petitions, etc.)?**

ANSWER: In addition to the MOU referenced in the response to Question 424, above, the FBI is in the process of establishing another MOU with USCIS regarding USCIS access to FBI systems in non-national security cases that complies with applicable laws, regulations, and policies. Discussions between the FBI and the USCIS in this regard are ongoing. The FBI/USCIS MOU now being negotiated will reflect an emphasis on prioritizing the search of the FBI files most likely to produce pertinent information for adjudication of the application.

Department of Justice Responses to Questions for the Record posed to Attorney General Alberto Gonzales Senate Judiciary Committee Oversight Hearing January 18, 2007 (Part 4)

Answer #420 Attachment

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 3, 2006

Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism,
and Homeland Security
The Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Assistant Director Chris Swecker, following Mr. Swecker's appearance before the Subcommittee on November 17, 2005. The subject of the Subcommittee's hearing was "Weak Bilateral Law Enforcement Presence at the U.S.-Mexico Border: Territorial Integrity and Safety Issues for American Citizens."

We hope that this information is helpful to you. The Office of Management and Budget has advised that there is no objection to the presentation of these responses from the standpoint of the Administration's program. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Robert C. Scott
Ranking Minority Member

**Responses of the Federal Bureau of Investigation
Based Upon the November 17, 2005 Hearing Before the
House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Regarding "Weak Bilateral Law Enforcement Presence
at the U.S. - Mexico Border:
Territorial Integrity and Safety Issues for American Citizens"**

1. Recently, there has been an obvious and dramatic increase in the level of violence in the Laredo region and I understand the U.S. Federal law enforcement community has responded with additional personnel. Do you think that the current level of federal agents is adequate to effectively combat the violence and prevent it from spreading into the United States?

Response:

Currently, violence on the U.S. side of the border is addressed through the coordination and leveraging of resources by U.S. federal law enforcement agencies in conjunction with additional focused support to address particular matters or events. The FBI is working with other federal entities and reviewing personnel levels to determine whether the assignment of additional personnel is necessary to prevent an increase in violence in the U.S. portion of this region.

The FBI has been advised by the Department of State (DOS) that, on the Mexico side of the border, DOS is working to assign Diplomatic Security (DS) Special Agents, known as Regional Security Officers, to the Consulates in Nuevo Laredo, Matamoros, and Nogales. DOS believes the assignment of these DS Special Agents to the border Consulates will facilitate improved information sharing between Mexican and U.S. law enforcement and intelligence authorities. According to DOS, DS Special Agents currently assigned in the border consulates of Tijuana and Ciudad Juarez have proven to be instrumental in cross-border investigations and threat counteractions.

2. Much of the violence along the border is attributed to narcotics trafficking. Would you agree with this characterization? Is it safe for U.S. citizens who are not connected to narcotics trafficking to visit Nuevo Laredo?

Response:

We believe that much of the violence along the Mexican side of the border historically has been attributable to the combination of narcotics trafficking and justice institutions that are more susceptible to corruption, rather than due to the mere presence of narcotics trafficking alone. However, the recent escalation of violence in the border area appears to be specifically

attributable to a drug cartel war over control of the Nuevo Laredo/Laredo corridor, or "plaza." Strong and effective justice institutions and greater law enforcement presence in the U.S. serve as a deterrent to violence because they increase the likelihood of apprehension and incarceration. DOS issues travel advisories to U.S. citizens who travel abroad and is the appropriate agency to comment on the safety of visits to Nuevo Laredo.

3. In June, it was reported that Mexican troops and federal officers took over law enforcement activities in Nuevo Laredo. How would you rate the success of this initiative by the Mexican government? How long do you anticipate they will be present and what type of atmosphere do you foresee once they leave?

Response:

Pursuant to Operation "Secure Mexico," there was an initial period of several weeks in the early summer of 2005 during which Mexican federal officers replaced Nuevo Laredo Municipal Police Officers. While violence was not reduced during this period, the presence of Mexican federal law enforcement and military officials in Nuevo Laredo disrupted the operations of the Gulf Cartel and its enforcement arm, the Zetas, to some degree as high-value Cartel members temporarily fled the area, leaving subordinates to control the drug trafficking "plaza" in their absence. It is not clear, however, that overall drug activity was reduced, since the Cartel likely continued its operations unabated in other areas. At the end of this period, approximately 300 members of the municipal police force were fired and 250 members were re-armed and allowed to resume their duties in Nuevo Laredo. The federal military and law enforcement presence in Nuevo Laredo lessened around August 2005, but the "Secure Mexico" program continues today.

A continued Mexican federal law enforcement and military presence in the border areas over the next 12-18 months could have a significant impact on border violence in the Nuevo Laredo area if a regular rotation of federal personnel is used to avoid the compromise or corruption of these units by drug trafficking organizations and if there is improved coordination between federal and local Mexican law enforcement authorities. A reduction in drug trafficking and related violence in the broader region would require the additional use of focused, intelligence-driven operations against those who plan, direct, and engage in violence.

4. In your testimony, you outline the problem of kidnapping in the region and specifically point to the disappearance of Yvette Martinez and Brenda Cisneros. How would you describe the level of cooperation you have received from the Mexican authorities and what limitations does your agency face when attempting to locate these victims?

Response:

Notwithstanding the difficulties presented when two very different legal systems are involved, there is generally good cooperation between the FBI and Mexican authorities when we

are investigating crimes in Mexico involving United States victims. Typically, the exchange of information between FBI investigators and Mexican authorities is coordinated by FBI agents assigned as Border Liaison Officers. This liaison occurs with respect to the investigations of both non-drug related violent crimes along the U.S.-Mexico border and kidnappings, murders, home invasions, and other violent crimes motivated by drug trafficking activities. In all cases, the focus of these Border Liaison Officers is the identification of those responsible for these crimes and the safe return of any kidnapping victims.

This task is often quite challenging, because the families of kidnap victims and other victims of border violence are often unwilling to cooperate with either U.S. or Mexican authorities. This lack of cooperation may be founded on a fundamental lack of trust for law enforcement authorities, a fear of further retaliation from the criminals, or worry that law enforcement authorities will learn that the victim or family were involved in drug trafficking or other criminal activity that led to the kidnapping or other offense.

According to ordinary protocol, Mexican and U.S. authorities have exchanged information regarding the disappearance of Yvette Martinez and Brenda Cisneros. Unfortunately, as often occurs in such cases, few leads have been developed because those with information have been difficult to identify. Currently, there are few investigative avenues to pursue.

5. In August of 2005, Ambassador Garza temporarily closed the U.S. Consulate in Nueva Laredo due to the escalation in violence in the city. Does the FBI work with the State Department in protecting U.S. Citizens in the region considering the extreme proximity to U.S. soil?

Response:

Through its Border Liaison Officers, the FBI's San Antonio Division maintains contact with DS Special Agents and other personnel assigned to the U.S. Consulates near the U.S.-Mexico border, and U.S. Consulate personnel pass along to the FBI information relevant to violent crimes and other matters under the FBI's investigative jurisdiction. Among other things, the FBI has included DOS personnel in briefings conducted by Mexican authorities regarding violent crime in the Nuevo Laredo area and in meetings with Mexican and U.S. authorities to discuss methods of reducing border violence and better coordinating cross-border efforts. The FBI insures the timely dissemination of information regarding criminal activity in the border areas so the State Department and others can take appropriate action. The FBI also enhances U.S. efforts to protect citizens in these areas through the assignment of FBI Special Agents to Drug Enforcement Administration offices in this region pursuant to the "Resolution 6" agreement.

DOS has informed the FBI that, while the Consulates in Nuevo Laredo, Matamoros, and Nogales are currently covered as constituent posts by Regional Security Officers in Monterrey and

Ciudad Juarez, DOS is working to assign dedicated Special Agents to these Consulates in response to the increased violence in these border areas and to enhance the U.S. government's investigative capabilities regarding visa fraud and illegal trafficking in humans. DOS further advises that, during the temporary closure of the Consulate in Nuevo Laredo, DS Agents and other personnel were sent there to provide additional security and an intelligence/threat assessment, and that DS also provided additional security personnel to other border Consulates during 2005. DOS believes DS is crucial in keeping its Consular Affairs up to date by providing timely and relevant security and crime information that is also disseminated to U.S. citizens and law enforcement agencies.

SUBMISSIONS FOR THE RECORD

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

Sample TALON Reports from the ACLU FOIA

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UNCLASSIFIED//FOUO

TALON REPORT 902-01-03-05-152

01-MAR-2005

CAUTION:
THIS TALON REPORT IS NOT FULLY EVALUATED INFORMATION. THE INFORMATION IN THIS TALON REPORT IS NOT TO BE USED IN ANY FINISHED PRODUCT WITHOUT THE SPECIFIC APPROVAL OF COMMAND HQ. THIS INFORMATION IS BEING PROVIDED ONLY TO ALERT COMMANDERS AND STAFF TO POTENTIAL TERRORIST ACTIVITY OR APPRISE THEM OF OTHER FORCE PROTECTION ISSUES.

REPORT NUMBER: 902-01-03-05-152
REPORT DATE: 2005-03-01
CLASSIFICATION: Unclassified//FOUO
INCIDENT TYPE: Suspicious Activities/Incidents
STATUS: Closed/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D.MI GP
SUBJECT: Protest at Military Recruiting Station and Federal Building in Akron, OH on 19 Mar 05
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.
DETAILS: The Source received an e-mail on 25 Feb 05, subject: Upcoming peace/anti-war events. The e-mail was from the American Friends Service Committee (AFSC) in Northeast Ohio.

Specifically, on 19 Mar 05, there will be a 'Stop the War NOW!' rally in commemoration of the second anniversary of the U.S. Invasion/Occupation of Iraq. The Akron Rally will have a March and Reading of Names of War Dead Assemble at 11:30 AM in Grace Park at the corner of Prospect and Park streets. The Akron March begins at Noon and goes past a local military recruiting station and the FBI office. The march will end at the Federal Building in Akron, for a rally, followed by reading of names of U.S. and Iraqi war dead.

The group needs 'Hundreds of people are needed to read names.' They requested that e-mails be sent to AkronMarch19@riseup.net. Also, for more information you can contact AFSC at b7(c)

PERSONS BRIEFED LOCALLY: FPS, JTTF Dayton, OH, Fort Knox RO
COMMENTS: Per source, the information contained within this report was from an email received directly from the Internet. No effort has been made by the source to validate the credibility of the information. The contents are shared solely for informational purposes.
INCIDENT SITE: Military Recruiting Station and Federal Building
INCIDENT CITY: Akron
INCIDENT STATE: OH
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 41.0433349609375
INCIDENT LONGITUDE: -81.5216674804688
INCIDENT UTM: Northing: 4543698.74 Easting: 456155.63 Zone: 17T
INCIDENT DATE/TIME: 19-MAR-05

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-24-02-05-136_full_text

UNCLASSIFIED//LES//FOUO

TALON REPORT 902-24-02-05-136

24-FEB-2005

CAUTION:
THIS TALON REPORT IS NOT FULLY EVALUATED INFORMATION. THE INFORMATION IN THIS TALON REPORT IS NOT TO BE USED IN ANY FINISHED PRODUCT WITHOUT THE SPECIFIC APPROVAL OF COMMAND HQ. THIS INFORMATION IS BEING PROVIDED ONLY TO ALERT COMMANDERS AND STAFF TO POTENTIAL TERRORIST ACTIVITY OR APPRISE THEM OF OTHER FORCE PROTECTION ISSUES.

REPORT NUMBER: 902-24-02-05-136
REPORT DATE: 2005-02-24
CLASSIFICATION: Unclassified//LES//FOUO
INCIDENT TYPE: Suspicious Activities/Incidents
STATUS: Closed/Unresolved
CONTAINS US PERSON INFO: Yes
FROM: 902D MI GP
SUBJECT: Civil Disobedience Planned at Three New York City Area Recruiting Stations for 19 Mar 05
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE
DETAILS: Source received an e-mail from [redacted] e-mail address: (b)(7)(C) per ICE [redacted] on 21 Feb 05, Subject: 'City-Wide Mobilization Mtg WED.Feb. 23 (UFPJ).' (b)(7)(C) per ICE.

The e-mail discusses the planning for the 2-year anniversary of the War on Iraq. The planning includes four areas:

1. Buses for 250-275 people to go to a protest in Fayetteville, NC set for 18-20 March 2005.

2. 18 Mar 05. This concerns a send-off rally apparently of the 250-275 people going to Fayetteville, NC.

Start Quote

3. Saturday, March 19. Civil Disobedience at recruiting centers. Ya YA Network and Code Pink have joined WRL et al in this effort. Three Recruitment center sites--Flatbush, Kingsbridge, and Times Square--have been selected. There will be a rally at each site and then a march to the recruitment center, where those who choose to will commit civil disobedience. Others who do not want to risk arrest will leaflet, hold banners and coffins and talk to people.

End Quote

4. 20 Mar 05. A church service for peace.

Separately, an Internet search of the term 'WRL,' using www.google.com, located a link to the War Resisters League website. At http://www.warresisters.org/counter-recruitMar05.htm, the recruitment stations were

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listed as Civil Disobedience at 43 Street and Broadway in Manhattan at 12 noon. Also, listed was a demonstration in Brooklyn at 102 Flatbush Ave (near State Street) with details to be announced later. The webpage also contains links to two flyers for this event.

PERSONS BRIEFED LOCALLY: JTTF Atlanta, JTTF New York, Atlanta Field Intelligence Group, 902d MI Group Fort Knox RO, NCIS, AFSOI
COMMENTS: 1. This information was from an e-mail and a website on the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. The source feels the e-mail and website listing the locations of the New York City recruiting stations has a theme that vandalism or a direct attack on a recruiting station is permitting and encouraged by the sender. Also, civil disobedience can range from a sit-in to forcibly removing personnel from the station along with vandalism of the building(s). The source also states that there is an intense debate among the anti-war protest groups concerning whether to be nonviolent or to conduct civil disobedience. While a group may publicly call for nonviolent protests, individually many of the individual may members actually favor civil disobedience and vandalism. Also, many members of these groups view vandalism as 'nonviolent' action.

INCIDENT CITY: New York
INCIDENT STATE: NY
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 40.75
INCIDENT LONGITUDE: -73.9988861083984
INCIDENT UTM: Northing: 4511487.28 Easting: 584513.19 Zone: 18T
INCIDENT DATE/TIME: 21-FEB-0
UPDATE: (1) 02-MAR-05
DETAILS: 1.

received 3/1/2005 2:25:14 PM

(FOUO) The original source received an additional e-mail over the Internet with the following new information:

(FOUO) On 28 Feb 05, organizers for one of the protests met at the International Action Center (NFI), on behalf of 'CAN,' to discuss plans for 19 Mar 05. They want a vibrant anti-war message from a strong youth and student contingent, lively signs, and loud chants. For the protest, they plan to start their rally at 10:00 AM at Marcus Garvey Park, before marching to Central Park. They further stated, 'the march to the East Meadow of Central Park will be interrupted, not by the NYPD, but by a quick but an important stop at the recruiting center at 125th Street to protest militarism in our schools, and the return to the draft.

(FOUO) There was no information provided on planned protests at the other New York City recruiting center locations.

UPDATE: (2) 08-MAR-05
DETAILS: 2. received 3/7/2005 6:51:22 PM

The source received another e-mail directly from the Internet. Source made no effort to validate the credibility of the information and shared it solely for informational purposes.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-24-02-05-136_full_text

The key text of the e-mail follows:

-----Original Message-----
From: [(b)(7)(C)][mailto:[ ]
Sent: Sunday, March 06, 2005 9:34 AM
Subject: WRL March 19 scenario, maps, fliers, guidelines

The easiest is to visit http://www.warresisters.org/counter-recruitMar05.htm instead of reading this, there may also be info someplace deep in the unitedforpeace.org site, though there was none a few days ago. If you're rushed, see text below clumsily pasted from warresisters.org:

Map of Manhattan march

http://www.warresisters.org/images/midtownManhattan.jpg

Map of Brooklyn march

http://www.warresisters.org/images/downtownBrooklyn.jpg

fliers

http://www.warresisters.org/CDflyer3-19-05_ver1.pdf

http://www.warresisters.org/CDflyer3-19-05_ver2.pdf

versions that include blank 'local contact' boxes

http://www.warresisters.org/counter-recruitMar05.htm

MANHATTAN [click on map (left) to see detail of route]

March 19 (Saturday)

10:30 am Gather at Dag Hammarskjold Plaza

(47 St. btwn First & Second Aves.)

11:30 am Solemn procession with coffins to Times Square Recruiting Station

begins 12 noon Civil disobedience at military recruiting station (43 St. & Broadway)

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-24-02-05-136_full_text

BROOKLYN [click on map (right) to see detail of route]

March 19 (Saturday)

10:45 am Gather at two locations:

Brooklyn Public Library

(on Flatbush Ave. near Grand Army Plaza and Prospect Park)

Brooklyn Borough Hall

11:30 am Two solemn processions with coffins will begin: one along Flatbush Ave. from the library and the other through the Fulton Mall from Borough Hall 12 noon Leafletting and civil disobedience at the military recruiting offices at 102 Flatbush Ave. (near State St.)

THE BRONX

March 19 (Saturday)

11 am Vigil at recruiting offices, Fordham Rd. and Grand Concourse [Also, the day before - on Friday, Mar. 18 - there will be a demonstration at Kingsbridge Armory]

Nonviolence Training & Affinity Groups. Two nonviolence trainings are planned; one located at a church in Brooklyn and another at a church in Manhattan.

This civil disobedience action will be structured by affinity groups who will be able to act autonomously (within the nonviolence guidelines) and to participate in decision-making with the whole group.

Nonviolence Guidelines. For the purpose of building trust and a common foundation for safety, and ensure that we act in the spirit of nonviolence, participants in the action agree to the following:

* Our attitude will be one of openness and respect toward people we encounter.
* We will not use physical violence or verbal abuse toward any person.
* We will not damage any property.
* We will not bring or use any alcohol or drugs other than for medical purposes.
* We will not carry weapons.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-24-02-05-136_full_text

Participating Organizations. The NYC War Resisters League is organizing this civil disobedience action with the endorsement of United for Peace and Justice; Socialist Party USA; Voices in the Wilderness; Brooklyn Parents for Peace; Park Slope Greens; Catholic Worker; Code Pink, Not in Our Name; Ya-Ya Network; Socialist Party of NYC; Progressive Programmers League; Kairos Community: World War III Arts in Action; No Police State Coalition.

COMMENTS: Believing war to be a crime against humanity, the War Resisters League, founded in 1923, advocates Gandhian nonviolence as the method for creating a democratic society free of war, racism, sexism, and human exploitation.

Next Meeting. Thursday, March 17, 7 pm, 339 Lafayette St. (at Bleecker St.) in Manhattan. Next meeting about the Brooklyn action will be March 15, 7 pm, 123 Garfield Pl. (btwn. Fifth & Sixth Aves.), Park Slope, Brooklyn.

J O I N U S

(b)(7)(C) per ICE

For more information or how to participate in this action, please e-mail nycwrl@att.net or call [redacted] If you haven't contacted us before, please give us your name, e-mail address, telephone number, where you're from, and what previous experience (if any) you have had with nonviolent direct action.

TECH-12-04-05-008_full_text

UNCLASSIFIED

TALON REPORT TECH-12-04-05-008

12-APR-2005

CAUTION:
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REPORT NUMBER: TECH-12-04-05-008
REPORT DATE: 2005-04-12
CLASSIFICATION: Unclassified
INCIDENT TYPE: Suspicious Activities/Incidents
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: No
FROM: CS-TECH
SUBJECT: Protest planned for Fort Lauderdale Air & Sea Show
SOURCE: Miami-Dade PD

DETAILS: The Broward Anti-War Coalition (BAWC), with support from other local groups, NFI, is planning to conduct a large scale protest at the Fort Lauderdale Air and Sea show. BAWC plans to reserve space at a small park south of the show on highway A1A and shuttle protestors to the show. BAWC plans to counter military recruitment and the 'pro-war' message with 'guerilla theater and other forms of subversive propaganda', NFI.

Original Serial Number: 902dMI-11-04-05-002

Original Report Date: 11 APR 05
PERSONS BRIEFED LOCALLY: USAREC, Miami JTTF
COMMENTS: 1. The Fort Lauderdale Air and Sea Show is an annual South Florida event featuring military hardware and other standard air-show events. This event attracts a large crowd and South Florida Military recruiters say this event is one of their biggest recruiting arenas.

2. Previous TALONS have reported various threats and actions by BAWC against recruiters in the South Florida area.
INCIDENT SITE: Fort Lauderdale Air and Sea show
INCIDENT CITY: Fort Lauderdale
INCIDENT STATE: FL
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 26.0874996185303
INCIDENT LONGITUDE: -80.1852798461914
INCIDENT UTM: Northing: 2885628.67 Easting: 581476.49 Zone: 17R
INCIDENT DATE/TIME: 30-APR-05

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-07-03-05-167_full_text

UNCLASSIFIED//FOUO

TALON REPORT 902-07-03-05-167

07-MAR-2005

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REPORT NUMBER: 902-07-03-05-167
REPORT DATE: 2005-03-07
CLASSIFICATION: Unclassified//FOUO
INCIDENT TYPE: Specific Threats
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: NO
FROM: 902D MI GP
SUBJECT: Protests Planned Against Recruiting Centers in Springfiled, IL Area on 18 Mar 05
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE
SUMMARY: Protests Planned Against Recruiting Centers in Springfiled, IL Area on 18 Mar 05
DETAILS: UNCLASSIFIED//FOUO

ArmyTALON 902dMI-28-02-05-002

Agent: b7(c)

Phone: b2 b7(c)

Report Date: 28 FEB 05

Acquisition Date: 28 FEB 05

Incident Date: 18 MAR 05

Incident Type: Phone/Voice/eMail Threats

Status: Open/Unresolved

From: 902nd MI Grp/Atlanta JTTF

Subject: Protests Planned Against Recruiting Centers in Springfiled, IL Area on 18 Mar 05

Details: Source received an e-mail from the American Friends Service Committee (AFSC), e-mail address: b7(c) that stated that on March 18-20 a series of protest actions were planned in the Springfield, IL area. For 18 Mar 05, they want to focus on actions at military recruitment offices with the goals to include: raising awareness, education, visibility in community, visibility to recruiters as part of a national day of action focused on military recruiters. The protests are in response to a called for by the UFPJ. The AFSC identified three locations and noted there were more recruitment stations in the local area. The identified locations are the Springfield (Federal Building), South Hadley, and Greenfield. The group is preparing a handout for all locations. Further, the e-mail stated, 'The actions would be simultaneous, beginning around 2pm (schools letting out) and lasting until 6pm (through commuting time).'

Currently, the group is organizing one speaker for each location, to help spread the

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message, speak with the media, etc. The group wants one coordinator for each location. The coordinator would help hold the space at the location for the duration of the action, be the liaison with media, help with outreach, etc. The AFSC further needs community members willing to flyer, hold signs and banners, etc. The event is formally being coordinated by 'AFSC/MREN, b7(c) and all are welcome to attend.

Source: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.

Country: United States (US)/USNORTHCOM

Address: Springfield township, IL

GeoCoords: Latitude: 39.831085; Longitude: -89.638334

Persons Involved: N/A

Coordinating Agencies: FPS, Atlanta FIG, Fort Know RO, NCIS, AFOIS, JTTF Chicago

Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. Other events sponsored by the National Front for Peace and Justice (NFPJ) during this period have called for civil disobedience.

Updates: 1. received 3/4/2005 1:09:05 PM

This protest appears to be set to occur in Springfield, MA; not Springfield, IL. The original e-mail did not provide a name of the State and a check of an address in the e-mail came back to IL. However, a street in Springfield, MA also has the same name and a check of two phone numbers with area code in the e-mails shows they are in Springfield, MA.

UNCLASSIFIED//FOUO
ASSOCIATED COUNTRIES: UNITED STATES (US)
PERSONS BRIEFED LOCALLY: FPS, Atlanta FIG, Fort Know RO, NCIS, AFOIS, JTTF Chicago
ACTIONS TAKEN: Agent Notes:

1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. Other events sponsored by the National Front for Peace and Justice (NFPJ) during this period have called for civil disobedience.
COMMENTS: Updates:

1. received 3/4/2005 1:09:05 PM

This protest appears to be set to occur in Springfield, MA; not Springfield, IL. The original e-mail did not provide a name of the State and a check of an address in the e-mail came back to IL. However, a street in Springfield, MA also has the same name and a check of two phone numbers with area code in the e-mails shows they are in Springfield, MA.
INCIDENT ADDRESS: Country: United States (US)/USNORTHCOM

Address: Springfield township, IL

GeoCoords: Latitude: 39.831085; Longitude: -89.638334
INCIDENT CITY: Springfield
INCIDENT STATE: MA
INCIDENT COUNTRY: US

3

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-07-03-05-167_full_text
INCIDENT LATITUDE: 39.8310852050781
INCIDENT LONGITUDE: -89.6383361816406
INCIDENT UTM: Northing: 4412340.47 Easting: 274224.19 Zone: 16S
INCIDENT DATE/TIME: 18-MAR-05

4

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-01-03-05-148_full_text

UNCLASSIFIED//FOUO

TALON REPORT 902-01-03-05-148

01-MAR-2005

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REPORT NUMBER: 902-01-03-05-148
REPORT DATE: 2005-03-01
CLASSIFICATION: Unclassified//FOUO
INCIDENT TYPE: Suspicious Activities/Incidents
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: NO
FROM: 902D MI GP
SUBJECT: Protests Planned Against Recruiting Centers in Springfiled, IL Area on 18 Mar 05
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE
DETAILS: Source received an e-mail from the American Friends Service Committee (AFSC), e-mail address: b7(c) that stated that on March 18-20 a series of protest actions were planned in the Springfield, IL area. For 18 Mar 05, they want to focus on actions at military recruitment offices with the goals to include: raising awareness, education, visibility in community, visibility to recruiters as part of a national day of action focused on military recruiters. The protests are in response to a called for by the UFPJ. The AFSC identified three locations and noted there were more recruitment stations in the local area. The identified locations are the Springfield (Federal Building), South Hadley, and Greenfield. The group is preparing a handout for all locations. Further, the e-mail stated, 'The actions would be simultaneous, beginning around 2pm (schools letting out) and lasting until 6pm (through commuting time).'

Currently, the group is organizing one speaker for each location, to help spread the message, speak with the media, etc. The group wants one coordinator for each location. The coordinator would help hold the space at the location for the duration of the action, be the liaison with media, help with outreach, etc. The AFSC further needs community members willing to flyer, hold signs and banners, etc. The event is formally being coordinated by 'AFSC/MREN, b7(c) and all are welcome to attend.

PERSONS BRIEFED LOCALLY: FPS, Atlanta FIG, Fort Know RO, NCIS, AFOIS, JTTF Chicago
COMMENTS: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. Other events sponsored by the National Front for Peace and Justice (NFPJ) during this period have called for civil disobedience.

INCIDENT SITE: Recruiting Centers
INCIDENT CITY: Springfield
INCIDENT STATE: IL
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 39.7997207641602
INCIDENT LONGITUDE: -89.6483306884766

5

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-01-03-05-148_full_text :
INCIDENT UTM: Northing: 4408884.08 Easting: 273265.49 Zone: 16S
INCIDENT DATE/TIME: 18-MAR-05

6

~~EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday,~~ January 17, 2007

902-10-12-04-201_full_text

UNCLASSIFIED//FOUO

TALON REPORT 902-10-12-04-201

10-DEC-2004

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REPORT NUMBER: 902-10-12-04-201
REPORT DATE: 2004-12-10
CLASSIFICATION: Unclassified//FOUO
INCIDENT TYPE: Specific Threats
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Protesting and Picketing Planned at a Rhode Island National Guard Recruitment Station
SOURCE: A SPECIAL AGENT OF A FEDERAL LAW ENFORCEMENT AGENCY
DETAILS: An emerging RI coalition in opposition to the war in Iraq will hold a picketing action in front of a RI National Guard Recruitment Station. The date is set for 13 Dec 04 from 1630 to 1800 at the National Guard Recruitment Station on Weybosset Street in downtown Providence, RI. The coalition's stated goal and outcomes for a planning meeting are:

Start Quote:

Goals:

1. 'Raise the flag,' The primary goal of the action is to create an awareness of an organized, action oriented, anti-war movement in Providence. This mainly will be achieved through one on one interactions at the picket. Additional, media attention through press releases and letters to the editor about the action will announce the group's presence.

Outcomes:

The desired outcomes for the action are:

1. build the teach-in schedule for 12-15/16

2. gain active membership to the anti-war group

3. develop a list of contacts for future actions/meetings of the anti-war group

End Quote--

The coalition's stated main slogan, per a poster, is 'Stop the call up of RI National Guard and end the occupation of Iraq'.

902-10-12-04-201_full_text

ASSOCIATED COUNTRIES: IRAQ (IZ)
PERSONS BRIEFED LOCALLY: Federal Protective Serive, FORSCOM G2, JTTF Boston
COMMENTS: 1. The number of protestors is unknown. It is not known if there are any plans for any type of vandilism, blocking of entry into the recruiting station, or a sit-in at the station. At a recent protest in Philidelphia, protesters entered into a recruitment station and left the building when police instructed them to leave or face arrest.

2. The original source document was a posting on an Internet bulletin board. The law enforcement agency providing the information has not made any effort to validate the information, but has provided it solely for informational purposes only.

INCIDENT SITE: Rhode Island National Guard Recruitment Station
INCIDENT CITY: Providence
INCIDENT STATE: RI
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 41.8263893127441
INCIDENT LONGITUDE: -71.4094467163086
INCIDENT UTM: Northing: 4633307.30 Easting: 299907.25 Zone: 19T
INCIDENT DATE/TIME: 13-DEC-04
INCIDENT DURATION: 2 HOURS

2

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-09-11-04-110_full_text

UNCLASSIFIED

TALON REPORT 902-09-11-04-110

09-NOV-2004

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REPORT NUMBER: 902-09-11-04-110
REPORT DATE: 2004-11-09
CLASSIFICATION: Unclassified
INCIDENT TYPE: Specific Threats
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Protest Planned at Sacramento Military Entrance Processing Station
SOURCE: A FEDERAL LAW ENFORCEMENT AGENCY

DETAILS: On 11 Nov 2004, a protest against the Iraq War is planned by a Sacramento chapter of a US domestic group at the Sacramento Military Entrance Processing Station (MEPS). This specific group is deeply into 'counter-recruiting' and wants to use MEPS stations as new induction centers for their cause. The groups views MEPS as their last chance to influence a decision to enlist. The promoter of this event further states there are 65 MEPS stations and 'maybe one is located near you' and provides the following Hyperlink: http://www.mepcom.army.mil/meps.htm. A check of this link shows it does provide a listing of MEPS facilities throughout CONUS.
PERSONS BRIEFED LOCALLY: Federal Protective Service, Fort McPherson CID
COMMENTS: 1. Based strictly on this information, it appears this protest will most likely be peaceful, but some type of vandalism is always a possibility.

2. The original report of this information states that only the Sacramento MEPS will specifically be protested. It cannot be determined based on original reporting if protests will actually occur at other MEPS stations in CONUS.

INCIDENT SITE: Sacramento chapter of a US domestic group at the Sacramento Military Entrance Processing Station (ME
INCIDENT CITY: Sacramento
INCIDENT STATE: CA
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 38.605556
INCIDENT LONGITUDE: -121.44334
INCIDENT UTM: Northing: 4274155.28 Easting: 635543.15 Zone: 10S
INCIDENT DATE/TIME: 11-NOV-0
UPDATE: (1) 18-NOV-04
DETAILS: 1. received 11/17/2004 4:35:40 PM

On 10 No 2004, the San Francisco JTTF advised the commanders of the Sacramento and San Jose MEPS of the intended protest at the Sacramento center. Both MEPS were scheduled to be closed due to the holiday.

Local news reported the following concerning the protest:

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-09-11-04-110_full_text

A group of military veterans took a different approach to commemorating veterans Day, spending the afternoon trying to discourage men and women from enlisting in the armed services.

The group US ORGANIZATION (Veterans for Peace) held a Veterans Day protest just outside the Military Entrance Processing Station in Sacramento. They were joined by the US ORGANIZATION (Physicians for Social Responsibility).

About 50 members of the groups conducted solemn reading of the names of 18 soldiers who came through the processing station and later died in Iraq.

According to members of the group, demonstrating in front of the station could be their last chance to dissuade young people from signing up to serve.

'This is where our children will line up to die in an unjust war that can have no winners,' said US PERSON [(b)(7)(C)] the group's president.
per ICE

The group's president says the protest was the first of a planned weekly series of demonstration at the station.

The demonstration did not go without controversy. A group of approximately a half-dozen military supporters from the US ORGANIZATION (Patriot Watch) turned up in an effort to shout down the veteran protesters

Despite the difference of opinion, the confrontation ended peacefully. The MEPS Commander reported there was no known vandalism or incidents as a result of the protest.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-08-04-05-320_full_text

UNCLASSIFIED//FOUO

TALON REPORT 902-08-04-05-320

08-APR-2005

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REPORT NUMBER: 902-08-04-05-320
REPORT DATE: 2005-04-08
CLASSIFICATION: Unclassified//FOUO
INCIDENT TYPE: Specific Threats
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Protest by an anti-war/anti-military organization and planned future protest throughout CONUS.
SOURCE: Active Duty US Army Officer
SUMMARY: Protest by an anti-war/anti-military organization and planned future protest throughout CONUS.
DETAILS: UNCLASSIFIED//FOUO

ArmyTALON 902dmi-08-04-05-001

Agent: Gregory Johnson

Phone: 7577882467

Report Date: 08 APR 05

Acquisition Date: 07 APR 05

Incident Date: 05 APR 05

Incident Type: Threat to Military Facilities

Status: Open/Unresolved

From: 902nd MI Grp/Fort Monroe RO

Subject: Protest by an anti-war/anti-military organization and planned future protest throughout CONUS.

Details: On 5 April 2005 Veterans for Peace (www.veteransforpeace.org) a peaceful anti-war/anti-military organization held a protest east of the student union on the New Mexico State University campus in Las Cruces, New Mexico. Veterans for Peace members set up hundreds of white crosses in an open field, representing soldiers killed in Iraq and were handing out anti-war/anti-military literature. One of their handouts said the organizations intent is 'to abolish war as an instrument of national policy.' Veterans for Peace applied for and received permission for their protest the previous day.

According to handouts, Veterans for Peace is planning to hold protest on the following campuses:

UTEP, 7-8 APR

UTSA, 11-12 APR

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-08-04-05-320_full_text

University of New Orleans, 18-19 APR

Auburn University, 21-22 APR

Emory University, 25-26 APR

Kent State University, 3-4 MAY

Howard University, 6-7 MAY

New York City (places TBD) 9-10 MAY

Northwestern University, 16-17 MAY

Source: Active Duty US Army Officer

Country: United States (US)/USNORTHCOM

Address: Las Cruces, NM 88003

GeoCoords: Latitude: 32.319693; Longitude: -106.765157

Persons Involved: N/A

Coordinating Agencies: TRADOC, Cadet Command

Agent Notes: Veterans for Peace is a peaceful organization, but there is potential future protest could become violent. It is unknown at this time if Veterans for Peace has applied for or been granted permission to hold protest on the campuses listed in this report.

Updates: N/A

UNCLASSIFIED//FOUO
ASSOCIATED COUNTRIES: UNITED STATES (US)
PERSONS BRIEFED LOCALLY: Coordinating Agencies: TRADOC, Cadet Command
COMMENTS: Agent Notes: Veterans for Peace is a peaceful organization, but there is potential future protest could become violent. It is unknown at this time if Veterans for Peace has applied for or been granted permission to hold protest on the campuses listed in this report.
INCIDENT ADDRESS: Country: United States (US)/USNORTHCOM

Address: Las Cruces, NM 88003

GeoCoords: Latitude: 32.319693; Longitude: -106.765157
INCIDENT CITY: Las Cruces
INCIDENT STATE: NM
INCIDENT ZIP CODE: 88003
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 32.2788887023926
INCIDENT LONGITUDE: -106.759719848633
INCIDENT UTM: Northing: 3572708.42 Easting: 334278.86 Zone: 13S
INCIDENT DATE/TIME: 05-APR-05

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

A-MON1-07042005-6134_full_text

ALICEA-DIAZAL
A-MON1-07042005-6134
6134
2005-04-07
Ft Monroe
USA
Ft Monroe
HQ TRADOC, DCSOPS&T

FOUO
Open/Unresolved
Non-Specific Threat
Demonstrations by Veterans for Peace
AT/Crim Intel Analyst

an organization called "Veterans for Peace, Inc." (www.veteransforpeace.org) set up a protest just east of the Student Union. They set up hundreds of white crosses in an open field, representing soldiers killed in Iraq.

9 Universities (see list in comments section)

US

UNITED STATES

Apr 07 2005 00:00:00 GMT-7
0

DCSINT
EOC Watch
MI

UTEP
7-8 Apr
UTSA
11-12 Apr
University of New Orleans
18-19 Apr
Auburn University
21-22 Apr
Emory University
25-26 Apr

Kent State University, 3-4 May
Howard University, 6-7 May
New York City (places TBD) 9-10 May

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EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-06-04-05-303_full_text

UNCLASSIFIED//~~FOUO~~

TALON REPORT 902-06-04-05-303

06-APR-2005

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REPORT NUMBER: 902-06-04-05-303
REPORT DATE: 2005-04-06
CLASSIFICATION: Unclassified//~~FOUO~~
INCIDENT TYPE: Specific Threats
STATUS: Closed/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Protest Against Military Recruiters at University of California at Santa Cruz (UCSC) on 5 Apr 05
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE
SUMMARY: Protest Against Military Recruiters at University of California at Santa Cruz (UCSC) on 5 Apr 05
DETAILS: UNCLASSIFIED//~~FOUO~~

ArmyTALON 902dMI-04-04-05-003

Agent: [redacted]

Phone: [redacted]

Report Date: 04 APR 05

Acquisition Date: 04 APR 05

Incident Date: 05 APR 05

Incident Type: Phone/Voice/eMail Threats

Status: Closed/Unresolved

From: 902nd MI Grp/Atlanta JTTF

Subject: Protest Against Military Recruiters at University of California at Santa Cruz (UCSC) on 5 Apr 05

Details: Source received an e-mail from [redacted] at e-mail address [redacted] dated 1 Apr 2005 (PST), subject: ¿ACTION TUESDAY TO KICK MILITARY RECRUITERS OUT OF UCSC!¿

The e-mail starts out with the line: ¿KICK MILITARY RECRUITERS OUT OF UCSC!¿ Then, the e-mail states that on 5 Apr 05, recruiters from the U.S. Army, U.S. Marine Corps, and U.S. Navy will be at the Last Chance Job & Internship Fair, organized by the University of California at Santa Cruz (UCSC) Career Center.

In response, there is a ¿COUNTER-RECRUITMENT MARCH¿ at 11:30, 5 Apr 2005 that starts at the ¿BAYTREE PLAZA,¿ below Career Center, and ends outside the job fair at the Stevenson Event Center. The e-mail states to ¿have fun and bring 5 friends.¿

Also, the e-mail urges people to: !!SIGN THE PETITION TO BAN RECRUITERS FROM UCSC

AND JOIN US 11:30am TUE, APRIL 5th @ BAYTREE PLAZA!!¿

Finally, the e-mail states:

--------For more information--------

UCSC Students Against War's

Counter-Recruitment Working Group

counterrecruitment@yahoo.com

Source: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.

Country: United States (US)/USNORTHCOM

Address: Santa Cruz, CA 95064

GeoCoords: Latitude: 36.97205; Longitude: -122.026252

Persons Involved: N/A

Coordinating Agencies: FPS, Fort Know Resident Office, 902d MI Group, JTTF San Francisco

Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. Several recent protests along the West Coast have drawn an estimated 200 - 400 protesters with one incident in January 2005 resulting in police escorting the military recruiters off the campus.

3. The text of the e-mail does not state if civil disobedience is planned to occur at this protest.

4. Per the Career Center, UCSC website, the following military organizations will be at the 'Last Chance Job and Internship Fair:'

U.S. Army

2121 41st Ave, Ste 204

Capitloa, CA 95010

U.S. Marine Corps Officer Programs

546 Vernon Ave, Ste 246

Mountain View, CA 94035

U.S. Navy Officer Programs

546 Vernon Ave, Ste 246

Mountain View, CA 94035

5. The Last Chance Job and Internship Fair is scheduled from 12:00 to 15:00 on 5 Apr 05.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-06-04-05-303_full_text

Updates: N/A

UNCLASSIFIED//~~FOUO~~
ASSOCIATED COUNTRIES: UNITED STATES (US)
PERSONS BRIEFED LOCALLY: Coordinating Agencies: FPS, Fort Know Resident Office, 902d MI Group, JTTF San Francisco
COMMENTS: Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. Several recent protests along the West Coast have drawn an estimated 200 - 400 protesters with one incident in January 2005 resulting in police escorting the military recruiters off the campus.

3. The text of the e-mail does not state if civil disobedience is planned to occur at this protest.

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U.S. Army

2121 41st Ave, Ste 204

Capitloa, CA 95010

U.S. Marine Corps Officer Programs

546 Vernon Ave, Ste 246

Mountain View, CA 94035

U.S. Navy Officer Programs

546 Vernon Ave, Ste 246

Mountain View, CA 94035

5. The Last Chance Job and Internship Fair is scheduled from 12:00 to 15:00 on 5 Apr 05.
INCIDENT ADDRESS: Country: United States (US)/USNORTHCOM

Address: Santa Cruz, CA 95064

GeoCoords: Latitude: 36.97205; Longitude: -122.026252
INCIDENT CITY: Santa Cruz
INCIDENT STATE: CA
INCIDENT ZIP CODE: 95064
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 36.9900016784668
INCIDENT LONGITUDE: -122.061943054199
INCIDENT UTM: Northing: 4094174.40 Easting: 583476.58 Zone: 10S
INCIDENT DATE/TIME: 05-APR-05

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-21-04-05-358_full_text.txt

UNCLASSIFIED//~~FOUO~~

TALON REPORT 902-21-04-05-358

21-APR-2005

CAUTION:
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REPORT NUMBER: 902-21-04-05-358
REPORT DATE: 2005-04-21
CLASSIFICATION: Unclassified//~~FOUO~~
INCIDENT TYPE: Specific Threats
STATUS: Closed/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Direct Action Planned Against Recruiters at University of California at Berkeley
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.
SUMMARY: Direct Action Planned Against Recruiters at University of California at Berkeley
DETAILS: UNCLASSIFIED//~~FOUO~~

ArmyTALON 902dMI-20-04-05-010

Agent: [redacted]

Phone: [redacted]

Report Date: 20 APR 05

Acquisition Date: 20 APR 05

Incident Date: 21 APR 05

Incident Type: Phone/Voice/eMail Threats

Status: Closed/Unresolved

From: 902nd MI Grp/Atlanta JTTF

Subject: Direct Action Planned Against Recruiters at University of California at Berkeley

Details: Source received an e-mail from e-mail address: [redacted] The e-mail was sent on Monday, April 18, 2005 with a Subject Line of: '4/21: Direct Action Against Military Recruitment at UCB.' The protest is scheduled at 1030, 21 Apr 05 at Fountain on Sproul Plaza, UC Berkeley with the recruiters located at the Career Fair at the MLK Student Center. The text of the e-mail follows:

Quote--

Protest Against Military Recruiters

WHEN: Thursday, April 21st * 10:30 am

WHERE: The Fountain on Sproul Plaza, UC Berkeley

Attd #- TAB B

Counter Recruitment has become a national issue, and it's working. Between these efforts and widespread anger about the war, all branches of the United States Military have seen drastic drops in their recruitment rates. In February, the Army missed its recruiting goal for the first time in nearly five years, and it missed its March goal by 32 percent. The Army Reserve is 10 percent behind their year-to-date recruiting target and the National Guard is 26 percent short, while the need for soldiers is on the rise. Counter Recruitment has proven to be an effective tool in actually hindering the Military's ability to carry out this immoral and unjust war, and Berkeley Stop the War Coalition has been working to bring the Counter Recruitment movement to UC Berkeley's campus.

Recently, the Associated Students at the University of California (ASUC) passed a resolution that argued that military recruiters (who refuse to recruit gays and lesbians) violate the University of California's anti-discrimination policy and therefore should not be allowed access to ASUC facilities (SB 107). Still, military recruiters have announced their intention to show up at the Career Fair in the MLK student union. We have to build the biggest protest possible to let them know that we won't stand for the military's discriminatory policies and that we oppose the war on Iraq that they are recruiting for. Join a growing movement of schools that are taking a stand against military recruitment on campuses!

COME THE LAST PLANNING MEETING & CIVIL DISOBEDIANCE TEACH-IN FOR THE PROTEST WEDNESDAY APRIL 20th, 225 WHEELER @ 7pm

SPONSORED BY: Berkeley Stop the War Coalition, member of the Campus Anti-war Network (CAN)

WEBSITES AND CONTACT INFO:

http://groups.yahoo.com/group/ucbstopthewar/

www.campusantiwar.net

Contact: ucbstopthewar@hotmail.com, or Daniel at 510-708-6803 and

dsaver@berkeley.edu

End Quote--

Source: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.

Country: United States (US)/USNORTHCOM

Address: Berkeley, CA

GeoCoords: Latitude: 37.871775; Longitude: -122.274603

Persons Involved: N/A

Coordinating Agencies: FPS, JTTF San Francisco

Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. There is a strong potential for a confrontation at this protest given the strong support for anti-war protests and movements in the past.

3. The fact the protest is in a different location from the recruiters does not mean anything. Protester tactics have included using mass text paging to inform others of the location of the recruiters. Also, protesters have used diversions to bypass security personnel to get into events to conduct protests.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-21-04-05-358_full_text.txt

Updates: N/A

UNCLASSIFIED//~~FOUO~~
ASSOCIATED COUNTRIES: UNITED STATES (US)
PERSONS BRIEFED LOCALLY: Coordinating Agencies: FPS, JTTF San Francisco
COMMENTS: Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. There is a strong potential for a confrontation at this protest given the strong support for anti-war protests and movements in the past.

3. The fact the protest is in a different location from the recruiters does not mean anything. Protester tactics have included using mass text paging to inform others of the location of the recruiters. Also, protesters have used diversions to bypass security personnel to get into events to conduct protests.
INCIDENT ADDRESS: Country: United States (US)/USNORTHCOM

Address: Berkeley, CA

GeoCoords: Latitude: 37.871775; Longitude: -122.274603
INCIDENT CITY: Berkeley
INCIDENT STATE: CA
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 37.8717765808105
INCIDENT LONGITUDE: -122.274597167969
INCIDENT UTM: Northing: 4191836.29 Easting: 563799.34 Zone: 10S
INCIDENT DATE/TIME: 21-APR-0
UPDATE: (1) 29-APR-05
DETAILS: 1.

received 4/28/2005 10:51:14 AM

Source received a follow-up e-mail on 26 Apr 05 stating that 100 students showed up to protest against US Marine recruiters, that were at the career fair. The civil disobedience plan was called off due to the 'Berkeley administration' planning a police attack against the protesters and the protesters did not want to 'walk into a trap.' Instead, 60 Berkeley students filed into the career fair in 'sign-file' and confronted the recruiters one at a time, challenging their anti-gay policies and the war in Iraq. This action took over an hour and effectively shut down the Marine's operation for most of the day.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-01-04-05-294_full_text

UNCLASSIFIED//LES//FOUO

TALON REPORT 902-01-04-05-294

01-APR-2005

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REPORT NUMBER: 902-01-04-05-294
REPORT DATE: 2005-04-01
CLASSIFICATION: Unclassified//LES//FOUO
INCIDENT TYPE: Suspicious Activities/Incidents
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Weekly Protests Planned at Atlanta, GA Area Recruiting Station
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.

DETAILS: Source received an e-mail form [redacted] sent 29 MAR 05, subject: Anti-Recruitment Picket on 8 April Across from City Hall East.

The source received an e-mail that stated an Anti-Recruitment Picket on 8 APR 05 will occur across from City Hall East and would be the 'First of weekly antirecruitment rallies to be held facing City Hall East in front of Ponce (recruiting office inside) starting at 5 PM ... Visually effective coffins will be in view. Participants urged to make own signs e.g., Don't sign up for a Coffin, etc.'

This e-mail was sent from the GSU Students for Peace and Justice. If you'd like to get involved with the group, email [redacted]

Original Serial Number: 902dMI-30-03-05-003

Original Report Date: 30 MAR 05
PERSONS BRIEFED LOCALLY: Atlanta Police Department, FPS, Fort McPherson CID, Georgia Information and Sharing Intelligence Center, Atlanta Recruiting Battalion
COMMENTS: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. Civil disobedience may occur at these protests.
INCIDENT SITE: City Hall East
INCIDENT CITY: Atlanta
INCIDENT STATE: GA
INCIDENT ZIP CODE: 30308
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 33.7688903808594
INCIDENT LONGITUDE: -84.3761138916016
INCIDENT UTM: Northing: 3739625.55 Easting: 742997.14 Zone: 16S
INCIDENT DATE/TIME: 08-APR-0
UPDATE: (1) 31-MAY-05
DETAILS: 1. received 5/27/2005 6:32:23 PM

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-01-04-05-294_full_text

1. This update is submitted to clarify why the Students for Peace and Justice represent a potential threat to DOD personnel. Per source, in April 2005 nearly 300 University of California-Santa Cruz students and community allies shut down the annual career fair, where recruiters from the Army, Navy and Marines had set up tables. The activists demanded that recruiters leave immediately and turn their tabling spots over to student counter-recruitment activists. Also, two of the recruiter's vehicles were vandalized while parked on the campus. Several local campus groups supported this action including the Students for Peace and Justice. Also, Students for Peace and Justice conducted an impromptu march to the Army recruitment offices in Dobie Mall because in a previous attempt to protest recruitment at Dobie, the offices closed for the day, ending the action. The protesters blocked the entrance to the recruitment office with two coffins, one draped with an American flag and the other covered with an Iraqi flag, taped posters on the window of the office and chanted, 'No more war and occupation. You don't have to die for an education.' Recruitment officers who were on duty during the protest had no comment and told protesters who tried to enter the recruiting office to leave unless they want to enlist. The on-duty manager of Dobie Mall, gave protesters a criminal trespass warning and called police to the scene. The Austin Police Department responded and reiterated the manager's requests to leave or they would be arrested for criminal trespass. The Students for Peace and Justice departed the area.

2. The clear purpose of these civil disobedience actions was to disrupt the recruiting mission of the US Army Recruiting Command by blocking the entrance to the recruiting station and causing the stations to shutdown early.

3. Additionally, per source Students for Peace and Justice and CAN have been involved in 'civil disobedience' in New York City in Feb 05. Per source, in Mar 2005, at least two members of the Atlanta area Students for Peace and Justice have expressed interest in doing more than just protesting and want to be more aggressive in conducting 'civil disobedience.' Also, Source, a federal law enforcement officer with 20 years of experience in intelligence collection on domestic groups, stated 'civil disobedience' can range from a sit-in to forcibly removing personnel from the station along with vandalism of the building(s). The source also states that there is an intense debate among the anti-war protest groups concerning whether to be nonviolent or to conduct civil disobedience. While a group may publicly call for nonviolent protests, individually many of the individual may members actually favor civil disobedience and vandalism. Also, many members of these groups view vandalism as 'nonviolent' action.

4. For the Atlanta area, if must be noted that the 'City Hall East Area' is directly across the street from an Army recruitment office. In addition, military personnel use the Metro Atlanta Regional Transportation Authority (MARTA) stations for rail transportation around Atlanta.

5. To date, no reported incidents have occurred at these protests.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-22-04-05-368_full_text

UNCLASSIFIED

TALON REPORT 902-22-04-05-368

22-APR-2005

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REPORT NUMBER: 902-22-04-05-368
REPORT DATE: 2005-04-22
CLASSIFICATION: Unclassified
INCIDENT TYPE: Suspicious Activities/Incidents
STATUS: Open/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Veterans for Peace anti-war display in New Orleans; Ref: Army TALON 902dMI-08-04-05-001
SOURCE: Army Recruiting Battalion - New Orleans
DETAILS: Veterans for Peace erected an anti-war display the week of 18 April 2005 at a local university. A local Army recruiter, through the local media, mistook the event as a memorial to fallen service members and arrived to view the display.

Upon arrival, the Soldier realized the display was anti-war in nature and proceeded to depart the area. He was pursued by six individuals who shouted 'war monger' and 'baby killer' at Him.

One of the individuals blocked the Soldier from entering His vehicle while the other individuals surrounded Him. The Soldier attempted to talk His way out of a confrontation, but was struck by the individual blocking His exit. The Soldier defended Himself. A security officer arrived and instructed the Soldier to depart the area while the individuals were kept back. The Soldier stated the other individuals were chastising the individual who had struck the Soldier.

The Soldier immediately reported the incident to His chain of command.

Original Serial Number: 902dmi-21-04-05-001

Original Report Date: 21 APR 05
PERSONS BRIEFED LOCALLY: N.O. Army Recruiting BN, NOPD, N.O. JTTF
COMMENTS: As reported in Army TALON 902dMI-08-04-05-001, Veterans for Peace claim to be non-violent. This incident demonstrates a propensity for violence, and the Veterans for Peace should be viewed as a possible threat to Army and DoD personnel.

It is unknown if the individuals involved in the incident are students at the local university or associated with the Veterans for Peace organization.

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-22-04-05-368_full_text
According to NOPD liaison with University Police, the organization was granted a permit for the display.
INCIDENT CITY: New Orleans
INCIDENT STATE: LA
INCIDENT COUNTRY: US
INCIDENT LATITUDE: 29.9558334350586
INCIDENT LONGITUDE: -90.0774993896484
INCIDENT UTM: Northing: 3317485.23 Easting: 782054.91 Zone: 15R
INCIDENT DATE/TIME: 20-APR-05

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-06-04-05-304_full_text

UNCLASSIFIED//FOUO

TALON REPORT 902-06-04-05-304

06-APR-2005

CAUTION:
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REPORT NUMBER: 902-06-04-05-304
REPORT DATE: 2005-04-06
CLASSIFICATION: Unclassified//FOUO
INCIDENT TYPE: Specific Threats
STATUS: Closed/Unresolved
CONTAINS US PERSON INFO: No
FROM: 902D MI GP
SUBJECT: Weekly Thursday and Friday Atlanta, GA Area Protests
SOURCE: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE
SUMMARY: Weekly Thursday and Friday Atlanta, GA Area Protests
DETAILS: UNCLASSIFIED//FOUO

ArmyTALON 902dMI-04-04-05-004

Agent: b7(c)

Phone: b2 b7(c)

Report Date: 04 APR 05

Acquisition Date: 04 APR 05

Incident Date: 08 APR 05

Incident Type: Phone/Voice/eMail Threats

Status: Closed/Unresolved

From: 902nd MI Grp/Atlanta JTTF

Subject: Weekly Thursday and Friday Atlanta, GA Area Protests

Details: Source received an e-mail from b7(c) e-mail address b7(c) dated 2 Apr 2005, subject: ¿Antiwar & Counter-recruitment rallies on Thursdays & Fridays.¿

In the e-mail b7(c) stated that every two months, the Antiwar & Counter-recruitment rallies would move to a new location. For the Thursday antiwar/peace rallies, so far ¿we have been in Five points, Lenox MARTA station, Decatur, and for the next couple months will be in front of North Ave MARATA Station.¿ The GPJC/Atlanta and IAC/Atlanta organized this protest.

On Thursdays, for the months of April and May, we will be 1700 to 1800 at North Ave. MARTA Station, corner of W. Peachtree and North Ave. The GPJC/Atlanta and IAC/Atlanta organized this protest. For more information, contact b7(c) at b7(c)

On Fridays, for the months of April and May, counter-recruitment rallies will be at 18:00 - 19:00 at the Ponce de Leon Shopping Center across from Atlanta City Hall

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-06-04-05-304_full_text

East, launching weekly antiwar protests to be held at milit: ruiting offices. For more information, contact [b7(c)] at [b7(c)] Also, : bring you: own signs and banners.

For next Friday only, 8 April 2005, a counter-recruitment ra y is planned for the Ponce de Leon shopping Center across from Atlanta City Hall East, 1700 to 1800. This protest will launch weekly protests to be held at military recruiting offices. [b7(c)] from Iraq Veterans Against the War, other members of Veterans for Peace and Military Families Speak Out will hold a news conference as part of the protest.

Finally, the e-mail states, for more information on [b7(c)] speaking tour go to GPJC website, http://www.georgiapeace.org. Also, [b7(c)] webpage that lists all rallies in different locations in Atlanta at the GPJC website, http://www.georgiapeace.org/Outreach.html

Source: A SPECIAL AGENT OF THE FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY. SOURCE IS RELIABLE.

Country: United States (US)/USNORTHCOM

Address: Atlanta, GA

GeoCoords: Latitude: 33.759506; Longitude: -84.403176

Persons Involved: N/A

Coordinating Agencies: Atlanta Recruiting Battalion, FPS, Fort Knox RO, 902d MI Group, Atlanta Police Department, Dekalb and Fulton County Police Department

Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. GPJC is the Georgia Peace and Justice Coalition and IAC is the International Action Center. Per an FBI Intelligence Analyst, the IAC can have members that are very radical and on an individual basis, they could conduct civil disobedience.

3. This report expands on information contained in ArmyTALON 902dMI-30-03-05-003.

Updates: N/A

UNCLASSIFIED//FOUO
ASSOCIATED COUNTRIES: UNITED STATES (US)
PERSONS BRIEFED LOCALLY: Coordinating Agencies: Atlanta Recruiting Battalion, FPS, Fort Knox RO, 902d MI Group, Atlanta Police Department, Dekalb and Fulton County Police Department
COMMENTS: Agent Notes: 1. This information was from an e-mail sent over the Internet. The source made no effort to validate the credibility of the information. The source shared the information solely for informational purposes.

2. GPJC is the Georgia Peace and Justice Coalition and IAC is the International Action Center. Per an FBI Intelligence Analyst, the IAC can have members that are very radical and on an individual basis, they could conduct civil disobedience.

3. This report expands on information contained in ArmyTALON 902dMI-30-03-05-003.
INCIDENT ADDRESS: Country: United States (US)/USNORTHCOM

Address: Atlanta, GA

GeoCoords: Latitude: 33.759506; Longitude: -84.403176
INCIDENT CITY: Atlanta
INCIDENT STATE: GA

BEST COPY AVAILABLE

2

EMBARGOED FOR RELEASE: 12:01 am E.S.T., Wednesday, January 17, 2007

902-06-04-05-304_full_text

INCIDENT COUNTRY: US
INCIDENT LATITUDE: 33.7595062255859
INCIDENT LONGITUDE: -84.4031753540039
INCIDENT UTM: Northing: 3738521.13 Easting: 740516.51 Zone: 16
INCIDENT DATE/TIME: 08-APR-0
UPDATE: (1) 31-MAY-05
DETAILS: 1. received 5/27/2005 6:29:00 PM

1. This update is submitted to clarify why the Students for Peace and Justice represent a potential threat to DOD personnel. Per source, in April 2005 nearly 300 University of California-Santa Cruz students and community allies shut down the annual career fair, where recruiters from the Army, Navy and Marines had set up tables. The activists demanded that recruiters leave immediately and turn their tabling spots over to student counter-recruitment activists. Also, two of the recruiter's vehicles were vandalized while parked on the campus. Several local groups supported this action including the Students for Peace and Justice. Also, Students for Peace and Justice conducted an impromptu march to the Army recruitment offices in Dobie Mall because in a previous attempt to protest recruitment at Dobie, the offices closed for the day, ending the action. The protesters blocked the entrance to the recruitment office with two coffins, one draped with an American flag and the other covered with an Iraqi flag, taped posters on the window of the office and chanted, 'No more war and occupation. You don't have to die for an education.' Recruitment officers who were on duty during the protest had no comment and told protesters who tried to enter the recruiting office to leave unless they want to enlist. The on-duty manager of Dobie Mall, gave protesters a criminal trespass warning and called police to the scene. The Austin Police Department responded and reiterated the manager's requests to leave or they would be arrested for criminal trespass. The Students for Peace and Justice departed the area.

2. The clear purpose of these civil disobedience actions was to disrupt the recruiting mission of the US Army Recruiting Command by blocking the entrance to the recruiting station and causing the stations to shutdown early.

3. Additionally, per source Students for Peace and Justice and CAN have been involved in 'civil disobedience' in New York City in Feb 05. Per source, in Mar 2005, at least two members of the Atlanta area Students for Peace and Justice have expressed interest in doing more than just protesting and want to be more aggressive in conducting 'civil disobedience.' Also, Source, a federal law enforcement officer with 20 years of experience in intelligence collection on domestic groups, stated 'civil disobedience' can range from a sit-in to forcibly removing personnel from the station along with vandalism of the building(s). The source also states that there is an intense debate among the anti-war protest groups concerning whether to be nonviolent or to conduct civil disobedience. While a group may publicly call for nonviolent protests, individually many of the individual may members actually favor civil disobedience and vandalism. Also, many members of these groups view vandalism as 'nonviolent' action.

4. For the Atlanta area, if must be noted that the 'City Hall East Area' is directly across the street from an Army recruitment office. In addition, military personnel use the Metro Atlanta Regional Transportation Authority (MARTA) stations for rail transportation around Atlanta.

5. To date, no reported incidents have occurred at these protests.

National Office
125 Broad Street, 18th Fl.
New York, NY 10004-2400
(212) 549-2500
www.aclu.org

In a general election, a Democrat can vote for a Republican candidate without switching parties.

Ballot Questions

Question D
County Auditor - Increased Powers
[X] For the Charter Amendment

Question E
Enactment of Legislation - Extension of Time
[X] For the Charter Amendment

Question F
County Council - Required Legislative Approval of Certain Contracts
[X] For the Charter Amendment

Question G
County Council - Required Approval of Certain Intrafund Budget Transfers
[X] For the Charter Amendment

Question H
County Council - Extension of Time for Review of Appointments
[X] For the Charter Amendment

Question I
Charter Required Referendum
Library Facilities Bonds
[X] For the Charter Referendum

Ballot Questions

Question J
Charter Required Referendum
Public Works and Transporation Facilities Bonds
[X] For the Charter Amendment

Question K
Charter Required Referendum
Public Safety Facilities Bonds
[X] For the Charter Amendment

Question L
County Buildings Bonds
Charter Required Referendum
[X] For the Charter Amendment

Question M
Charter Required Referendum
Community College Facilities Bonds
[X] For the Charter Amendment

Ehrlich-Steele Democrats

Official Voter Guide

WAYNE CURRY

KWEISI MFUME

JACK JOHNSON

These are OUR Choices

General Election
Tuesday, November 7th, 2006

Paid and Authorized by Bob Ehrlich for Maryland Committee
Paid and Authorized by Steele for Maryland, Inc.

DEMOCRATIC SAMPLE BALLOT

Election Day
Tuesday, November 7, 2006
Polls Open 7AM to 8 PM

Governor/Lt. Governor

[X] Robert L. Ehrlich
Kristen Cox

State Comptroller

[X] Peter Franchot

Attorney General

[X] Douglas Gansler

U.S. Senator

[X] Michael Steele

U.S. Representative District 4

[X] Albert Wynn

U.S. Representative District 5

[X] Steny Hoyer

U.S. Representative District 8

[X] Chris Van Hollen

State Senator - District 21

[X] John A. Giannetti, Jr.

State Delegates - District 21

[X] Ben Barnes
[X] Barbara A. Frush
[X] Joseline Pena-Melnyk

State Senator - District 22

[X] Paul Pinsky

State Delegates - District 22

[X] Tawanna P. Gaines
[X] Anne Healey
[X] Justin David Ross

State Senator - District 23

[X] Doug J.J. Peters

State Delegates - District 23A

[X] James W. Hubbard
[X] Gerron Levi

State Delegates - District 23B

[X] Marvin Holmes Jr.

State Senator - District 24

[X] Nathaniel Exum

State Delegates - District 24

[X] Joanne Benson
[X] Carolyn J.B. Howard
[X] Michael Vaughn

State Senator - District 25

[X] Ulysses Currie

State Delegates - District 25

[X] Aisha Braveboy
[X] Dereck Davis
[X] Melony Griffith

State Senator - District 26

[X] C. Anthony Muse

State Delegates - District 26

[X] Veronica Turner
[X] Kris Valderrama
[X] Jay Walker

State Senator - District 27

[X] Ron Miller

State Delegates - District 27A

[X] Kenneth Brown
[X] Antoinette Jarboe-Duley

State Senator - District 47

[X] Gwendolyn Britt

State Delegates - District 47

[X] Jolene Ivey
[X] Doyle Niemann
[X] Victor Ramirez

County Executive

[X] Jack B. Johnson

County Council - District 1

[X] Thomas E. Dernoga

County Council - District 2

[X] Will Campos

County Council - District 3

[X] Eric Olson

County Council - District 4

[X] Ingrid M. Turner

County Council - District 5

[X] David Harrington

County Council - District 6

[X] Samuel H. Dean

County Council - District 7

[X] Camille Exum

County Council - District 8

[X] Tony Knotts

County Council - District 9

[X] Marilynn Bland

State's Attorney

[X] Glenn Ivey

Sheriff

[X] Michael Jackson

Clerk of the Court

[X] Peggy Magee

Register of Wills

[X] Cereta A. Lee

Judge of Orphans Court

[X] Wendy Cartwright
[X] Athena Groves
[X] Vicky Ivory-Orem

Court of Special Appeals

[Yes] Ellen L. Hollander
[Yes] James P. Salmon

School Board At-Large

[X] Donna Hathaway Beck
[X] Jeana McCotter-Jacobs
[X] Nathaniel Thomas
[X] Ronald Watson

School Board District 1

[X] Rosalind Johnson

School Board District 2

[X] Heather Iliff

School Board District 3

[X] Pat Fletcher

School Board District 4

[X] Steven E. Morris

School Board District 5

[X] Owen R. Johnson, Jr

Ballot Questions

Question 1
Constitutional Amendment
Disposition of Park Lands

[X] For the Amendment

Question 2
Constitutional Amendment
Circuit Court in Banc Decisions

[X] For the Amendment

Question 3
Constitutional Amendment
Civil Jury Trials

[X] For the Amendment

Question 4
Statewide Referendum
Election Law Revisions

[X] Against Referred Law

Question A
Local and Minority Business,
Budget and County Personnel

[X] For the Charter Amendment

Question B
County Personnel - County Council
Staffing Level Approval

[X] For the Charter Amendment

Question C
County Council - Authority to Increase
or Decrease Revenue Estimates

[X] For the Charter Amendment

Department of Justice

STATEMENT

OF

ALBERTO R. GONZALES
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

DEPARTMENT OF JUSTICE OVERSIGHT

PRESENTED ON

JANUARY 18, 2007

Statement of Alberto R. Gonzales
Justice Department Oversight Hearing of the Senate Judiciary Committee
January 18, 2007

Thank you, Chairman Leahy and Ranking Member Specter, and members of the committee. I appreciate the opportunity to be here today.

As you know, the Department of Justice's responsibilities are broad, ranging from preventing terrorist attacks upon the United States to prosecuting violations of civil rights to interdicting international drug trafficking. In my testimony today, I have time to touch on only a few of the Department's many important functions.

I'd like to discuss today several of my top priorities: our efforts to combat terrorism, including the usefulness of some of the tools Congress has recently given us to do so and additional tools we still need; the need for comprehensive reform of our immigration system; our commitment to working with state and local law enforcement to keep Americans safe from violent crime and from the scourge of illegal drugs; our extensive work to bring to justice those who prey on and exploit innocent children through the Internet; our efforts to prevent and prosecute identity theft, other types of fraud, and intellectual property crimes; and our work to protect voting rights.

This is just some of the work of the Justice Department, and I am humbled to be its steward during this critical time in our nation's history.

Preventing Terrorist Attacks

For those of us in government whose job it is to protect our country from terrorism, every day is September 12th.

Since the horrific attacks of September 11, 2001, the Department of Justice has undertaken a significant re-orientation to a preventive and proactive approach to combating terrorism. While bringing terrorists to justice remains a top priority, preventing attacks from happening in the first place is the *first* priority.

National Security Division (NSD)

In previous testimony, my predecessor and I have discussed the FBI's reorganization. Creation of a new National Security Division in the Department of Justice was the next step shifting toward an approach focused on the prevention, disruption, and dismantling of terrorism.

Previously, as the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction noted, several different divisions and offices in Main Justice handled various parts of our national security operations, without centralized, coordinated management other than the Deputy Attorney General or me. The

Administration proposed creation of the National Security Division to bring all of these functions together in one component, and you authorized it in the USA PATRIOT Improvement and Reauthorization Act, signed by the President last March.

Ken Wainstein was confirmed as the Assistant Attorney General for the Division last year, and it is now fully operational. The Division brings together the Office of Intelligence Policy and Review, which is responsible for processing Foreign Intelligence Surveillance Act ("FISA") applications and presenting them to the Foreign Intelligence Surveillance Court, and the Counterterrorism and Counterespionage Sections, which previously resided within the Criminal Division. This reorganization allows lawyers with a criminal prosecutorial focus and lawyers with an intelligence focus to coordinate and share information on a daily basis, ensuring the best coordination, planning, and strategic thinking about how to deal with every emerging terrorist threat.

The Division also has continued to build upon the Department's success in reducing the number of pending FISA applications. The use of FISA is a critical tool in the government's efforts to collect foreign intelligence to prevent acts of terrorism and espionage against America, and I am pleased to report that the Department has dramatically increased its production and efficiency in processing applications to the FISA Court in recent years. From the end of 2004 to September 2006, for instance, the Department reduced the number of days it takes to process FISA applications by the FBI by on average 35 percent. In that same time span, the Department reduced the number of FBI FISA applications pending by roughly 65 percent.

These improvements have occurred even as the volume of FISA applications has grown. Applications to the FISA Court have surged in recent years, from a mere 973 in 2001, to roughly 1,754 in 2004, to roughly 2,072 in 2005. The Department expects this demand for FISA collection authority to continue to increase in the coming years.

USA PATRIOT Act Reauthorization and Successful Implementation

The members of this Committee are very familiar with the provisions of the USA PATRIOT Act and the legislation that reauthorized it last year. The provisions of this Act have been for the last several years, and continue to be, extremely valuable to the Department in preventing and prosecuting terrorism and other crimes.

I appreciate the productive working relationship we enjoyed with the Congress last year in reauthorizing this legislation. Removing the sunset dates on most of the sections subject to them – including critical provisions such as the one that was instrumental in taking down the "wall" that prevented law enforcement and intelligence officials from effectively sharing vital information and coordinating – eliminated a level of uncertainty that had hung over our counterterrorism strategies and procedures. The reauthorization also made a number of important improvements to the existing provisions of the law and created at least thirty new safeguards for civil liberties. Since the reauthorization's

enactment, the Department has been able to incorporate the changes to the law, including those bolstering civil liberties protections, into our operations. The President charged all of us in the Administration with ensuring that none of the amendments to the Act harmed our ability to prevent, investigate, and prosecute terrorism, and we believe the reauthorization bill complied with that directive.

Indeed, it improved the utility of certain authorities. For example, section 128 of the reauthorizing legislation included new authority that supplemented existing FISA pen register/trap and trace provisions. Pursuant to Congress's revisions, we can now obtain subscriber information in connection with a court-approved FISA pen register or trap and trace order. This commonsense revision obviates the need to use other authorities in addition to the pen register/trap and trace order to obtain this information. As before the reauthorization, a court must approve the application and issue the order, but the modification saves time and resources and gets critically useful information into the hands of our counterterrorism and counterintelligence investigators more efficiently and without compromising any American's civil liberties.

We look forward to a similarly productive working relationship with this Committee during the current Congress in ensuring that the Department has the tools it needs to keep our nation safe from the threat of terrorism.

Military Commissions Act

I also appreciate the work of this committee on the Military Commissions Act. The MCA provides for the full and fair trial of captured terrorists; reinforces and clarifies United States obligations under the Geneva Conventions; and buttresses our ability to gather vital intelligence and disrupt future terrorist attacks.

I am aware that two bills were introduced in the last Congress, and are likely to be re-introduced, that would amend the federal habeas statute by deleting the MCA restrictions in their entirety. I believe that such proposals to amend the MCA are ill-advised and frankly defy common sense.

The MCA's restrictions on habeas corpus petitions did not represent any break from the past. Indeed, it has been well-established since World War 2 that enemy combatants captured abroad have no constitutional right to habeas petitions in the United States courts. As the Supreme Court recognized in *Johnson v. Eisentrager*, 339 U.S. 763 (1950), the extension of habeas corpus to alien combatants captured abroad "would hamper the war effort and bring aid and comfort to the enemy," *id.* at 779, and the Constitution requires no such thing, *see id.* at 780-81. The Constitution did not give the right of habeas corpus to the several hundred thousand German and Japanese soldiers detained by the United States during World War 2, and it does not provide that right to the alien enemy combatants detained in the present conflict.

Congress endorsed this principle in the Detainee Treatment Act of 2005, which removed federal courts jurisdiction over habeas corpus petitions filed by the detainees at Guantanamo Bay. After the Supreme Court held in *Hamdan v. Rumsfeld* that these restrictions did not apply to the several hundred petitions pending at the time of its enactment, Congress passed the broader restrictions under the MCA, which apply to the petitions of all enemy combatants in United States custody, including pending petitions. The MCA's restrictions prevent terrorists captured on the battlefield from continuing to fight us in our courts. They are necessary to limit the burden that litigating the hundreds, and potentially thousands, of enemy combatant petitions would impose on the United States in this conflict and future conflicts.

The existing restrictions should be preserved. Given the military necessities of the war on terror, it is common sense to do so, and to preserve, more broadly, that which the MCA achieved so well – a priority system that puts the security of our country and citizens first and still respects human rights while ensuring that terrorists are not given more rights than our men and women in uniform.

Terrorist Surveillance Program

When necessary, the government has developed tools to increase our flexibility in fighting the war on terror. The Terrorist Surveillance Program (TSP) helped us to adapt to a new enemy that attempts to blend into our society while it plans its attacks. The TSP operates with the speed and agility needed to counter this new enemy, providing us with a critical early warning system that alerts us to the presence of al Qaeda agents in the United States. The TSP is limited to targeting only international communications in which we have reasonable grounds to believe that one party is a member or agent of al Qaeda or an affiliated terrorist organization.

Alan Raul, Vice Chairman of the Privacy and Civil Liberties Oversight Board said that the Board "found there was a great appreciation inside government, both at the political and career levels, for protections on privacy and civil liberties." In fact, he noted that "the public may have an underappreciation for the degree of seriousness the government is giving these protections." The TSP is reviewed approximately every 45 days to ensure that it is still necessary and consistent with the Fourth Amendment.

It is helpful to think of the TSP as a modern-day version of the "signals" intelligence that our country has gathered and relied upon in every conflict in our history, and that every nation has relied upon.

In every conflict we have been in, the United States government has needed to know what the enemy is doing, and signals intelligence provides one of the most important ways to do that.

During the Civil War, telegrams were intercepted. During both World Wars, we intercepted telegrams in and out of the United States.

The Terrorist Surveillance Program has proven to be one of our most effective tools in the war against terrorism. U.S. intelligence officials have confirmed that the program has helped detect and prevent terrorist attacks and has saved American lives.

I hope that Congress will act to provide additional authority for this narrow, essential program as soon as possible. Congress should also act to modernize FISA – another valuable intelligence tool. Revolutions in telecommunications technology since FISA was enacted in 1978 have brought within FISA's scope communications that Congress did not intend to be covered – and as a result, extensive resources are now expended obtaining Court approval for acquiring communications that do not substantially implicate the privacy rights of Americans. We urge Congress to modernize FISA so that we can more effectively confront the new threats and technologies of the 21st Century.

The Importance of Cooperation with international, state, and local partners in preventing terrorism

Last summer, we were given a vivid illustration of the importance of a prevention strategy when we learned of the disruption in England of what would have been a major terrorist attack with massive casualties. Thanks to the vigilance of the British authorities, a terrorist plot to kill innocent men, women, and children was disrupted.

It was an international success for intelligence and law enforcement, with over 200 FBI agents working with their British counterparts to investigate every possible lead here in America.

The disruption of the UK bomb plot highlights the success of international cooperation. Our prosecutors train one another and share information and intelligence. The level of cooperation between the United States and our foreign counterparts is outstanding.

At home, we have dramatically improved collaboration among federal agencies. Indeed, we have applied a new mentality of *constant* information sharing.

We are strongly supporting the standup of intelligence fusion centers where the federal government can work with our state, local, and tribal partners to better protect the nation. The FBI is a relatively small organization when compared to the tremendous number of state and local law enforcement officers across the country. Our combined abilities are much greater, so we will leverage these combined resources.

Homegrown Threat and Response of DOJ/Law Enforcement

The threat from homegrown terrorists and cells – often radicalized online, in prisons, and among other socially isolated groups – may be as dangerous to the safety of Americans as

that from international terrorist organizations. Together with its federal, State and local partners, the Department has worked steadily to prevent the spread of these cells and the danger of attacks by them.

With respect to prisons, for instance, the Correctional Intelligence Initiative within the National Joint Terrorism Task Force has implemented a number of initiatives to identify, interdict, and deter radicalization and recruiting of inmates in federal, State, and local correctional facilities. In federal prisons, we have enhanced the screening process to identify existing and entering inmates who may already be radicalized and have separately housed the most dangerous and sophisticated international terrorists so that they cannot influence others, gain prestige, or use other inmates to send or receive messages. In addition, we have improved supervision of inmate-led groups and enhanced training and other requirements for religious staff and volunteers.

We are also able to use the tools that have been given to us by the Congress to identify, investigate and prosecute would-be homegrown terrorists, including those inspired by the ideology of al Qaeda and those who use violent means to advocate such causes as animal rights and environmental protection. Just this past summer, for example, we arrested seven men in Florida who, in support of al Qaeda, were planning attacks on targets in the United States, including the Sears Tower in Chicago and the Miami FBI building. And this past year, nineteen defendants connected with the Earth Liberation Front and the Animal Liberation Front were charged with a variety of crimes relating to attacks against government facilities and private enterprises. Twelve defendants have already pleaded guilty. These investigations and arrests were the product of the hard work and cooperation of federal, State, and local agencies. I applaud the work of state and local law enforcement in identifying and investigating these threats.

Immigration Reform

As you well know, one of the most pressing and complex issues facing this Committee is the need for comprehensive immigration reform. Such reform is urgently needed to facilitate effective law enforcement, to maintain the productivity of the American economy, and – most importantly – to help ensure the national security of the United States. The Department of Justice has substantial responsibility, of course, for immigration enforcement. Among other things, the Department is responsible for all criminal prosecutions arising from violations of the nation's immigration laws, for incarcerating convicted immigration offenders, and for administratively adjudicating (and defending in federal court) orders for the removal of illegal aliens. As a result, the Department is keenly interested in working with this Committee in pursuit of practical and comprehensive immigration reform.

The President has made clear that such reform must include at least five elements: securing our borders, enforcing immigration laws in the interior (specifically including laws preventing the employment of aliens who are not authorized to work in the United

States), establishing a temporary worker program so that foreign workers can do jobs for which U.S. employers cannot find American workers, dealing with the millions of undocumented workers that are already in the United States, and promoting the assimilation of new immigrants. All of these elements are essential to successful and workable immigration reform and must be pursued in tandem.

The Department of Justice in cooperation with the Department of Homeland Security has already increased its efforts to help secure the border and step up interior enforcement by allocating more resources to prosecuting criminal immigration offenders and adjudicating removals of illegal aliens who are here now, but more resources and statutory improvements will be essential in helping the Department to combat immigration fraud, alien smuggling, and other threats to the nation's security.

As the Committee considers new legislation in this Congress, I urge it to bear in mind the importance of all five elements of successful reform and look forward to helping ensure that the Administration has the tools it needs to implement that reform.

Violent Crime and Drugs

Keeping our communities and citizens safe from violent crime is a top priority for law enforcement at all levels, including the United States Department of Justice. Although the vast majority of the work of preventing, investigating, and prosecuting these crimes is done by state and local law enforcement, federal investigators and prosecutors can have a significant beneficial impact by, for example: prosecuting federal gun crimes, which carry stiff sentences and remove violent offenders from the streets of our cities; dismantling and prosecuting national gangs under RICO and other federal statutes; interdicting international and interstate drug shipments; and prosecuting the worst drug offenders on federal charges. We look forward to working with this Committee to continue to ensure that the federal criminal justice system can play these vital roles by making reforms to the federal sentencing system. Because of the Supreme Court's decision in *Booker v. United States,* disparity among the sentences handed down to federal convicts has increased. We need to restore the fairness and consistency that existed prior to *Booker* in a way that meets the constitutional requirements established by the Supreme Court in that decision.

We are pleased that the violent crime rates in our nation remain near historic lows. However, as you know, the rates of violent crime in certain cities have shown a slight increase over the last two years, and law enforcement at all levels must be vigilant in determining how we can best address this issue. Last year I announced the Safe Communities Initiative, in which senior Department officials would visit cities around the country to discuss crime issues with state and local law enforcement to better understand what crime issues faced those cities and which law enforcement approaches are the most effective in addressing them. In November and December, they visited 18 cities, including cities where crime rates had increased from 2004 to 2005 and cities where crime had decreased during that period. We are now in the process of digesting what we

learned from those visits and assessing what suggestions and proposals we may make to improve law enforcement efforts at the federal, state, and local levels to combat violent crime.

I'd like to give you a brief overview of a few of the Department's current efforts against violent crime.

Project Safe Neighborhoods (PSN)

Project Safe Neighborhoods (PSN) is central to the Department's approach. Project Safe Neighborhoods is the nation's largest and most visible effort to combat violent crime and criminal gang activity at a community level. Originally focused on gun crime, the PSN strategy has since been expanded to help America's communities address all forms of violent crime and violent gang activity by providing locally based programs with the tools and resources they need to succeed. The goal is simple and uniform: Get armed criminals off the street so that there are fewer victims of crime and our communities become safer.

In order to make PSN operational, United States Attorneys' Offices across the country have assembled task forces that consist of community stakeholders – those individuals or agencies with an interest in reducing gun crime in the district and/or a specific role in implementing the district gun crime response. Task force members vary by district, but they often include representatives from the U.S. Attorney's Office, federal, state and local law enforcement, state and local prosecutors, parole and probation, corrections, social service agencies, non-profits, local businesses, and educational institutions. The task force is responsible for creating the district's PSN strategy and periodically reviewing and revising the strategy as needed.

Though the ultimate goal is the same, the PSN strategy is unique in every district. The ability of districts to tailor their responses to violent crime under this initiative is one of the reasons PSN is so successful and is highly regarded by those in the field. We know that the districts are in the best position to assess their crime problem and its primary source. PSN gives districts the flexibility to identify their needs and potential solutions. I hear from law enforcement officials on a regular basis regarding concerns that they have about crime. I cannot tell you how often I hear praise for PSN and the community partnerships that it has created and sustained.

In FY 2006, through the PSN initiative, the Department filed 10,425 cases against 12,479 defendants under sections 922 and 924 of title 18, which regulate the possession and transfer of certain weapons in specified circumstances. This is a 66% increase in cases filed and a 55% increase in defendants prosecuted under those sections since FY 2000. The conviction rate in FY 2006 for federal firearms defendants was 92% – the highest it has ever been. Over 93% of those offenders received prison terms, and over 50% were sentenced to five or more years in prison. This information is important, but it only reflects what is occurring within federal prosecutions. We also know that there is a

great deal of good work being done by our partners, the state and local prosecutors, to punish firearms offenders.

Gangs

Prosecuting gang violence and preventing America's youth from becoming involved with gangs are top priorities for the Department of Justice. We also are committed to working with our partners in state and local law enforcement to take apart the criminal gangs that are responsible for so much violence. The Department has established the necessary infrastructure to focus our resources and carry out our anti-gang mission. First, we 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.

Within the last year, the Department has further improved our ability to achieve this goal by establishing national coordination, intelligence and enforcement mechanisms aimed at dismantling the most significant violent, national and regional gangs.

The Department created and launched the new National Gang Targeting, Enforcement & Coordination Center (GangTECC) to be the coordination arm of the Department's effort to achieve maximum national impact on America's most dangerous and far-reaching gangs. Led by the Criminal Division, the center coordinates overlapping investigations, ensures that tactical and strategic intelligence is shared among law enforcement agencies, and serves as a central coordinating center for multi-jurisdictional gang investigations involving federal law enforcement agencies.

GangTECC works hand-in-hand with the new National Gang Intelligence Center (NGIC). The NGIC integrates the gang intelligence assets of all Department of Justice agencies and has established partnerships with other federal, state, and local agencies that possess gang-related information. The Department's Criminal Division, under the leadership of Assistant Attorney General Alice Fisher, established the new Gang Squad composed of prosecutors to serve as the prosecutorial arm of the Department's efforts to achieve maximum national impact against violent gangs.

Additionally, the Department launched a Six Site Comprehensive Anti-Gang initiative that focuses on reducing gang membership and gang violence through enforcement, prevention and reentry strategies. The program provides $2.5 million in grant funds to each of six sites across the country: Los Angeles, Tampa, Toledo, Dallas/Ft. Worth, Milwaukee, and Pennsylvania's 222 Corridor. Each city's program employs a multi-faceted and comprehensive approach, focusing on enforcement, prevention, and prison re-entry.

On the prevention front, I directed each U.S. Attorney to convene a Gang Prevention Summit in his or her district to explore additional opportunities in the area of gang prevention. These summits bring together law enforcement and community leaders to discuss best practices, identify gaps in services, and create a prevention plan to target at-risk youth within their individual communities. These summits have already reached over 10,000 law enforcement officers, prosecutors, community members, social-service providers and members of the faith-based community.

Drug Enforcement

The Department continues to devote substantial investigative and prosecutorial resources to addressing the problem of drug trafficking. In Fiscal Year 2006, drug cases represented over 25% of all cases filed by our U.S. Attorneys and 35% 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, 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 nonmedical 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 illicitly through 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 Congress on additional enforcement tools that may be appropriate.

Project Safe Childhood

I appreciate the work of this committee to safeguard the innocence of our children, including its support for the Adam Walsh Act, which included authorization of Project Safe Childhood.

As you know, the Internet is increasingly used by sexual predators and abusers as a tool for exploiting and victimizing our children through both child pornography and cyber-enticement.

The term child pornography imperfectly describes what really are crime-scene photos of the sexual assault of children. The Internet has contributed to a significant increase in the

proliferation and severity of such images. It provides deviants with an easily accessible and seemingly anonymous means of accumulating and distributing vast collections of images of child sexual abuse. In the past, pedophiles were constrained by social norms, difficulty in obtaining images, and their consciences; today, the Internet provides community, affirmation, and easy access to images for sexual deviants. Eventually, many who initially seek images turn to abusing children themselves and producing their own images. The result has been that images of child sexual abuse today are more disturbing, more graphic, and more sadistic than ever before. Worse yet, they involve younger and younger children.

This is not a victimless crime. Most images of child pornography depict actual sexual abuse of real children. I've seen some of the shocking and vulgar images we've uncovered, such as the rape of a girl as young as five years old by an adult man. Though she is unnamed in the series of images cataloguing her abuse, she has been given a distinctive nickname known throughout the world to those who trade in images of child exploitation. This is the reality of child pornography and sexual exploitation on the Internet today.

Masha Allen offered a victim impact statement at a recent criminal trial of a child pornography defendant who was convicted of possessing images of the sexual abuse of Allen by her adoptive father when she was child. "I know that these pictures will never end and my 'virtual abuse' will go on forever....Usually when someone is raped and abused, the criminal goes to prison and the abuse ends. But since [my abuser] put these pictures on the Internet, my abuse is still going on...I want every single person who downloads my picture to go to jail and really be punished as much as possible...They are as evil as [my abuser.] They want to see me suffer. Child pornography is not a victimless crime."

As the Internet and related technologies have grown and evolved, children are also increasingly at risk of being sexually solicited online by predators. Law enforcement is uncovering an escalating number of "enticement" cases, where perpetrators contact children in chat rooms or through instant messaging and arrange to meet at a designated location for the purpose of making sexual contact. The threat posed to our children in cyberspace was highlighted by a national survey, released in August 2006, conducted by University of New Hampshire researchers for the National Center for Missing & Exploited Children. The study revealed that 1 in 7 youth Internet users received unwanted sexual solicitations or approaches in the past year. One in 3 of those that received an unwanted solicitation described the contact as an aggressive sexual solicitation, which threatened to spill over into "real life" because the solicitor asked to meet the youth in person, called him or her on the telephone, or sent him or her offline mail, money, or gifts.

The challenge is great, but we have stepped up to the challenge. Through Project Safe Childhood, which, as I mentioned, was authorized by the Adam Walsh Act and 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. I see Project Safe Childhood as a strong, three-legged stool: one leg is the federal contribution led by United States Attorneys around the country. Another leg is state and local law enforcement, including the outstanding work of the Internet Crimes Against Children task forces funded by the Department's Office of Justice Programs. And the third leg is non-governmental organizations, such as the Financial Coalition Against Child Pornography and the National Center for Missing and Exploited Children (NCMEC). On this sturdy platform we are certain to build on our success to date, in terms of investigations commenced, defendants prosecuted, and children rescued.

In 2006, federal prosecutors charged 1,638 defendants with child pornography or cyber-enticement. Of these, 1,242 were sentenced to prison. This is up from 715 defendants charged in 2000. Over the last ten years, the FBI's Innocent Images National Initiative has gone from 68 defendants charged and convicted as a result of their efforts to 1,018 in 2006. The ICAC task force program opened a remarkable total of 13,667 investigations in 2006 involving suspicion of cyber-enticement and child pornography.

Cooperation among law enforcement and NCMEC has yielded more than arrests and convictions; it also has contributed to the identification and, in many cases, rescue of 296 children depicted in images of sex abuse. This is a 50% increase over all preceding years.

We also have made progress in keeping child predators off the street. In late October, 1,659 sex offenders were arrested through "Operation Falcon III" led by the U.S. Marshals with hundreds of partners from state, local and other federal agencies. The effort to separate our children from dangerous offenders will continue to be advanced by the tools provided Congress in the Adam Walsh Act.

For example, I am supporting the development and implementation of new regulations for the Bureau of Prisons to pursue the civil commitment authority provided in the Adam Walsh Act, which will allow a court to civilly commit a sexually dangerous person.

We already are implementing a number of other mandates that were included in the Adam Walsh Act. For example, the President recently appointed Laura Rogers to be the Department's first SMART office coordinator. With this appointment, the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking Office will now be able to get to work on numerous important functions relating to the sex offender registry. Improving that registry and giving the registration requirement some teeth was a step that is going to help all of us protect America's children. In further support of the Adam Walsh Act, the United States Marshals Service has established a Sex Offender Investigations Branch. With these efforts, we hope that unregistered sex offenders will finally understand that non-compliance will not be tolerated.

I think the President put it very well when he signed the Adam Walsh Act. He said: "Protecting our children is our solemn responsibility. It's what we must do. When a

child's life or innocence is taken it is a terrible loss – it's an act of unforgivable cruelty. Our society has a duty to protect our children from exploitation and danger."

I look forward to continued work with this committee on this issue that I care about deeply.

Identity Theft

On May 20, 2006, the President signed Executive Order 13402, establishing an Identity Theft Task Force aimed at using federal resources effectively to deter, prevent, detect, investigate, proceed against, prosecute, and remediate Identity Theft. I have served as the Chairman of that Task Force, with Chairman Majoras of the Federal Trade Commission as my Co-Chair. The Task Force, and we at the Department of Justice, have been very concerned about the current prevalence of the crime of identity theft – some studies indicate that about four percent of Americans are identity theft victims each year – combined with the lingering burdens and effects on victims. As part of the Task Force's efforts, we have looked at the adequacy of the current federal response, including whether we at the Department of Justice have the tools and authorities we need to protect and assist Americans and prosecute wrongdoers.

The prosecution of identity theft and related crimes has been a focus of the Department of Justice. In 2004, the aggravated identity theft statute was signed into law, and since that time, the Department has used the statute aggressively. The number of aggravated identity theft cases filed increased from 177 in FY 2005 to 344 in FY 2006. The number of individual defendants against whom aggravated identity theft charges were brought increased from 226 in FY 2005 to 507 in FY 2006. For all cases that included aggravated identity theft charges, the conviction rate rose from 87.5 percent in FY 2005 to 93.5 percent in FY 2006. In recent weeks, we have federally charged 148 individuals with identity-theft related crimes in connection with DHS's recent enforcement action at the Swift meatpacking facilities, and have worked with state authorities who have charged another 98 defendants under similar state statutes.

I am proud of our record, but we can do more. Looking forward, the Task Force has identified areas for improvement and will present final recommendations to the President in a comprehensive strategic plan containing recommendations for a fully coordinated federal strategy to combat identity theft. In order to make sure that the Task Force has all of the information that it needs, it is currently seeking public comment on numerous potential recommendations.

The recommendations will build on and ensure effective coordination of robust efforts already under way to prevent identity theft, to assist victims of identity theft, and to investigate and prosecute the identity thieves. We look forward to sharing those final recommendations with this committee, but we have made some interim recommendations already that I can report on today. We conveyed these recommendations to the President

on September 19, 2006, and to date, the Task Force has either implemented or taken steps to implement each of the recommendations.

When we look at the problem of identity theft, we are reminded that the same technological advances that have improved our lives have also given new and broad opportunities to criminals including identity thieves. These criminals are clever and sophisticated, and they leave their victims with more than financial loss. As with any crime, victims suffer feelings of violation and stress, but in these cases, victims have the added burden of essentially cleaning up the mess that the identity thieves leave behind. One of the interim recommendations adopted this past September by the Task Force squarely addresses that problem.

We also recommended the development and use of a universal police report for identity theft victims. This will ensure that victims are able to obtain police reports documenting the misuse of their personal information, which in many cases they need in order to obtain fraud alerts, to request that fraudulent information in their credit report be blocked, and to undo the other damage the identity thief has done. Great progress has already been made in this regard.

We recommended that the public sector look seriously at ways to reduce unnecessary use of social security numbers. Social Security Numbers are ubiquitous in government and, as the most valuable piece of consumer information to identity thieves, we must identify ways to keep them more confidential. Furthermore, by reducing unnecessary use of social security numbers in the public sector, we can serve as an example for the private sector.

The Task Force also developed concrete guidance on how federal agencies should respond to data breaches, which the Task Force recommended be immediately issued to all agencies. This step-by-step roadmap, which was issued to all federal agencies and departments in September 2006, is the first guidance of this kind, and it will allow agencies to more quickly, effectively, and intelligently respond to the types of data breaches that have become more and more common in recent years.

A quick and effective response by agencies to data breaches is good government and also has the important effect of allowing the individuals affected by the breach to protect themselves before they become victims. I'm proud of the work of the Task Force to date, and I believe that we are on track to produce a strong set of final recommendations to the President.

Katrina Fraud Task Force and Combating Fraud

After hurricanes left the Gulf Coast region in ruins, with thousands of lives lost and dismantled, the vast majority of the nation responded with compassion. Government, private sector, and individual efforts to help the people of the region were as unprecedented as Hurricane Katrina herself.

Yet while most Americans were sending donations and prayers, some chose to plot their own corrupt enrichment instead. For example, one woman who was living in Belleville, Illinois, at the time of Hurricane Katrina defrauded FEMA by claiming she was displaced by the storm and even went so far as to tell FEMA that her two daughters had died during the flooding in New Orleans and that she had watched their bodies float away. In reality, this woman had no daughters. It was all an elaborate fabrication that resulted in her indictment by the Justice Department this summer.

Other fraudsters had the audacity to set up websites to collect charitable donations only to pocket the money personally. The examples go on and on.

This problem required a robust, national response, and the Department created the Hurricane Katrina Fraud Task Force to investigate and prosecute these crimes. The Task Force has cracked down on criminal activity ranging from charity and assistance fraud to identity theft, Internet fraud and public corruption involving federal or state contracts. Through the work of the Task Force, private, taxpayer and charitable dollars have been protected and would-be criminals have been prevented from taking advantage of the situation in the Gulf Coast.

In the past year, the Task Force's efforts have resulted in charges against more than 400 defendants in 30 separate judicial districts around the country. I believe the Task Force's efforts have had a significant deterrent effect as well. Since the establishment of the Task Force, FEMA and the Red Cross report that more than $18.2 million has been returned by recipients of individual-assistance benefits.

Of course, the work of the Task Force is not yet done. Billions of dollars are headed to the Gulf Coast region for the rebuilding effort – and we know that fraud, sadly, follows dollars.

A report released in the fall detailed the trends and patterns the Task Force has identified, and that is one of the things that will assist Task Force members in the considerable work that lies ahead.

The report identified the cycles of fraud after disasters – beginning with charity-fraud schemes, then moving into emergency-assistance schemes, and later into procurement and insurance fraud.

The Task Force has also identified, and detailed in its report, how systemic weaknesses are exploited by criminals. In short, when these criminals find a weak spot, an easy route to the money, they tend to return for more – giving law enforcement an opportunity to stop them. This report is now serving as a guide for the Task Force's ongoing work.

The Department of Justice remains absolutely dedicated to vigorously investigating and prosecuting all types of fraud in the hurricane region.

Intellectual Property Rights

In our 21st-century economy, intellectual property is among the most valuable assets in enterprises as diverse as manufacturing, communications and medicine. Whether it is the copyright of a blockbuster film, the trade secret for an innovative product, the patent on a life-saving drug or the trademark of a valuable brand, intellectual property is a significant source of growth in the American economy and a key driver of global economic activity. America's intellectual-property-based industries are the biggest exporters in our economy and a strong factor in American competitiveness.

Although our economy suffers from intellectual property theft, intellectual property crime more significantly harms public health and safety. Counterfeit automotive and aviation parts that are prone to failure can cause accidents and injuries. The risks from fake pharmaceuticals are obvious. Intellectual property crimes are serious and by no means victimless.

The key to addressing the threat of intellectual property theft is cooperation among law enforcement authorities, other government agencies, Congress and victims.

This Administration has led an unprecedented effort to crack down on intellectual property theft. This has been possible only because we have made cooperation among government agencies the cornerstone of our efforts. That is what our ongoing "STOP" initiative is all about. The Strategy Targeting Organized Piracy is a comprehensive and coordinated strategy to crack down on the growing global trade in counterfeit and pirated goods. This initiative attacks the problem in a number of ways with nine federal agencies, including the Department of Justice, working together to highlight and to enforce intellectual property rights and to prevent intellectual property theft. I am proud of the Administration's accomplishments with the STOP Initiative over the last two years.

The success of this strategy is made clear in the 2006 Report to the President and Congress on Coordination of Intellectual Property Enforcement and Protection that was released last September. This important document sets forth the Administration's significant and substantial efforts to stem the tide of intellectual property theft and our coordinated strategy to ensure that intellectual property rights are protected.

The Department of Justice's efforts are also set forth in the report of the Department's own Task Force on Intellectual Property, which I unveiled last June. As you may remember, in March 2004 we had established a Task Force of high-level Department of Justice officials who were given the task of reviewing how the Department enforced and protected intellectual property rights.

The Task Force made 31 substantive recommendations to improve the Department's efforts to protect and enforce intellectual property rights through criminal, civil, and antitrust enforcement; international cooperation; legislation; and prevention programs.

When I became Attorney General in 2005, I charged the Task Force with implementing all of the recommendations contained in the Report as soon as possible. And I was glad to be able to announce to you in June that the Department had met, and in some ways exceeded, its goals.

Among our many achievements, the Department of Justice increased the number of defendants indicted for intellectual property offenses by 98% from fiscal year 2004 to 2005. Through these prosecutions, the Department has dismantled international criminal organizations that commit these crimes. We have obtained convictions against sellers of counterfeit medications, IP-crime rings that engaged in terrorist financing through the proceeds from IP offenses, online software and music pirates, and thieves of trade secrets, among many others.

To expand on our successes, we increased the number of prosecutors focusing on intellectual property crimes in the field by creating 12 new Computer Hacking and Intellectual Property, or CHIP, Units in U.S. Attorneys' offices around the country, including offices in Pittsburgh, Pennsylvania; Orlando, Florida; Detroit, Michigan; Sacramento, California; and Nashville, Tennessee. The FBI has also increased the number of its agents assigned to search for digital evidence in intellectual property cases.

In addition, the Department of Justice has deployed an intellectual property law enforcement coordinator in Asia, and we are adding a coordinator in Eastern Europe. We have trained more than two thousand foreign prosecutors, investigators, and judges regarding intellectual property investigations and prosecutions. We have protected victims' rights and established victim-industry partnerships, educated youth on the importance of intellectual property protections, developed a comprehensive resource manual on prosecuting intellectual property crimes, and defended appropriate protections for intellectual property through filings in the Supreme Court.

While I am proud of our efforts and those of our partners, there is more that we can do. We will continue to seek legislation that would, among other things, increase penalties for intellectual property crimes, clarify that registration of a copyright is not required for a criminal prosecution, make attempts to commit copyright infringement a crime and increase the tools investigators have at their disposal to track potential intellectual property crimes. I know that widespread support for intellectual property protection exists in the Congress. We will be pleased to work with you to enact this important legislation.

At the Department of Justice, we realize that we did not achieve the important milestones already reached – and will not continue to make progress – without the cooperation of other federal agencies, and most importantly, the cooperation of victims. I recognize and appreciate as well the support we received from the Congress on previous bills and treaties, and I hope to build upon that support in the next two years.

Civil Rights and Voting

The right to vote is the foundation of our democratic system of government. The Department's Civil Rights Division has the solemn duty to protect this right.
Last year, the President and 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 the bilingual requirements of Sections 4 and 203.

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."

During the signing ceremony at the White House, 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 over 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, over 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 telephone lines to handle calls from citizens with election complaints, as well as 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 over 200 complaints through its telephone- and Internet-based system on election day. Many of these complaints were subsequently 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 17 new lawsuits, which is double the average number of lawsuits filed 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, in any year since 1992. Finally, in 2006, the Voting Section processed the largest number of Section 5 submissions in its history. The Division made two objections to submissions pursuant to Section 5, and filed its first Section 5 enforcement action since 1998.

Last year furthered our record of accomplishment during this Administration. During the past six years, the Civil Rights Division has litigated more cases on behalf of minority language voters 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. Moreover, during the past six years, we have brought six of the eight 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 build upon our accomplishments, and continue to create a record that reflects the profound significance of this right for all Americans.

The Department's responsibility to protect access to the ballot box extends not only to civil enforcement of federal voting laws, but also to criminal prosecution of those who commit election fraud. The Criminal Division and the United States Attorneys' Offices have made enforcement against election fraud and campaign financing offenses a top priority. With the assistance of the FBI, we have investigated over 300 election crime matters, charged more than 170 individuals with election fraud or campaign fraud offenses and secured more than 130 convictions. At the present time, over 200 election crime investigations are pending throughout the country. Every prosecution, settlement, or other public resolution puts would-be wrong-doers on notice: We will not tolerate the infringement of voting rights or election fraud, period.

Conclusion

Finally, I am committed to working with the Committee to confirm the President's judicial nominees. Ensuring that the federal judiciary is fully staffed is essential to our system of justice and to fulfilling many of the Department's critical mandates.

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.

Judiciary Committee Hearing
"DOJ Oversight"
January 18, 2007

Opening Statement of Senator Grassley

Chairman Leahy, thank you for holding this DOJ Oversight hearing today. As the new Congress begins its work, there is lots of talk about renewed interest in Congressional oversight because of the new Majority. But, oversight shouldn't be a partisan issue. Oversight should be about good government, accountability, and transparency — things both parties ought to agree on. I have been a long-time advocate of more vigorous Congressional oversight of the Executive Branch throughout my time in the Senate, regardless of whether the Administration is Republican or Democrat and regardless of whether the Congress is Republican or Democrat.

I intend to continue that practice and I'm going to take this hearing as an opportunity to begin by asking the Attorney General about some important oversight issues. My goal isn't to score political points for one party or the other. My goal is to make sure our government is doing what's right and operating efficiently.

The Amerithrax Investigation

As I said in our December hearing with FBI Director Mueller, I am shocked that the FBI and the Justice Department continue to deny Congressional requests for briefings on the Anthrax investigation. Five years with no signs of progress and three years without a briefing to Congress on one of the largest and most important investigations the FBI has ever undertaken is simply unacceptable. There are accusations that FBI agents leaked information to the *New York Times*, and yet Director Mueller told us in December that no one has been disciplined for those leaks.

I would like to hear from the Attorney General when the Department plans to respond to the questions in my October 23rd letter to him. That letter posed legitimate oversight questions seeking basic information necessary to ensure that Congress can evaluate how its post-9/11 legislation is being implemented. For example, I asked about whether and how often grand jury information gathered during the investigation has been shared with other elements of the intelligence community. A detailed answer to that question is key to understanding whether one of the major mistakes of our pre-9/11 system has been adequately addressed.

Refusing to answer basic questions like these just doesn't make sense. Since the December hearing, 32 other Senators and Congressmen, including several members of this Committee, joined me in asking the Attorney General to direct the FBI to provide a comprehensive briefing on the status of the investigation. We haven't received a reply.

DOJ Oversight Training

I also have questions for the Attorney General on the Justice Department's activities in training other agencies on how to respond to Congressional oversight requests. I understand that the Office of Legislative Affairs at DOJ has been conducting some of these sessions, and frankly, I'm concerned about what that means for the ability of Congress to get access to the documents and witnesses it needs to do the everyday business of Congressional oversight. The DOJ Office of Legislative Affairs has been the source of unnecessary and inappropriate foot dragging in many of my oversight efforts over the years. That sort of attitude should not be allowed to infect other agencies as well. Therefore, I've asked the Attorney General to provide copies of the training materials and explain the nature of the program, so that we can ensure that agencies are receiving accurate information about history and precedents that govern Congressional access to information. Unfortunately, I have not received a response. To be fair, any such training should include materials and input from experts in Congressional oversight that address issues from the Legislative Branch perspective as well as the Executive Branch perspective.

False Claims Act

Today's hearing also affords an opportunity to ask some detailed questions of Attorney General Gonzales regarding the False Claims Act. The False Claims Act represents this nations number one tool for fighting fraud, waste, and abuse of taxpayer dollars by allowing qui tam relators to act as private attorney's general and recover money on behalf of the government. As the principal author of the 1986 revisions to the False Claims Act, I take pride in the fact that the FCA has recovered nearly $18 billion of taxpayer money that otherwise would have been lost.

Based upon the success of the 1986 amendments, I authored a provision in the Deficit Reduction Act of 2005 which created an incentive for states to pass their own version of the false claims act. It is my hope that states will take advantage of this incentive and pass an act that meets the qualifications. Working together, states and the federal government will be able to uncover even more money that would have slipped through the cracks, cost the taxpayers, and lined the pockets of wrongdoers. I look forward to discussing the FCA and the new state FCA incentive with Attorney General Gonzales.

Antitrust Enforcement

In addition, I've been concerned about concentration in agriculture for quite some time. In fact, just this past September, I wrote a letter to the Antitrust Division expressing my serious reservations with the proposed merger between Smithfield Foods and Premium Standard Farms.

I'm concerned about reduced market opportunities, possible anti-competitive and predatory business practices, and increasing agribusiness consolidation. For example, in the pork industry, expanded packer ownership of hogs, exclusive

contracting and captive supply are adversely impacting the ability of small independent producers and family farmers to compete in the marketplace. I'm concerned about fewer competitors, vertical integration, as well as less choice for consumers.

So I wasn't particularly happy when a January 8, 2007 Legal Times article questioning the Antitrust Division's merger enforcement record was brought to my attention. I will want assurances that the Justice Department is doing all it can to enforce the antitrust laws, by challenging problematic deals, as well as being aggressive in going after anti-competitive business practices. The Justice Department must be pro-active in policing anti-competitive activity not just in the agriculture industry, but all other industries.

January 15, 2007

Statement of Law Deans

We, the undersigned law deans, are appalled by the January 11, 2007 statement of Deputy Assistant Secretary of Defense Charles "Cully" Stimson, criticizing law firms for their pro bono representation of suspected terrorist detainees and encouraging corporate executives to force these law firms to choose between their pro bono and paying clients.

As law deans and professors, we find Secretary Stimson's statement to be contrary to basic tenets of American law. We teach our students that lawyers have a professional obligation to ensure that even the most despised and unpopular individuals and groups receive zealous and effective legal representation. Our American legal tradition has honored lawyers who, despite their personal beliefs, have zealously represented mass murderers, suspected terrorists, and Nazi marchers. At this moment in time, when our courts have endorsed the right of the Guantanamo detainees to be heard in courts of law, it is critical that qualified lawyers provide effective representation to these individuals. By doing so, these lawyers protect not only the rights of the detainees, but also our shared constitutional principles. In a free and democratic society, government officials should not encourage intimidation of or retaliation against lawyers who are fulfilling their pro bono obligations.

We urge the Administration promptly and unequivocally to repudiate Secretary Stimson's remarks.

Sincerely,

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T. Alexander Aleinikoff
Dean, Georgetown University Law Center

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Statement
United States Senate Committee on the Judiciary
Oversight of the U.S. Department of Justice
January 18, 2007

The Honorable Patrick Leahy
United States Senator , Vermont

Statement of Senator Patrick Leahy,
Chairman, Committee On The Judiciary
Hearing On Department of Justice Oversight
January 18, 2007

Today, this Committee holds an important hearing to examine the operations of the Department of Justice – the federal agency entrusted with ensuring the fair and impartial administration of justice for all Americans. I take our oversight responsibility very seriously.

Restoring Privacy and Civil Liberties

In the 32 years since I first came to the Senate – during the era of Watergate and Vietnam – I have never seen a time when our Constitution and fundamental rights as Americans were more threatened by their own government. Just this last weekend, the President and Vice President indicated that they intended to override the will of the American people, as expressed in the most recent national elections, and ignore actions of Congress in order to escalate the war in Iraq. This Administration has circumvented express congressional prohibitions on creating databanks of information on law-abiding Americans over the last five years.

For years, this Administration has engaged in warrantless wiretapping of Americans contrary to the law. Since this troubling program was first revealed, I have urged this Administration to inform Congress about what the government is doing and to comply with the checks and balances Congress wrote into law in the Foreign Intelligence Surveillance Act. I welcome the President's change of course yesterday to not reauthorize this program and to, instead, seek approval for all wiretaps from the Foreign Intelligence Surveillance Court, as the law requires. We must engage in all surveillance necessary to prevent acts of terrorism, but we can and should do so in ways that protect the basic rights of all Americans, including the right to privacy. The issue has never been whether to monitor suspected terrorists but doing it legally and with proper checks and balances to prevent abuses. This reversal is a good first step, but there are still several outstanding questions that remain. To ensure the balance necessary to achieve both security and liberty for our Nation, the President must also fully inform Congress and the American people about the contours of the Foreign Intelligence Surveillance Court order authorizing this surveillance program and of the program itself.

The President has issued signing statement after signing statement declaring the law to be not what Congress passed and he has signed, but what he finds convenient. And, regrettably, the Administration has all too often refused to answer the legitimate oversight questions of the duly-elected representatives of the American people. Unfortunately, this Justice Department has been complicit in advancing these government policies which threaten our basic liberties and overstep the bounds of our Constitution.

Human Rights

The Department has also played a pivotal role, in my view, in eroding basic human rights and undercutting America's leading role as an advocate for human rights throughout the world. Last week, the world marked the fifth anniversary of the arrival of the first prisoners at Guantanamo Bay with protests. That facility has replaced Abu Ghraib in the eyes of many, including some of our closest allies, as a symbol of repression. Although the President had said that he wanted to close it down, he is now proposing stepped up use and construction projects that threaten to make the detention center at Guantanamo Bay a permanent fixture in the world.

For more than two years, we have sought answers from the Department of Justice about reported and, in some instances, documented cases of the abuse of detainees in U.S. custody. I wrote to Attorney General Gonzales regarding press reports that the Central Intelligence Agency has finally acknowledged the existence of additional classified documents detailing the Bush Administration's interrogation and detention policy for terrorism suspects. I am glad that, after initially refusing to provide any new information in response to my inquiries, the Attorney General wrote to me last week to say that he would work to develop "an accommodation that provides the Judiciary Committee with a sufficient understanding of the Department's position on legal questions related to the CIA program." That is a good first step, and I will work with him to reach the accommodation that he suggested. But, I remain disappointed that the Department of Justice and the White House have continued to refuse to provide the requested documents to the Committee.

We have a democratic government in which Congress is entitled to know and review government actions. The President and Vice President of the United States should not be operating a secret and separate regime in which their official acts and policies cannot be known by the people's elected representatives.

The Administration's secret policies have not only reduced America's standing around the world to one of the lowest point in our history, but these policies also jeopardize the Department's own efforts to prosecute terrorism. Last week, USA Today reported that the Department's terrorism case against Jose Padilla is imperiled by concerns that Mr. Padilla's treatment during his lengthy detention and back and forth designations as a defendant and enemy combatant have eroded his mental capacity to such a great extent that he cannot fairly be tried. Any trial of Khalid Sheikh Mohammad as the mastermind of 9/11 will have to overcome challenges based on his treatment and detention.

And, after the Administration and the Republican-led Congress eviscerated the Great Writ of habeas corpus -- not just for detainees but for millions of permanent residents living in the United States -- this Department of Justice filed a legal brief expressly supporting that result, raising the specter that millions living in the United States today can now be subjected to indefinite government detention.

Civil Rights and Crime

This week we commemorated the life and contributions of Dr. Martin Luther King, Jr. Sadly, the while the Department has defended the constitutionality of the Voting Rights Act, I am concerned that it is backing away from the vigorous enforcement of the Voting Rights Act that the President promised only a few months ago. I am concerned that, in nearly six years of power, the Bush Administration has filed only one suit on behalf of African-American voters under Section 2 of the Voting Rights Act, the key section that provides a cause of action for discrimination against minority voters.

I am also deeply concerned that the Department of Justice is retreating from its core mission to hold those who would violate our criminal laws accountable. Last week, the President told us that he plans

to spend $1.2 billion more, on top of the billions already sent to Iraq for reconstruction. Despite mounting evidence of widespread corruption, contracting fraud and billions unaccounted for, the Department of Justice has not brought a single criminal case against a corporate contractor in Iraq.

The Department must also do better at addressing the dangers that Americans face at home. According to the FBI's preliminary crime statistics for the first half of 2006, violent crimes in the United States rose, again. Some of us are concerned that this Administration has forgotten the lessons that led to our success during the Clinton years and that the rise in violent crime is related to this Administration's $2 billion cut in aid to state and local law enforcement programs. While it is more than willing to spend more and more American taxpayers' funds for police in Iraq, this Administration is cutting back funding for our state and local police at home.

Conclusion

This Committee has a special stewardship role to protect our most cherished rights and liberties as Americans and to make sure that our fundamental freedoms are preserved for future generations. There is much work to be done to repair the damage inflicted on our Constitution and civil liberties during the last six years.

Attorney General Gonzales, I thank you for agreeing to come here today. I look forward to hearing your views and answers to our questions. We need to work together to move forward.

The Attorney General
Washington, D.C.

January 17, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Minority Member
Committee of the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I am writing to inform you that on January 10, 2007, a Judge of the Foreign Intelligence Surveillance Court issued orders authorizing the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. As a result of these orders, any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to the approval of the Foreign Intelligence Surveillance Court.

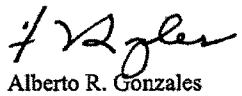
In the spring of 2005—well before the first press account disclosing the existence of the Terrorist Surveillance Program—the Administration began exploring options for seeking such FISA Court approval. Any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protect the Nation from al Qaeda—the very speed and agility that was offered by the Terrorist Surveillance Program. These orders are innovative, they are complex, and it took considerable time and work for the Government to develop the approach that was proposed to the Court and for the Judge on the FISC to consider and approve these orders.

The President is committed to using all lawful tools to protect our Nation from the terrorist threat, including making maximum use of the authorities provided by FISA and taking full advantage of developments in the law. Although, as we have previously explained, the Terrorist Surveillance Program fully complies with the law, the orders the Government has obtained will allow the necessary speed and agility while providing substantial advantages. Accordingly, under these circumstances, the President has

determined not to reauthorize the Terrorist Surveillance Program when the current authorization expires.

The Intelligence Committees have been briefed on the highly classified details of these orders. In addition, I have directed Steve Bradbury, Acting Assistant Attorney General for the Office of Legal Counsel, and Ken Wainstein, Assistant Attorney General for National Security, to provide a classified briefing to you on the details of these orders.

Sincerely,



Alberto R. Gonzales
Attorney General

cc: The Honorable John D. Rockefeller, IV
The Honorable Christopher Bond
The Honorable Sylvester Reyes
The Honorable Peter Hoekstra
The Honorable John Conyers, Jr.
The Honorable Lamar S. Smith

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

January 17, 2007

The Honorable Colleen Kollar-Kotelly
Presiding Judge
U.S. Foreign Intelligence Surveillance Court
DOJ Building, Room 6725
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Judge Kollar-Kotelly:

Attorney General Gonzales revealed today that the Foreign Intelligence Surveillance Court issued orders on January 10, 2007 authorizing the government to engage in electronic surveillance of communications into or out of the United States by terrorism suspects, subject to approval of the Court. I enclose a copy of the letter he sent to us and also note that the Department of Justice briefed the media on these matters at 2:30 this afternoon.

On behalf of the Senate Judiciary Committee, we ask that you provide the Committee with copies of the orders and opinions. We also request that you make the Court's decision public to the extent possible.

These are matters of significant interest to the Judiciary Committee and the Congress and to the American people, as well. We all have an interest in ensuring that the government is performing surveillance necessary to prevent acts of terrorism and that it is doing so in ways that protect the basic rights of all Americans, including the right to privacy.

Sincerely,

PATRICK LEAHY
Chairman

ARLEN SPECTER
Ranking Member

Encl.

UNITED STATES FOREIGN INTELLIGENCE SURVEILLANCE COURT

Washington, D.C.

Honorable Colleen Kollar-Kotelly
Presiding Judge

January 17, 2007

Honorable Patrick Leahy
Chairman, United States Senate
Committee on the Judiciary
Senate Office Building
Washington, DC 20510-6275

Honorable Arlen Specter
Ranking Member, United States Senate
Committee on the Judiciary
Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

I am writing in response to your request that I provide the Committee on the Judiciary with "copies of the orders and opinions" issued in the matter referenced in Attorney General Alberto R. Gonzales' letter to you, dated January 17, 2007. As the presiding judge of the Foreign Intelligence Surveillance Court (FISC), I have no objection to this material being made available to the Committee. However, the Court's practice is to refer any requests for classified information to the Department of Justice. In this instance, the documents that are responsive to your request contain classified information and, therefore, I would ask you to discuss the matter with the Attorney General or his representatives. If the Executive and Legislative Branches reach agreement for access to this material, the Court will, of course, cooperate with the agreement.

Sincerely,

Colleen Kollar-Kotelly

Colleen Kollar-Kotelly
Presiding Judge

PATRICK LEAHY
VERMONT

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
APPROPRIATIONS
JUDICIARY

United States Senate
WASHINGTON, DC 20510-4502

January 12, 2007

The Honorable George W. Bush
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

Recently a high-ranking official in the Defense Department threatened governmental retaliation and intimidation of attorneys that might represent detainees. These reprehensible comments go against some of the basic tenets of our society, and I respectfully ask that you disavow those statements.

In a recent radio interview, Mr. Cully Stimson, a Deputy Assistant Secretary of Defense for Detainee Affairs, strongly criticized civilian law firms that might represent detainees. He then proceeded to list the names of several law firms, which he obtained from a media organization's freedom of information request, and asked business executives to reevaluate their relationship with those firms because they might be representing detainees, whatever their status. Worse, Mr. Stimson intimated that some of these firms are supportive of, and being funded by, terrorists.

Mr. Stimson's remarks would be outrageous accusations from anybody or any governmental official, but it is especially appalling that they come from a senior defense official responsible for U.S. detention policy. Mr. Stimson's comments show complete disregard for a bedrock principle of our legal system, the right to counsel. As I learned in all my years as a prosecutor, our legal system works best when the accused is represented by competent counsel. I was also deeply disappointed to see the Freedom of Information Act, a law designed to promote governmental transparency, instead, used as a tool for government intimidation.

I hope you will immediately disavow Mr. Stimson's statements and take the appropriate action against this official.

Sincerely,

PATRICK J. LEAHY
United States Senator

This is truly disturbing

cc: The Honorable Robert Gates, Secretary of Defense
The Honorable Alberto R. Gonzales, Attorney General of the United States

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The Gitmo High Life *Robert L. Pollock*. **Wall Street Journal**. (Eastern edition). New York, N.Y.: Jan 12, 2007. pg. A.12

For sheer irony it's hard to beat this week's spectacle of Cindy Sheehan protesting the U.S. detention facilities at Guantanamo Bay -- from inside the prison that is Cuba itself. It's not uncommon for asylum-seeking Cubans to brave minefields and shark-infested waters to enter the U.S. naval base, which five years ago this week also became home to many top figures from al Qaeda and the Taliban.

That anniversary has brought forth predictable demands that Guantanamo be closed from the self-styled human rights activists at Amnesty International and other groups. But the world needs a place to hold al Qaeda terrorists, who continue to strike in Europe, Iraq and Afghanistan -- even if they have failed to hit the United States since 2001. And after visiting Guantanamo just before Christmas, it was easy to understand why Belgian Police official Alain Grignard (who came last year with a delegation from the Organization for Security and Cooperation in Europe) was moved to declare it "a model prison, where people are better treated than in Belgian prisons."

This is no less true of Camp Five, Gitmo's maximum security facility that houses its most dangerous detainees. Modern and clean, it looks just like a U.S. jail. Meals (I ate the same lunch the detainees did that day) are high in caloric content, if not exactly gourmet. The average detainee has gained 18 pounds. And in the interrogation room it's the Americans who may have to suffer long hours in straight-back chairs, while the detainees -- I kid you not -- get a ⓘLa-Z-Boy. I was shown a Syrian under interrogation via closed circuit television. His questioners were two pleasant-looking young women. He was smiling.

I'm not under the impression that these sessions are always fun and games. But detainees in Defense Department custody are treated according to the restrictive rules of the Army Field Manual, which bans all forms of coercive interrogation. I double checked with the camp's lead interrogator: other government agencies -- read CIA and FBI -- have to follow those rules too. Not only does that mean no "torture" is going on. Your average good-cop bad-cop routine isn't allowed. Cooperative detainees get rewards like movies. "Harry Potter" is one of their favorites.

When it comes to medical care, almost no expense is spared -- as I discovered after spotting an overweight man lounging in the rec yard of Camp Five. "Khalid Sheikh Mohammed?" I inquired (he was some distance away). "No, that's Paracha," came the somewhat exasperated reply.

Saifullah Paracha is a Pakistani businessman and media owner who claims two meetings with Osama bin Laden were purely for journalistic interest. He is believed to be an important figure in the case against Majid Khan, one of the 14 "high value" detainees recently transferred to Gitmo from CIA custody. Last year Mr. Paracha's son Uzair was

sentenced to 30 years in a U.S. prison for aiding an al Qaeda operative in a plot to bomb U.S. targets.

Maybe terrorism is stressful work. But whatever the reason, the elder Paracha also suffers from heart disease. So late last year -- at an expense of some $400,000 -- the U.S. government flew down doctors and equipment to perform cardiac catheterization. Mr. Paracha's response was to refuse treatment and file a petition in U.S. federal court for transfer to a hospital in the U.S. or Pakistan. At least his lawyers were frank about their cynical motives: "His death in U.S. captivity would be a blow to American prestige."

The medical care at Guantanamo seems state of the art. All detainees over 50 are offered colonoscopies; at least 16 have been performed. Gitmo's psychiatrist told me that fewer that 1% of detainees suffer from mood disorders, a rate lower than that of the general population. That would appear to undercut claims that indefinite detention is itself a form of "mental torture."

Guantanamo detainees don't lack for legal representation. A list of lead counsel released this week in response to a Freedom of Information Act request reads like a who's who of America's most prestigious law firms: Shearman and Sterling; Wilmer Cutler Pickering Hale & Dorr; Covington & Burling; Hunton & Williams; Sullivan & Cromwell; Debevoise & Plimpton; Cleary Gottlieb; and Blank Rome are among the marquee names.

A senior U.S. official I spoke to speculates that this information might cause something of scandal, since so much of the pro bono work being done to tilt the playing field in favor of al Qaeda appears to be subsidized by legal fees from the Fortune 500. "Corporate CEOs seeing this should ask firms to choose between lucrative retainers and representing terrorists" who deliberately target the U.S. economy, he opined.

None of the above is meant to suggest Guantanamo is a fun place. What terrorist detention facility would be? (Base commander Adm. Harry Harris rejects the term "prison," by the way: "We are not about punishment; we are about keeping enemy combatants off the battlefield.") But the picture of Guantanamo usually painted by the press and human-rights activists is a terribly distorted one. Americans should rest assured that the men held there are probably getting better treatment than they deserve.

Mr. Pollock is a member of The Wall Street Journal's editorial board.

They've Got Mail

It might be yours.

Saturday, January 13, 2007; A18

IS THE FEDERAL government opening citizens' mail without obtaining warrants? Was a statement that was quietly issued when the president signed an obscure Postal Service reform bill last month a new assertion of power by the administration to engage in such warrantless searches? The answer to both these questions is disturbingly unclear.

No reasonable person doubts that in emergency circumstances -- a ticking bomb inside a package -- government agents shouldn't have to wait for court approval to open private mail. That authority has been clear for years. In signing the Postal Accountability and Enhancement Act, President Bush took pains to note that he would interpret the law "in a manner consistent . . . with the need to conduct searches in exigent circumstances, such as to protect human life and safety against hazardous materials, and the need for physical searches specifically authorized by law for foreign intelligence collection."

That's not troubling if, as administration officials contend, the signing statement simply reinforces existing law. "There is nothing new here," said White House press secretary Tony Snow.

Okay, but what does present law allow? Does the administration contend, as in the case of its warrantless wiretaps, that the president has the inherent constitutional authority, or power granted by the post-Sept. 11 Authorization for the Use of Military Force (AUMF), to open mail without going through the process outlined in the Foreign Intelligence Surveillance Act? Administration officials have been less than eager to answer these questions.

At a hearing of the Senate Judiciary Committee last February, Sen. Patrick J. Leahy (D-Vt.), asked Attorney General Alberto R. Gonzales whether the administration believed that the AUMF also permitted the warrantless opening of mail:

Mr. Gonzales: "There is all kinds of wild speculation out there about what the president has authorized and what we're actually doing. And I'm not going to get into a discussion, Senator, about hypotheticals."

Mr. Leahy: "Mr. Attorney General, you're not answering my question . . . Does this law -- you're the chief law enforcement officer of the country. Does this law authorize the opening of first-class mail of U.S. citizens -- yes or no -- under your interpretation?"

Mr. Gonzales: "Senator, I think -- I think that, again, that is not what is going on here. We're only focused on communications -- international communications where one part of the communication is al-Qaeda. That's what this program is all about."

Mr. Leahy: "You haven't answered my question."

Given the president's signing statement, given his demonstrated willingness to stretch the boundaries of his authority and dispense with inconvenient legal niceties, it seems necessary to ask again.

○