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BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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UNITED STATES DEPARTMENT OF JUSTICE

TUESDAY, MAY 3, 2011

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

The Committee met, pursuant to call, at 10:17 a.m., in room 2141, Rayburn House Office Building, the Honorable Lamar Smith (Chairman of the Committee) presiding.

Present: Representatives Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Chabot, Issa, Pence, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy, Ross, Adams, Quayle, Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson, Quigley, Chu, Deutch, Sánchez, and Wasserman Schultz.

Staff Present: (Majority) Sean McLaughlin, Chief of Staff and General Counsel; Allison Halataei, Parliamentarian; Richard Hertling, Deputy Staff Director; Crystal Jezierski, Counsel; Jennifer Lackey, Staff Assistant; and Perry Apelbaum, Minority Staff Director and Chief Counsel.

Mr. SMITH. The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare a recess of the Committee at any time. We welcome everyone here, but particularly our guest today, the Attorney General of the United States, Eric Holder. I am going to recognize myself for an opening statement and then the Ranking Member for his opening statement. This morning we welcome Attorney General Eric Holder to the Committee for an oversight hearing on the U.S. Department of Justice. First, I would like to thank the Attorney General for supporting the reauthorization of the expiring PATRIOT Act provisions. I also appreciate his support of a mandatory data retention policy to help law enforcement officials track dangerous pedophiles and keep children safe.

Although he may not want to take credit for this next item, I should also thank the Attorney General for the decision not to try certain terrorists in the U.S. It is the right decision and will ensure justice for the families of the 9/11 victims. Terrorists remain intent on carrying out their plots to destroy America. The killing of Osama bin Laden is a victory in America's efforts to combat terrorism. But the terrorist threat does not end with Bin Laden's death. In the year since 9/11, al-Qaeda has expanded and splintered into smaller groups and rogue terrorists around the world. This makes it harder for us to detect and deter plots against Americans both here, at home and abroad.

Despite Sunday's victory, we cannot afford to leave our intelligence community without the resources it needs to dismantle terrorist organizations, identify threats from groups and individuals and interrupt terrorist plots, so Congress must reauthorize the PATRIOT Act. Our laws should keep pace with the evolving terrorist threat, but they must also keep pace with rapidly changing technology. Nowhere is this more apparent than with the dramatic increase in the proliferation and exchange of child pornography. Today pedophiles can purchase, view or exchange this disturbing material with near impunity.

Child pornography on the Internet may be our fastest growing crime in America increasing by an average of 150 percent a year. Better data retention will assist law enforcement officers with the investigation of child pornography and other Internet-based crimes. When investigators develop leads that might save a child or apprehend a pornographer, their efforts should not be impeded because vital records were destroyed.

While I appreciate the Department's support on these important matters, I am concerned that in some cases, this Administration may have placed political and ideological considerations above enforcing the law. Earlier this year, the Department abandoned its obligation to defend the Defense of Marriage Act, a Federal law enacted by Congress and signed by President Clinton to protect the institution of marriage. It seems the President's personal political views regarding the law may have trumped the obligations of the Department of Justice.

Another example of selective enforcement is the Administration's views when it comes to immigration laws enacted by the States. The Justice Department sued Arizona for enacting a law that mirrors Federal immigration law. The Administration justifies its actions by claiming that the Arizona law wrongly supersedes Federal authority. But what about a law recently enacted in Utah that creates a guest worker program for illegal immigrants. This undermines Federal immigration law and yet the Administration has taken no action. Similarly, the Justice Department refuses to defend Congress' constitutional authority to determine national drug policy. Marijuana distribution is illegal under Federal law regardless of whether it is used recreationally or medicinally. But rather than enforce Federal drug laws, the Department directed Federal prosecutors not to bring charges against marijuana dispensaries in the States that have taken it upon themselves to legalize medical marijuana. And just last week, it was reported that the Department has dropped its criminal probe of a lawyer who admitted leaking classified information on the terrorist surveillance program.

This case should have been a slam dunk for the Department since the attorney admitted to violating the law. But the President's ideological opposition to the TSP program may have stopped a legitimate criminal investigation. The Justice Department has a solemn duty to defend the laws of the land as enacted by Congress without politics or prejudice. And I am concerned that there seems to be a pattern of selectively enforcing the law based on the Administration's political ideology. I do want to thank the Attorney General for coming today, and we look forward to hearing from him on

these and many other issues. The gentleman from Michigan, Mr. Conyers, the Ranking Member of the Judiciary Committee, is recognized for his opening statement.

Mr. CONYERS. Thanks, Chairman Smith. Once again, we welcome the Attorney General, Eric Holder. Most of us have known him for more than a number of years in his various positions in the government. And I welcome you here and praise your standing up for the rule of law, especially in the area of national security where you were the Attorney General that supported the end of using torture. And you released legal memos on this subject that proved that what you were doing was right and some of those legal memos were incorrect.

Now, for the things that we want you to improve on. I start off with the fact that the worst economic upheaval since the Depression, with all the suffering and damage that it has caused citizens and their family, there is, to my knowledge, not one single prosecution on any of the Wall Street barons that have created this economic mess. The systemic abuses not only have not ended, but are still going on as far as I am concerned.

In the area, General Holder, of the approach to crack cocaine cases under the Fair Sentencing Act, that the Department would continue to seek extreme sentences that have been rejected as a policy matter by both the executive and the legislative branch is disappointing. And more needs to be done to ensure that the so-called pipeline cases are handled in a just manner.

And the area of antitrust enforcement and merger review, we are getting more discussion about this, but our economy continues to become more and more dominated by global megafirms, and just about every merger that has come through the Department of Justice's front door has made it out alive. And I know that you are getting ready to block one large merger, but antitrust is still underutilized in the Department of Justice, and I want to help work with you if we can to increase the use of antitrust enforcement as these global megafirms get larger.

And then in the national security area, the State secrets privilege policy is deeply troubling to me. And of course, the Department has become more transparent of late, and I appreciate that the State secrets report recently transmitted to our Committee, there is still a lot of decision-making that remains flawed. This privilege to me is a threat to the separation of powers and to the right of every citizen to lawfully fight back against government abuse and must be reigned in. Outside of those minor observations, we welcome you to the Committee, General Holder. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Conyers. Without objection, other Members' opening statements will be made a part of the record. We are pleased to welcome today's witness, United States Attorney General Eric H. Holder, Jr. On February 3, 2009 Attorney General Holder was sworn in as the 82nd Attorney General of the United States. Attorney General Holder has enjoyed a long and distinguished career of public service. Joining the Department through the Attorney General's Honors Program in 1976, he became one of the Department's first attorneys to serve in the newly-formed public integrity section.

He went on to serve as a judge of the Superior Court in the District of Columbia and the U.S. Attorney for the District of Columbia as well. In 1997, Mr. Holder was named by President Clinton to be the Deputy Attorney General. Prior to becoming Attorney General, Mr. Holder was a litigation partner at Covington and Burling, LLP in Washington, D.C.

Mr. Holder, a native of New York City, attended Columbia University graduating in 1973 and Columbia Law School from where he graduated in 1976. Mr. Attorney General, we look forward to hearing your testimony and welcome you again to today's hearing. And please proceed.

TESTIMONY OF THE HONORABLE ERIC H. HOLDER, JR., ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

Attorney General HOLDER. Well, thank you, Chairman Smith, Ranking Member Conyers. Chairman Smith, that was a wonderful introduction, except for the part where you mentioned the dates that I graduated from law school and college. People are now calculating how old I am. And I am of an age where I am sensitive to that. Other than that, thank you. But also distinguished Members of the Committee, good morning, and thank you for this opportunity to discuss the critical work of our Nation's Department of Justice. Now, as I have stated often, no aspect of our work is more important or more urgent than protecting the American people.

Mr. SMITH. Mr. Attorney General, would you pull your mic a little bit closer so that we can hear you better. Thank you.

Attorney General HOLDER. Protecting the American people is our most fundamental responsibility. Two days ago with the death of Osama bin Laden, the leader of al Qaeda and the world's most wanted terrorist, our Nation made historic progress in fulfilling this responsibility and in achieving justice for the nearly 3,000 innocent Americans who were murdered on September 11, 2001. This achievement was the result of a steadfast almost decade-long effort, one that spanned two Administrations and was advanced by many dedicated military and civilian leaders, intelligence and law enforcement officers, diplomats and policymakers, investigators, prosecutors and counterterrorism experts. For the last 2 years, President Obama has made certain that efforts to kill or to capture Osama bin Laden remained a central focus in our Nation's fight against terrorist threats. For the President's national security team, achieving this goal has been at the forefront of our work, even as we continued and strengthened broader efforts to dismantle and defeat terrorist networks and to use every tool available to combat national security threats both at home and abroad.

Now, the Justice Department has played a vital role in this ongoing fight against terrorism. During the last 2 years, we have helped to identify and to disrupt plots to attack New York City's subway system and plots to deploy weapons of mass destruction in Texas, Oregon and Washington State. We have secured guilty pleas, as well as long sentences and actionable intelligence from terrorists intent on harming our people, our allies and our interests. And the Department has charged more defendants in Federal Court with the most serious terror-related offenses than in an any 2-year pe-

riod in our Nation's history. Through the use of robust military, intelligence and law enforcement operations this Administration has sent a clear and unequivocal warning to those intent on harming the American people. You will be pursued and you will be brought to justice. Although we can all be proud of Sunday's successful operation and we can all be encouraged by the way that thousands of Americans have joined together at this defining moment in our fight against terrorism, we cannot become complacent.

The fight is far from over. Just yesterday, I ordered the Department's prosecutors and law enforcement agencies to be mindful that Bin Laden's death could result in retaliatory attacks in the United States or against our interests overseas. And I have instructed Department officials, as well as our State and local partners, to maintain focus on our highly effective counterterrorism and deradicalization efforts. I have also reiterated what President Obama said on Sunday evening that the United States is not, and never will be at war with Islam. Bin Laden was not a Muslim leader, he was a mass murderer of Muslims in many countries, including our own. We cannot, and we will not lose sight of this fact. And I pledge that at every level of today's Justice Department, we will remain focused on our paramount obligation to protect the citizens that we serve. Using every available resource and appropriate tool, including the Federal Court system, we will be vigilant against both international and domestic threats, and we will continue to utilize the critical authorities that are provided under the provisions of the PATRIOT Act, which I hope Congress will move promptly to reauthorize for a substantial period of time.

On this issue, I want to thank Chairman Smith for his leadership and for his strong support. Beyond our national security work, the Department will take steps to build on current efforts to combat violent crime and financial fraud and to defend the rights of all Americans, especially the most vulnerable among us.

And let me say, finally, that our country and the world have really just witnessed an historic moment. What we make of it now is up to us. Osama bin Laden has been brought to justice. A brutal terrorist will no longer be free to order the murder of innocent people across the globe. And just as we came together nearly a decade ago in the aftermath of the most devastating attack in America's history, I believe we must come together again. On 9/11, our Nation was united as never before by tragedy, by grief and by a shared sense of loss.

Today, we must be united by a collective resolve and a common purpose to protect our homeland and to protect our people, to honor the values that have made our Nation great and to build on the extraordinary progress that has been achieved in protecting the people we are all privileged to serve. So thank you, Mr. Chairman. I will be more than glad to respond to any questions that you might have.

[The prepared statement of Attorney General Holder follows:]

Department of Justice

STATEMENT FOR THE RECORD OF

ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"OVERSIGHT OF THE UNITED STATES DEPARTMENT OF JUSTICE"

PRESENTED

MAY 3, 2011

Statement of
Eric H. Holder, Jr.
Attorney General
United States Department of Justice
Before the
Committee on the Judiciary
United States House of Representatives
at a
Hearing Entitled
"Oversight of the United States Department of Justice"
Presented On
May 3, 2011

Good morning, Chairman Smith, Ranking Member Conyers, and members of the Committee, and thank you for this opportunity to discuss the critical work of the Department of Justice. The fundamental mission of the Department of Justice is to protect national security, counter the threat of terrorism, fight crime, and represent the United States in litigation defending civil rights, consumers, financial markets, intellectual property rights, the environment and other key national interests.

Over the past year, Department employees have worked tirelessly to protect the nation against threats both foreign and domestic. We remain deeply committed to ensuring that terrorists are brought to justice so they can no longer endanger American lives. We have collaborated with local law enforcement to prevent and reduce violent crime and to advance critical investigations and prosecutions, including the senseless murders that took place in Tucson, Arizona, early this year. We are working diligently to ensure the safety of those who serve and protect our communities. And we continue to enforce the law vigorously and fairly to defend the interests of American citizens, and to ensure public confidence in government, our economy, and the rule of law.

Today, I would like to highlight the essential and wide-ranging activities of the Justice Department over the past year in several key areas.

PROTECTING OUR NATIONAL SECURITY

Protecting America's national security remains the highest priority of the Department of Justice. The Department supports this Administration's use of all lawful and appropriate means to protect the United States and the safety of the American people, including military, intelligence, law enforcement, diplomatic, and economic tools and authorities. We will defend America from attack by international terrorist groups, as well as domestic, in a manner that is consistent with the Constitution, laws, and treaty obligations of the United States.

During the past year, the Department of Justice has repeatedly undertaken robust law enforcement efforts to protect American lives, incapacitate terrorists and their accomplices, and

gather intelligence about terrorist groups worldwide. One vivid illustration of the Department's counterterrorism efforts is the case of Faisal Shahzad. On May 1, 2010, Shahzad drove a vehicle loaded with an improvised explosive and incendiary device to Manhattan, parked it in Times Square, and then attempted to detonate the explosives. Shahzad was arrested two days later after boarding a flight at JFK airport. Following his arrest, Shahzad, a naturalized U.S. citizen from Pakistan, cooperated with authorities and provided useful intelligence. Within a month, Shahzad pleaded guilty to terrorism charges, including the attempted use of a weapon of mass destruction and an attempted act of terrorism transcending national boundaries. On October 5, 2010, Shahzad was sentenced to life in prison.

Last year, the Department also won significant convictions in terrorism-related cases that were not as well-publicized, but also involved attacks that were thwarted before they could be executed. These included the convictions of: an individual who sought to blow up the Fountain Place skyscraper in Dallas using what he believed to be a truck bomb; three individuals who attempted to travel to Somalia to join al-Shabaab, a terrorist and insurgent group with links to al-Qa'ida; and four individuals who plotted to detonate explosives inside New York's JFK airport. The Department also charged dozens of others for Category 1 terrorism offenses – those involving alleged violations of our core international terrorism statutes, such as the use of weapons of mass destruction, conspiracy to murder persons overseas, or providing material support to terrorists.

We are all indebted to the quick thinking of citizens and local police officers like those who prevented last May's attempted attack on Times Square. The Department of Justice, together with the Departments of Defense and Homeland Security, supports the efforts of state, local, and tribal law enforcement agencies to contribute to the counterterrorism mission. They are essential partners on the FBI's Joint Terrorism Task Forces (JTTFs), the interagency entities responsible for domestic counterterrorism operations. Through the Office of Justice Programs, the Department provides grants that fund counterterrorism training and related resources to strengthen state and local law enforcement. And joint national-level programs, such as the Department's Nationwide Suspicious Activity Reporting Initiative, enhance the capabilities of federal, state, local, and tribal law enforcement agencies to share information, particularly with JTTFs, enabling greater ability to fuse information and prevent acts of terrorism.

Of course, the Department's work in the area of national security extends beyond working to disrupt terrorists' plots and dismantle their networks. We also continue to protect the nation from other serious threats, including espionage and export control violators. This year, for instance, ten individuals were indicted for being "deep-cover" agents in the United States on behalf of the Russian Federation. Following guilty pleas from all ten Russian agents, the United States won the release of four individuals incarcerated in Russia for alleged contact with Western intelligence agencies by transferring the ten agents to the custody of the Russian Federation.

Many of the significant prosecutions noted above – and the countless intelligence actions that do not result in prosecution but do disrupt terrorist and criminal activity – depend on the government aggressively employing the full arsenal of available authorities, including the Foreign Intelligence Surveillance Act. At the same time, the Department of Justice, through its national security review process, is working to ensure that FBI national security investigations

are conducted in accordance with the Constitution, federal statutes, Attorney General Guidelines, and internal FBI policy directives. No fewer than twenty of these time-intensive reviews were completed in FY 2010.

Finally, in addition to the Department's sustained commitment to counterterrorism, counterespionage, and intelligence gathering efforts, we stand ready to protect the American people from unanticipated national security threats. For example, the Department has brought to justice several pirates who attacked Americans and others on the high seas. In March, fifteen defendants from Somalia and Yemen were charged with criminal acts arising out of their piracy of the ship *Quest*, which resulted in the tragic deaths of four Americans. In the same month, five men from Somalia were sentenced to life in prison for acts of piracy, which included the use of a rocket-propelled grenade against the *USS Nicholas*. And, in February, another defendant was sentenced to 33 years in prison for the attempted hijacking of a U.S.-flagged ship, the *Maersk Alabama*, in the Indian Ocean.

These cases demonstrate the Department's unwavering resolve to protect American lives and property from all manner of national security threats, as well as the flexibility and strength of the tool we use to accomplish our mission – the American criminal justice system.

CRIME AND FRAUD

From the start of this Administration, the Department set forth an ambitious crime-fighting agenda prioritizing efforts to reduce violent and organized crime, combat financial crime and fraud, ensure the integrity of government, fight computer crime in all its forms, and play a leadership role – at home and on the world stage – in protecting public safety and ensuring the rule of law. Over the last two years, the men and women of federal law enforcement, including the United States Attorney community and the Department's Criminal Division, together with our state and local partners, have taken important steps toward these goals, making our country stronger as well as safer, and building greater trust in the integrity of our financial markets and in the effectiveness of our government.

Over the last year the Department has continued to aggressively combat violence along our country's Southwest border. We have dedicated significant manpower resources towards working with our Mexican government counterparts to assist their crime-fighting capacity, and prosecute the cartel members whose drug trade is the root cause of violence in that region. In one of our most significant enforcement actions along the border, we charged 35 members of the Barrio Azteca international gang with a number of federal offenses. Of the 35 defendants, ten were specifically charged with the murders of a U.S. Consulate employee and two family members of Consulate employees.

The Department also created a new Money Laundering and Bank Integrity Unit, designed in part to target professional money launderers who work for criminal organizations such as Mexican drug cartels, thus disrupting the flow of money that is fundamental to their existence. Through Project Deliverance, a Drug Enforcement Administration-led, multi-agency law enforcement initiative, the Department has also successfully targeted transportation organizations

working for cartels along the Southwest border, which resulted in 2,266 arrests and the seizure of more than $154 million and over 74 tons of drugs.

Domestic organized crime also remains a priority. If left unchecked, mafia operations threaten both the safety of our citizens and the strength of our economy, and the Department, working with state and local law enforcement partners, is committed to eradicating these criminal enterprises and bringing their members to justice. In January, I was proud to announce the largest single-day enforcement action ever against La Cosa Nostra, in which 127 members and associates of seven La Cosa Nostra crime families were charged with federal offenses.

In addition to fighting violent crime, the Department is investigating and prosecuting fraud cases all across the country. Working with our partners in federal law enforcement, including the Inspector General community, and state and local authorities, we are holding those who defraud the American people accountable, seeking sentences that punish and deter illegal activity, and working aggressively to recoup the money those defendants have stolen and return the proceeds to the victims. This work is critical to protecting American consumers and businesses and restoring confidence in our markets.

The Financial Fraud Enforcement Task Force, created by President Obama in November 2009, is the broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to combat fraud. This year, Task Force members brought criminal and civil actions involving a broad array of fraud, from mortgage to procurement to investment fraud involving high-level executives, employees and corporations. Those efforts included multiple convictions against defendants associated with the Galleon Group, in one of the largest hedge-fund insider-trading cases ever brought by the Department of Justice. We also completed a nationwide mortgage fraud enforcement sweep, Operation Stolen Dreams, involving more than 1,500 defendants and over $3.5 billion in losses. Last month, Department prosecutors convicted Lee Farkas, chairman of the largest privately held mortgage lender in the United States, on charges stemming from an almost $2 billion fraud in the sub-prime mortgage market and an attempt to steal over half a billion dollars in TARP funds. Six other individuals, including several senior executives of the company and bank involved in the fraud have pled guilty as well.

In addition to focusing on prosecutions the Task Force also includes a Victims' Rights Committee, which addresses the devastating impact financial fraud has on its victims. And within the last few weeks, I announced the formation of an Oil and Gas Price Fraud Working Group within the Task Force, which brings together a broad array or regulatory and law enforcement agencies to ensure a comprehensive effort in examining any potential fraud or illegal manipulation in the energy markets to safeguard American consumers from fraud and other abuses during this time of strained budgets and rising costs at the pump.

The Medicare Fraud Strike Force, part of the Health Care Fraud Prevention and Enforcement Action Team (HEAT), launched May of 2007, has brought cases against 1,000 defendants for fraudulent Medicare claims totaling more than $1.3 billion. This includes the largest federal health care fraud enforcement action ever, charging 114 doctors, nurses, health care executives, and others with fraudulently billing $240 million to the Medicare program. Due to successes like these, the Department has expanded the Strike Force from two cities in 2009 to

nine today. In total, our criminal and civil health care fraud enforcement efforts produced record recoveries exceeding $4 billion during FY 2010.

In July 2010, I launched the Department's Kleptocracy Asset Recovery Initiative, aimed at combating large-scale foreign official corruption and using civil and criminal forfeiture tools to recover misused public funds. We cannot allow the United States to become a safe haven for stolen wealth. Although we are still implementing the initiative, the Department already is developing cases in which we have information that the proceeds of corruption or kleptocracy have entered U.S. financial institutions. We are working with other federal agencies, as well as foreign counterparts and non-governmental institutions, to enhance our ability to investigate, trace, and recover corruption proceeds. The need for this initiative is underscored daily by events around the world: multiple nations, including Egypt and Tunisia reportedly have launched their own corruption investigations in the wake of regime changes.

Finally, the Department has brought successful civil enforcement actions to protect taxpayer dollars and the integrity of government programs from fraud. In FY 2010, we secured $3 billion under the False Claims Act – the second largest annual recovery under this law. Over $6.8 billion was recovered under the False Claims Act in the two-year period beginning in January 2009, which constitutes a record for any such period. And, in the first few months of FY 2011, the Department has reached a number of significant False Claims Act settlements with pharmaceutical manufacturers. In agreements totaling $700 million with Dey, Inc., Abbott Laboratories, Roxane Laboratories, Inc. and B. Braun Medical, Inc., we resolved allegations that the defendants engaged in a scheme to report false and inflated prices for numerous pharmaceutical products. In October, we reached a $750 million global criminal and civil agreement with GlaxoSmithKline to resolve allegations that it manufactured and distributed adulterated drugs made at its now-closed plant in Cidra, Puerto Rico.

The Department is also dedicated to vigorous enforcement of intellectual property laws. Criminals who steal American ideas and products – everything from counterfeit pharmaceuticals and electronics to pirated movies, music and software – and sell them over the internet and elsewhere are undermining the U.S. economy and threatening public health, safety, and national security. Together with our law enforcement partners at Immigration and Customs Enforcement and Customs and Border Protection in the Department of Homeland Security, the Department of Justice has obtained 30 felony convictions and seized over $143 million in counterfeit computer network hardware manufactured in China as a part of Operation Network Raider. This important joint enforcement effort is designed to protect our nation's IT infrastructure from failures associated with counterfeit network hardware and to secure our supply chain. It has also helped secure our troops. As a part of this operation, law enforcement officials intercepted counterfeit network hardware that would have been used by U.S. Marines to transmit troop movements, relay intelligence and maintain security for a military base west of Fallujah, Iraq. The defendant responsible for attempting to sell these counterfeits to the Department of Defense was sentenced to 51 months in prison.

PROTECTING LAW ENFORCEMENT OFFICERS

Each year, far too many dedicated law enforcement officers are senselessly killed in the line of duty while bravely confronting violent criminals and gangs. Most recently, the Department felt this pain on a very personal level with the deaths of Deputy U.S. Marshals Derek Hotsinpiller and John Perry, who were killed by gunfire while working to capture dangerous fugitives and protect our communities. After a two-year decline in law enforcement fatalities, officer deaths in the line of duty spiked last year, making 2010 one of the deadliest years on record for law enforcement. Unfortunately, this year we are on track to exceed last year's devastating record. This is unacceptable. Our law enforcement officers regularly put themselves in harm's way to ensure the safety and security of the American people in communities across this country, and we must take every step possible to protect them.

To address this issue, I recently convened a meeting of Justice Department leaders and state and local authorities to discuss ways that we can effectively work together to combat violence against law enforcement officers. I also launched a Law Enforcement Officer Safety Initiative, and directed each U.S. Attorney to bring together the federal, state, local, and tribal law enforcement agencies and prosecutors in his or her district for meetings focused on officer safety. I instructed our U.S. Attorneys to work with these groups to identify the "worst of the worst" – offenders with criminal histories who cycle in and out of local jails and state prisons – and discuss whether any of these repeat offenders should be prosecuted under federal law for offenses that make them eligible for stiffer sentences. I also ordered them to ensure that our state, local, and tribal partners are fully informed about the resources that the Department makes available to help protect officers.

In addition, the Department is aggressively pursuing those who put profits ahead of the safety for our law enforcement personnel. We continue to investigate those involved in the sale of defective bulletproof vests to law enforcement agencies. To date, these efforts have recovered more than $60 million and have sent a strong message that we will not tolerate actions that put our first responders at risk.

At the same time, we must work to prevent gun crimes before they occur. I am committed to strengthening systems that prevent individuals who are legally prohibited from possessing firearms from obtaining weapons. This is a critical public safety goal we can achieve without infringing on the rights of lawful gun owners.

The Department remains committed to safeguarding our communities, and the officers who are sworn to serve and protect them. I am convinced that we can reduce violent crime and reverse the recent upward trend in officer fatalities. Some of the initiatives that we support include our Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) initiative, new support officer safety training programs, research initiatives, and information-sharing platforms; our Bulletproof Vest Partnership, to research causes and prevention of officer injuries; and the development of the RISSafe Officer Safety Event Deconfliction System, which aims to prevent potential conflicts between agencies in law enforcement operations. As we look to the future, the Justice Department will continue to make

strategic investments and work with our law enforcement partners at every level to keep officers safe.

ADVANCING CIVIL RIGHTS

The fair, vigorous, and independent enforcement of our nation's civil rights laws continues to be a top priority for the Administration and the Department of Justice. The strong record of achievement by our Civil Rights Division over the past year reflects this commitment.

The Department recently completed a comprehensive ten-month investigation into the New Orleans Police Department, which revealed deeply troubling patterns and practices of unconstitutional conduct, including widespread excessive use of force and pervasive discrimination. As a result, the Department is helping to develop a thorough blueprint for sustainable reform of the NOPD. We are pleased to have strong support and cooperation from the city's mayor, police chief and community leaders, and we expect the NOPD case to serve as a model for pattern and practice investigations going forward.

We also have been working tirelessly this year to implement the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, opening more than 80 investigations and bringing the first prosecutions under this historic law. We have conducted trainings sessions across the country with hundreds of federal, state, local, and tribal law enforcement officers, providing our enforcement partners instruction on the law's added coverage of violent acts perpetrated because of the actual or perceived sexual orientation, gender, gender identity, or disability of a person. We also continue to prosecute hate crimes under other authorities, including a successful prosecution for a shocking act of racial violence in Shenandoah, Pennsylvania, in which the three defendants brutally and fatally assaulted an undocumented Latino immigrant because of his race; the former Shenandoah Police Chief and a Police Lieutenant also were convicted of falsifying evidence in connection with the crime.

In addition, the Department continues to vigorously defend the essential rights of all Americans to practice their religion. Muslim Americans have the right to worship in mosques, just as Christian Americans have the right to worship in churches, or Jewish Americans in synagogues. Regrettably, however, we continue to see incidents of hate-fueled violence targeting Muslim and Arab Americans. Recently, in the 50th federal prosecution of post-9/11 backlash crimes against Arab and Muslim Americans, the Department secured a guilty plea from a man who set fire to playground equipment at a mosque in Arlington, Texas. The Department will continue to steadfastly enforce freedom of religion rights under the Religious Land Use and Institutionalized Persons Act for all, including Muslim Americans. And we will continue our ongoing efforts to protect religious freedom and combat religious discrimination – in all forms – in schools, in workplaces, and in prisons.

Prosecuting hate crimes and enforcing civil rights laws constitutes only one part of the Department's mission with respect to engaging Arab and Muslim communities. For years, the Civil Rights Division has been meeting with Arab American and Muslim American leaders and organizations across the country. U.S. Attorneys also routinely conduct outreach with these communities and many others. It is vital that we continue to engage these communities, with

the goal of protecting our common security while preserving our common values. Treating our fellow citizens of the Muslim faith as a monolithic enemy is un-American and counterproductive to the anti-terror efforts that protect us all.

The Department also is working hard to protect the rights of our men and women in uniform. Ensuring that our military servicemembers and their families can exercise their right to vote is a responsibility that the Justice Department takes very seriously, and during the last election cycle, we undertook successful enforcement actions in fourteen jurisdictions under laws protecting military and overseas voting, securing court orders or settlements in all. The Department is also working with other federal agencies to protect rights guaranteed by the servicemembers Civil Relief Act (SCRA), including the protection from foreclosure and other adverse financial actions by creditors and servicers. Finally, in the first two years of this Administration, the Department has redoubled efforts to ensure that servicemembers returning from active duty are not penalized by their civilian employers. We have filed more complaints under the Uniformed Services Employment and Reemployment Rights Act than in the previous three years combined.

Protecting the right to vote for all Americans will continue to be a top priority for the Department. In anticipation of the thousands of redistricting plans that will be submitted for review under Section 5 of the Voting Rights Act in the current redistricting cycle, we recently published a final rule embodying major revisions to procedures for administering Section 5 – the first substantial revisions since 1987. The first Department suit under Section 7 of the National Voter Registration Act in seven years led to an agreement with Rhode Island officials to make voter registration opportunities available throughout the state at offices providing public assistance and disability services, as the law provides. We also continue vigorous enforcement of the Voting Rights Act's language minority provisions, and recently reached a settlement with Cuyahoga County, Ohio, to ensure language assistance for thousands of county residents of Puerto Rican descent who are of voting age and limited English proficiency.

Beyond the Voting Rights Act, the Department has worked over the past year to ensure that all persons, including those with limited English proficiency, have meaningful access to federal programs, services, and benefits. We have recommitted the Department to providing the language capability necessary to serve all persons as we conduct our law enforcement, preparedness, and access-to-justice duties, and I have asked each federal agency to do the same, ensuring that they have the language capability to communicate effectively with all members of the public when carrying out critical functions.

Finally, the Civil Rights Division is vigorously enforcing the Americans with Disabilities Act (ADA), and last summer issued landmark new ADA regulations to enhance access for persons with disabilities to public places as well as state and local entities like swimming pools and playgrounds, entertainment venues, ATMs and hotels. We also launched an aggressive effort to enforce the 1999 Supreme Court decision in *Olmstead v. L. C.*, which recognized that the unjustified segregation of people with disabilities in institutions is illegal under the ADA. In October, the Department reached a landmark settlement with the state of Georgia that will enable thousands of persons with disabilities to receive care and treatment in community-based settings, and will serve as a model for *Olmstead* enforcement going forward.

ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Law enforcement and other public safety agencies across the country are facing staffing reductions and other budgetary challenges precipitated by the recent economic crisis. Through the efforts of our Office of Justice Programs (OJP), Office of Community Oriented Policing Services (COPS), and Office on Violence Against Women (OVW), we are helping jurisdictions meet their responsibilities for protecting their citizens. The Department is committed to working with federal, state, local and tribal partners to ensure that all communities – particularly those that have been chronically neglected – are given the resources and support they need to ensure public safety.

Last year, OJP awarded $2.6 billion to states, localities, and tribes to support a wide range of criminal and juvenile justice activities. Through OJP's flagship Edward Byrne Memorial Justice Assistance Grants program, the Department continued to support basic law enforcement operations, prosecution and court programs, community corrections activities, and technology enhancements. We held a Summit on Preventing Youth Violence that brought together mayors and federal government leaders to examine city plans to address youth and gang violence, which stands among the most challenging of public safety problems. Through the Coordinating Council on Juvenile Justice and Delinquency Prevention, which I chair, high-level federal officials are developing and implementing policies that address the significant needs of at-risk youth and juveniles who encounter the criminal justice system. I also launched the Defending Childhood Initiative, which will develop and support comprehensive community-based strategic planning and implementation of projects to prevent and reduce the impact of children's exposure to violence in their homes, schools, and communities.

Early in my tenure as Attorney General, I emphasized the importance of working smarter to keep our communities safe. In November of last year, I appointed an 18-member Science Advisory Board to guide OJP in developing evidence-based policies and programs, and in January, the Board held its inaugural meeting. We have undertaken an OJP-wide Evidence Integration Initiative to assess our understanding of what works in reducing and preventing crime, and to distribute this information to the field in a comprehensible, practical format. And OJP has expanded the Smart Policing Initiative, which brings together local law enforcement agencies and criminal justice researchers to devise innovative solutions to targeted crime problems and measure the results.

I also am leading an Administration-wide effort to reduce recidivism by examining and improving the policies related to the reentry of formerly incarcerated people into our communities. In January, I chaired the first meeting of the Interagency Reentry Council, composed of seven Cabinet secretaries and other top Administration officials and staffed by personnel from 17 federal agencies. Last year, we awarded almost $100 million under the Second Chance Act to support substance abuse treatment, employment assistance, housing, mentoring, and other reentry services. We now support some 250 reentry programs and also have launched rigorous evaluations of these programs, measuring the degree to which they reduce recidivism.

Strong oversight is critical to ensuring accountability and effective use of taxpayer dollars. The Department is committed to transparent administration of grant funds, and I am pleased that the Department's Office of the Inspector General found that all of our grant components have made great progress in improving grant management.

The COPS Office has played a key role in supporting my priorities as Attorney General by advancing the practice of community policing in America's law enforcement agencies. Engaging with state, local, and tribal law enforcement, the COPS Office helps to ensure that the voices of local officers and agencies are heard at the federal level on issues like officer safety, defending childhood, improved tribal law enforcement, and state, local, and tribal law enforcements' need for use of the broadband spectrum. The COPS Office supports these priorities through innovative grant programs like the Child Sexual Predator Program, through forums that convene law enforcement practitioners and academics to discuss issues of national importance, and through publications and other communications tools.

Finally, our Office on Violence Against Women has led the Department's efforts to raise awareness about and combat domestic violence, sexual assault, dating violence, and stalking. Because the vast majority of violent crimes against women are investigated and prosecuted at the state and local levels, we are committed to providing states and communities with resources to meet the needs of crime victims and hold perpetrators accountable. In the past year, we have implemented four new grant programs to support communities in this work, including three that seek to break the cycle of violence by providing services to young victims and broadening prevention efforts. The Department also has emphasized improving the national response to sexual assault, an issue that historically has not received the attention or funding that effectively addressing this problem requires; and in partnership with the White House Council on Women and Girls, we have convened the first-ever Roundtable on Sexual Violence in America. We are also committed to addressing the devastating rates of violence against women in tribal communities, which face unique law enforcement challenges. The Department has funded a number of innovative technical assistance projects in Indian Country, including a forthcoming award for a National Tribal Clearinghouse on Sexual Assault, an adaptation of the *National Protocol for Sexual Assault Medical Forensic Examinations* to address the needs of tribal communities, and we have launched a project to promote the use of community-based health care providers to collect and preserve sexual assault forensic evidence.

TRIBAL JUSTICE

These programs addressing violence against American Indian and Alaska Native women are part of the Department's larger strategy to advance public safety strategies in tribal communities. Over the last year, we have reaffirmed the Department's commitment to building and sustaining healthy and safe native communities, to renewing our nation's enduring promise to American Indians and Alaska Natives, to respecting the sovereignty and self-determination of tribal governments, and to ensuring that the progress we have achieved in recent years is not derailed. At my direction, every U.S. Attorney's Office with Indian Country jurisdiction is engaging with the Tribes within its district with the goal of developing plans to improve public safety and to prevent and reduce violence against women and girls. Each of these districts also has a dedicated tribal liaison. In addition, the Department has added new Assistant U.S.

Attorney positions in nearly two dozen judicial districts that cover Indian Country. Through the Coordinated Tribal Assistance Solicitation, the Department has begun to streamline the way it administers tribal grants, awarding nearly $130 million in grants in FY 2010 to support the public-safety initiatives of federally recognized tribes. These investments will help to enhance law enforcement activities, bolster justice systems, prevent youth substance abuse, and serve victims of domestic violence and sexual assault.

Since the Tribal Law and Order Act was signed into law in 2010, we have been able to realize some of the Department's long-standing tribal justice goals and focus on new objectives. We have permanently established the Office of Tribal Justice as an independent component of the Department, dedicated to collaborating with our partners in tribal governments and to advancing our work in Indian Country. Under the Act, the Department launched a pilot program with the Bureau of Prisons to accept certain tribal offenders for placement in federal institutions, alleviating problems created by violent offenders and under-resourced correctional facilities in Indian Country. And the Department has begun work on numerous interagency initiatives to address significant challenges to public safety and justice in Indian Country.

We also have made meaningful advances in nation-to-nation collaboration. The Civil Rights Division recently re-established the Indian Working Group, which is conducting outreach in Native American communities with the goal of establishing new channels of communication and cooperation. The Department participated in nine consultations with tribes this year, and also convened the first meeting of the Justice Department's Tribal Nations Leadership Council, composed of tribal leaders selected by the tribes themselves and charged with advising me on issues critical to tribal communities. This collaboration between representatives of tribal governments and Justice Department leadership is the first of its kind.

ENSURING COMPETITION

Through the Antitrust Division, the Department of Justice protects economic freedom and opportunity by promoting free and fair competition in the marketplace. We stand firmly in the corner of American consumers, helping to ensure that they have access to innovative, high-quality products at competitive prices. Over the last two years the Department has focused on important sectors of the economy, including health care, agriculture, defense, energy, finance, telecommunications, transportation, and technology. Because addressing antitrust issues increasingly demands a global approach, the Department has stepped up our efforts on the international front, advocating for global as well as domestic competition and engaging foreign competition authorities on both policy and particular enforcement matters.

In August, the Antitrust Division, in conjunction with the Federal Trade Commission, issued the first major revision of the Horizontal Merger Guidelines in 18 years. This articulation of the agencies' approach to merger review provides for predictability and certainty, and thus, allows for more efficient business behavior. Overall, the Antitrust Division acted against 10 merger transactions in FY 2010, reaching negotiated settlements to protect competition in each case. Already in FY 2011, we have reached negotiated settlements in four transactions, including the combination of Comcast, General Electric and NBC Universal, and Google's acquisition of ITA Software. In addition, in its lawsuit against Dean Foods, the nation's largest

dairy processor, the Division successfully secured a settlement in March requiring Dean to divest a significant milk processing plant and other assets.

We have continued to protect consumers through non-merger civil actions as well. This year, for the first time since 1999, the Department brought an action challenging a monopolist with engaging in traditional anticompetitive unilateral conduct. We ultimately reached a settlement that prohibits United Regional Health Care System in Texas from entering into contracts that improperly inhibit commercial health insurers from contracting with its competitors. Another of our civil non-merger actions resulted in the first district court decision to recognize disgorgement as a civil remedy under the Sherman Act. We also reached a settlement with Adobe Systems, Apple, Google, Intel, Intuit, Pixar, and Lucasfilm that prevents them from entering into anticompetitive employee solicitation agreements.

The Department also continues its rigorous criminal enforcement efforts, uncovering and prosecuting cartels and other collusive agreements. During FY 2010, we filed 60 criminal cases, charging 84 corporate and individual defendants in sectors of the economy including financial, air transportation, real estate, LCD panels, and refrigerant compressors. Seventy-eight percent of the individual defendants sentenced went to prison, serving an average sentence of 30 months, and the Department obtained fines in excess of $550 million.

The Department also promotes the principles of market competition through broad advocacy and outreach efforts. We expanded those efforts last year, and led the way in innovative, cross-agency cooperation through joint agency workshops held around the nation, exploring effective tools for promoting competition and a level playing field. This collaborative effort is unprecedented, and we will continue to pursue and expand this fruitful cooperation.

In an increasingly interconnected world, global issues also are a top priority. The Antitrust Division has integrated the consideration of international issues into its day-to-day work through stronger cooperative relationships with competition agencies abroad. Notably in 2010, we worked extensively and productively with the European Commission on our respective Cisco/Tandberg merger investigations, which involved coordination with the merging firms, third parties, and the European Commission on joint fact-gathering activities.

PROTECTING THE ENVIRONMENT AND NATURAL RESOURCES

Through its Environment and Natural Resources Division, the Department vigorously enforces the country's environmental laws, protecting health, reducing pollution, and conserving important natural resources. Over the past year, the Department has played an integral role in the federal government's response to last year's oil spill in the Gulf of Mexico. We have assembled an inter-agency group to address legal issues arising from the spill and clean-up, assist in coordinating federal activities with the Gulf Coast states, and advise other federal agencies on response activities and new deepwater-drilling regulations. We also have defended lawsuits against the Department of Interior and other federal agencies, alleging violations of federal statutes in connection with deepwater drilling in the Gulf.

While response efforts were under way, the Department initiated civil and criminal investigations of the oil spill. In December 2010, we filed a civil lawsuit against nine defendants, including BP and Transocean, seeking to hold eight of the defendants liable under the Oil Pollution Act of 1990 for government-incurred removal costs, economic damages, and damages to natural resources, and to impose civil penalties under the Clean Water Act for the unauthorized discharge of oil. Pre-trial proceedings in the case are expected to run at least through early 2012. Our investigations are ongoing, and additional claims may be brought in the future. We will go where the facts lead us, and will consider all relevant evidence as to the causes of the oil spill and the parties who may have been responsible.

Throughout this effort, the Department has taken unprecedented steps to assist the individuals and resources affected by the spill. At the Administration's insistence, shortly after the spill BP established a $20 billion trust for certain Gulf relief efforts. The $20 billion is neither a ceiling nor a floor on BP's liability, but ensures that funds will be available to pay individual and business claims, natural resource damage claims, and state and local response costs. The Department also worked alongside the Department of the Interior, NOAA, and our state partners to structure an unprecedented, $1 billion voluntary contribution that BP recently made to fund early restoration efforts throughout the Gulf.

The Justice Department achieved impressive results over the past year through environmental enforcement actions, both civil and criminal. We brought significant civil cases, and achieved significant settlements, under both the Clean Air and Clean Water Acts. All told, in collaboration with other federal agencies, state, local, and tribal governments, and U.S. Attorneys' Offices, the Department, through its Environment and Natural Resources Division, secured nearly $1.3 billion in civil penalties and other monetary relief, including over $922 million in Superfund recoveries. We also obtained over $7.5 billion in corrective measures through court orders and settlements – measures that will go a long way toward protecting our air, water, and other natural resources. On the criminal side, our cases continued to reflect our enforcement priorities, including reducing pollution from ocean-going vessels, coordinating environmental and worker safety investigations, and combating illegal logging and wildlife trafficking under the Lacey Act. The Environment and Natural Resources Division concluded a total of 50 criminal cases against nearly 80 defendants in FY 2010, obtaining more than 20 years in jail time and over $100 million in fines and other monetary sanctions.

Environmental Justice is also a key priority of this Administration. We are committed to ensuring that overburdened, low-income, and minority communities have the opportunity to enjoy the health and economic benefits of a clean environment. We have worked hard to achieve meaningful outcomes that recognize and address adverse impacts on affected communities.

TAX LAW ENFORCEMENT

Enforcing our nation's tax laws is especially critical in this time of fiscal stress. Over the past year, our Tax Division has continued its vigorous efforts to collect unpaid taxes, stop the promotion of costly tax scams, defend the treasury from unjustified lawsuits, and prosecute tax evaders and fraudulent return preparers who threaten to undermine public confidence in our tax system. In FY 2010, we collected over $560 million through affirmative litigation, saved over

$700 million by defending refund suits, and continued our historically high criminal conviction rate. We are committed to maintaining a strong tax enforcement program in 2011.

Our campaign against the use of secret offshore bank accounts to evade taxes continued to gain steam this past year. The resolution of the Department's cases against Swiss banking giant UBS in 2009 has so far resulted in criminal investigations of approximately 150 of the bank's U.S. clients and over 20 guilty pleas. Those who believe that our efforts will be limited to one bank or one foreign country are mistaken. Additional banks from around the world are currently under investigation, and we have already charged clients, bankers, lawyers, and financial advisers associated with other banks for engaging in or facilitating offshore tax evasion.

The Department also remains committed to preventing corporations and high-net-worth individuals from attempting to exploit abusive tax shelters to generate illicit tax savings. The Tax Division prevailed in numerous tax shelter cases in 2010, including the reversal on appeal of the only trial court decision that had upheld the notorious "Son-of-BOSS" scheme, which purported to eliminate capital gain income by creating artificial capital losses. Tax shelter cases often involve the recovery of millions of dollars in taxes and penalties, and the precedential and deterrent effects of our victories frequently preserve even more taxpayer money. Furthermore, as we have demonstrated repeatedly, unscrupulous attorneys, accountants, and investment bankers who design and market these deals, along with their firms, are targets for civil and possibly criminal sanctions.

The Department also continues to obtain civil injunctions to stop the imminent loss of tax dollars by halting the promotion of fast-spreading tax scams and the preparation of false tax returns. The injunction program has proven to be a useful complement to our criminal prosecutions of fraudulent return preparers and other offenders. Cooperation among our civil and criminal attorneys has aided our enforcement efforts against so-called "tax defiers" -- those who challenge the validity of our tax laws and neither file returns nor pay any taxes. We are currently working with representatives from the IRS, the FBI, the National Security Division, and other agencies to develop a comprehensive approach for investigating and prosecuting these individuals, many of whom also exhibit violent anti-government behavior.

PROMOTING TRANSPARENCY

Consistent with President Obama's commitment to promoting transparency in government, the Department of Justice continues to encourage full compliance with the Freedom of Information Act (FOIA). We asked agencies to apply a presumption of openness in responding to FOIA requests, and they have complied. Of the more than 400,000 requests processed in FY 2010, approximately 93% resulted in the release of some or all of the requested information. We also asked agencies to work to reduce their backlogs, and they have done that, as well. At the end of FY 2010 there was a 10% decrease in the number of backlogged requests, the second year in a row of backlog reduction.

At the Justice Department, we processed a record number of FOIA requests this past year, and increased the number of responses that resulted in full or partial releases. We also trained over two thousand agency FOIA professionals in implementation of the new transparency

guidelines. Finally, the Department recently launched FOIA.Gov, a website that educates the public about how the FOIA process works and graphically displays all the agencies' FOIA statistics and releases, encouraging agencies to do well by making information about their performance accessible to all who are interested.

CONCLUSION

Mr. Chairman, Ranking Member Conyers, and members of the Committee, thank you for this opportunity to detail the priorities and highlight some of the accomplishments of the Department of Justice. None of our goals could be met without the dedicated employees of the Department, who work tirelessly to meet the Department's critical obligations during this time of unprecedented challenges, new threats, and ongoing war. We will remain vigilant in protecting the safety of the American people and strengthening our national security.

Thank you.

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

And I will recognize myself for questions. The first is this: At the end of the month, there are three temporary provisions of the PATRIOT Act that are set to expire. A lot of people say that we might exaggerate the significance of the ability of those provisions to enable us to gather intelligence. Would you comment on how impor-

tant those three provisions are and whether you feel that they should be extended?

Attorney General HOLDER. Well, we believe, I believe, it is absolutely essential that these expiring provisions be reauthorized. We never want to see these Acts, these provisions, expire. The fact that they have sunsetted periodically and have required us to come back periodically to get them reauthorized is not helpful to us. We need certainty. Our prosecutors, our investigators, need certainty in that regard.

So our hope is that these provisions will be reauthorized for as long as we possibly can. If they were done on a permanent basis, that is not something that we would object to. I am trying to confront the political reality in trying to get to the necessary votes in the House, the necessary votes in the Senate, and my hope would be that at a minimum, we would reauthorize these provisions for a substantial period of time.

Mr. SMITH. Thank you, Mr. Attorney General. My next question goes to something that I mentioned in my opening statement, and that is the importance of data retention by ISPs to allow us to go after the child predators on the Internet. Has the absence of data retention or significant periods of time for data retention hampered your ability to go after these individuals?

Attorney General HOLDER. I can't point to a specific case, but I am concerned that the lack of retention periods will hamper our ability to get at important cases among the ones that you mentioned, child pornography, but also in the terrorist field, national security field is something that we are talking about with our European counterparts where they want to have data retention periods that are substantially shorter than what I think is appropriate.

But I think the concern that you have expressed with regards to the retention of data is something that is worthy of our attention.

Mr. SMITH. Okay. Thank you. Mr. Attorney General, as I mentioned in my opening statement, it seems to me that we have had the appearance that the Department of Justice has chosen to prosecute cases based upon political ideology rather than equal justice under law. And some of the examples that come to mind are, for example, the decision of the Department of Justice to sue Arizona on an immigration bill that that State passed, but then not to Utah for the immigration laws that that State passed. And it seems to me that the Department probably should be consistent in its application of the law.

Also you reopened an investigation into CI interrogations earlier in your tenure, and yet you ended a criminal probe into the lawyer who publicly admitted leaking classified information on the terrorist surveillance program. Again, I mentioned that in my opening statement. This does give the appearance of a pattern of selectively enforcing a law, and I wanted to ask you for your comment as to whether that appearance is accurate or not.

Attorney General HOLDER. Well, let me be very clear. With regard to those matters and in all the other work that this Department of Justice does, we apply the facts as we find them, we apply the law as we find it, we do what we do and make decisions without any regard for political considerations. Frankly, the work of the Department could be made a lot easier if we listened to the critics,

if we listened to the pundits, if we looked at the polls. That is not what we do, it is not what I have asked the men and women of the Department.

Mr. SMITH. But you understand that the examples I mentioned give that appearance whether that is accurate or not? Do you see the inconsistency that I point out and feel that that is not accurate or do you think that there is an appearance of inconsistency there?

Attorney General HOLDER. Well, I don't see necessarily the inconsistency or the appearance of political considerations that you mentioned. For instance, with regard to the Utah law, that is a law that doesn't go into effect until 2013. It has always been Department of Justice policy to try to work with States to see if there is a way in which we can reach an agreement without us having to actually file suit. So we will look at the law and if it is not changed to our satisfaction by 2013, we will take all the necessary steps.

Mr. SMITH. Okay. Thank you, Mr. Attorney General. The Ranking Member has yielded his initial time to the gentlewoman from Florida, Ms. Wasserman Schultz, so she will be recognized for her questions now.

Ms. WASSERMAN SCHULTZ. Thank you so much. And I thank the Ranking Member and the Chairman. General Holder, it is good to see you again, and I know that you are going to really be surprised about the subject about which I am going to ask you, but that would be our focus and your priority, which I am thrilled continue to be a priority on the exploitation of our Nation's children. We have worked hard to implement the Protect Our Children Act. And the National Strategy on Child Exploitation, Interdiction and Prevention Report that came out last year details that there are hundreds of thousands of criminal suspects in the U.S. engaged in child pornography trafficking.

Just to give everyone an idea, according to the Office of Juvenile Justice and Delinquency Preemption in 2009, our Internet Crimes Against Children Task Forces made over 3,000 arrests and identified over 1,000 child victims. Since passage of the Protect our Children Act of 2008, the funding though has remained relatively the same, about $30 million. In the 111th Congress, under the Democratic leadership we passed a budget that included $60 million for our ICAC task forces, and we know that with every dollar that we add, we can make it that much more likely to actually rescuing a child victim.

So wouldn't you agree that by doubling the ICAC task force budget that we would have an opportunity to rescue that many more children?

Attorney General HOLDER. Well, let me say that we have certainly enjoyed working with you. The focus that you have placed on this issue I think is totally appropriate. I hope it will be a legacy item for this Department of Justice that people will see that we stood up for our Nation's most vulnerable and most important citizens, our children. And the work that you have done with us I think has been extremely effective.

The ICAC task forces, I think, again, have been extremely effective and we want to support them in every way that we can. We are unfortunately confronted with budget realities that make it extremely difficult to do all the work that we want to do. But with

regard to those task forces we want to try to expand them to the extent that we can, support the ones that do exist and then try to ring out efficiency, so that we can in some ways make sure these budgetary problems don't get in the way of the very important work that we have done together.

Ms. WASSERMAN SCHULTZ. Let me just point out, the Administration has been incredibly supportive and has made it a priority. My concern is that we made a commitment in the 111th Congress to continue to increase the funding for the ICAC task forces, and in this Republican Congress, I am quite concerned that that same commitment won't be met. Now, the Chairman has been—Chairman Smith has been incredibly committed to making sure that we can go after these child predators. I am hopeful that his influence rises to the top so we can ensure that continued commitment.

I want to also just touch on a letter that I sent to you about Sholom Rubashkin which we sent in December. And it is a case where the judge has been accused accurately of some ex parte communication and excessive sentencing. And I won't get into it here, but if we could follow up with you on that and get a response from the Department, I would appreciate it very much. Because it appears both the sentence has been—that the sentence is incredibly excessive and the judge who levied the sentence engaged in inappropriate ex parte communication.

So if we could follow up with you on that that would be great. And then lastly, I just want to ask you about the gas prices task force, because I think that it is fantastic that the Administration has set up the task force. If we look—I just want to review the current situation because most people aren't aware of this. According to the Energy Information Agency under the U.S. Department of Energy as of a week ago, this is a week ago, the U.S. crude oil reserves that we had were at 363,125 barrels, which is higher than at any point during the 8 years of the Bush administration. Our total petroleum imports are at their lowest level since 1997.

Domestic oil production for the last 2 years is up. And in the Gulf of Mexico, we have larger production now than at any point in the last two decades, at 1.64 million barrels a day, which is double the production in 1992. Yesterday though the average price at the pump was $3.96, up over a dollar from a year ago this week when it was $2.90. So with all the good news about supply, one would think that there must be a dramatic increase in the demand for gasoline that drives those increases, but that is just not the case.

So it seems like there is something that smells in Denmark. Can you tell us specifically how the fraud working group, which again, I think, is really a very aggressive way of pursuing that the facts and separating fact from fiction and helping to get to the bottom of how we can explore manipulation, explore collusion and fraud, and tell us how Congress can assist you in this effort.

Attorney General HOLDER. Well, there are certainly market forces that are at work. And I don't want to oversell what it is that we will be doing, but to the extent that there are inappropriate attempts to manipulate the market, that there is price gouging, other things of that nature that have had a devastating impact on average Americans who are trying to, in these tough economic times,

make do, that will be the focus of this task force. We have partners from the Federal Government, as well as our State and local counterparts, State attorneys general, district attorneys, all of whom will be coming together to look at this situation to see if there are people who are doing things that are inappropriate, and to the extent that they are we will hold them accountable.

This is a serious effort by a dedicated group of people that, as I said, is pretty wide ranging. It involves prosecutors, investigators, at a variety of levels. We will look at this on both the civil and the criminal sides.

Ms. WASSERMAN SCHULTZ. I thank the Ranking Member and the Chairman for their indulgence, and yield back the balance of my time.

Mr. SMITH. The gentleman from Wisconsin, Mr. Sensenbrenner, former Chairman of the Judiciary Committee, is recognized for his questions.

Mr. SENSENBRENNER. Thank you very much. Thank you for coming, General Holder. I would like to ask a few questions relative to the Department's February 23rd decision not to defend the constitutionality of section 3 of the Defense of Marriage Act. And as a result, the House of Representatives is going to have to hire outside counsel at our own expense to be able to make sure that this issue is properly argued before the court. Why did you do it?

Attorney General HOLDER. Well, we had a unique situation in the Second Circuit where this case—where the decision was made. We had, in prior instances, been in circuits where the courts of appeals had a defined standard, a rational basis standard. In the Second Circuit, we had for the first time a circuit that had not looked at the issue, had not come up with an applicable standard. When the Department looked and had to make the determination as to what the appropriate standard was, given the nature of the way in which gay people had been treated in this country, given the nature of the reasons for the passage of the statute, it was our feeling that a heightened scrutiny test had to be applied.

Applying the heightened scrutiny test, we did not think that the statute would pass constitutional muster, and as a result, thought that we could not make reasonable arguments in defense of the statute, something that is done extremely rarely but happens occasionally. And I recommended to the President that we not defend the statute and he agreed with that recommendation.

Mr. SENSENBRENNER. Well, sexual preference has never been a protected class in any of our civil rights laws. And my understanding is that the vast majority of the courts disagree with the Second Circuit, and believe that the lower standard, which is rationally related to a legitimate government interest is the one that applies. Now, evidently, the President has decided to take the opinion of one court to the exclusion of other courts to make this decision that he will not execute the laws that he took an oath to enforce.

Attorney General HOLDER. No, I mean, these instances happen occasionally. In fact, there is a Federal statute that anticipates this. And under that statute, when the Attorney General decides not to defend the statute a letter is sent to Congress, as I did in this case, and as I have done in other instances. The reason for the

determination, though, was, as I said, this different standard. And the fact that much has changed since the passage of the bill 15 years or so ago, the Supreme Court has ruled that criminalizing homosexual contact is unconstitutional. Congress has repealed the Don't Ask, Don't Tell policy. Since the lower courts have——

Mr. SENSENBRENNER. But Congress has never repealed or modified the Defense of Marriage Act, and this law has been on the books for over 15 years. And you were the Deputy Attorney General at the end of the Clinton administration and this concern was never raised. And now all of a sudden, 2 years into the Obama administration, the President and you apparently have decided that section 3 is unconstitutional. You know, I know you have got to pivot around a little bit in this business but the Constitution hasn't been pivoting around.

Attorney General HOLDER. Yeah, but circumstances have changed, and that is what I have been saying.

Mr. SENSENBRENNER. Is it political circumstances or legal circumstances?

Attorney General HOLDER. No, as I said, if you look at the history of discrimination coupled with what Congress has done with regard to don't ask don't tell, what the Supreme Court has said——

Mr. SENSENBRENNER. Well, don't ask don't tell, with all due respect, sir, was a personnel issue in the Defense Department. And the decriminalization of homosexuality, that was the criminal law. DOMA does not deal with either of these two items. DOMA was an attempt to define for Federal purposes that marriages between one man and one woman. And 45 States in this country have also reached that conclusion, either through a constitutional amendment ratified by the people, as was the case in Wisconsin, or through statutory enactments by the legislature.

You know, my concern on this, Mr. Attorney General, and it is deeply troubling, is that the President has decided to usurp the function of Congress in making laws which a former President has signed and also to usurp the function of the courts by saying that this law is unconstitutional; well, that is not his job. Now, I guess what I can say is that I certainly would support an effort to have the cost of Congress' defending this provision that the President and you have refused to do so come out of the Justice Department's appropriation so that the message is sent down the street that an Attorney General or President can't willy-nilly decide that a law that they may have voted against if they had been in Congress at the time is unconstitutional.

Well, my time is up. And, you know, let me say I haven't said the last about this, but you made the wrong decision. And I think that there ought to be a little bit of skin off the Department's back as a result of the wrong decision being made, and I yield back.

Attorney General HOLDER. Well, with all due respect, in addition to the determination that I made and the President agreed with, which is based strictly on an assessment of the legal situation in front of us, there are several lower courts that have ruled that the DOMA itself is unconstitutional. And the notion that this is somehow something that ought to be, as you said, taken off the backs of the Department of Justice in a financial way, I think, is inappropriate. The lawyers in the Department of Justice who would have

worked on that case, believe me, have more than a full-time job, and they will have to use the time that might have been used in the DOMA defense, they will use it in other areas, so I don't think that that is inappropriate.

Mr. SMITH. Without objection, the gentleman from Wisconsin is recognized for an additional 30 seconds.

Mr. SENSENBRENNER. Mr. Attorney General, I guess what I can say is that we are in a tough budget time, and we all know we are in a tough budget time. If you take the position that this should come out of Congress' budget, which we willingly cut on the second day of the session, essentially what you are saying is that there shouldn't be money, government money, to pay a lawyer to argue the constitutionality of this law.

And you know I am one of those that believes that everybody is entitled to a lawyer no matter how wrong their position may be. And you know, what you are saying is, well, just because you and the President have decided not to defend DOMA because you and the President have decided it is unconstitutional there should be some kind of financial shifting around so that the lawyer gets paid for because this is a serious constitutional question, and the best lawyers in the country ought to argue both sides of the case, and I yield back.

Mr. SMITH. The gentleman's time has expired. The gentleman from New York, Mr. Nadler, is recognized.

Mr. NADLER. Thank you. I am very heartened to hear from the——

Attorney General HOLDER. Can I just say, I don't disagree with Mr. Sensenbrenner in the sense that good lawyers ought to be involved in this matter, and you apparently hired Mr. Clement, who is a great lawyer. But Congress, it seems to me, has the ability to pass an appropriation to pay Mr. Clement for the defense, a great defense that I am sure he will render. To take it out of the Justice Department, however, I think is inappropriate.

Mr. NADLER. I am delighted to hear the observation of the gentleman from Wisconsin, and I look forward to his—that everyone is entitled to a lawyer, and I look forward to his support to greatly increase appropriations for legal services and legal aid so that people who need lawyers in this country can get it, and we will be working together on that, I am sure. Mr. Attorney General, I want to offer my sincere appreciation to the Administration for its daring and successful mission to eliminate Osama bin Laden. I want to commend our military, our intelligence personnel and the Administration for never forgetting 9/11, and for continuing to pursue terrorists and bringing them to justice. And please bring that message back to the President.

As you well know, during the last Congress a number of us worked tirelessly to pass the 9/11 Health and Compensation Act so that we can properly honor, remember and care for the victims of 9/11. This new law reopens the Victims' Compensation Fund which will allow those still suffering and dying from their work at Ground Zero to finally apply for financial compensation for their losses. You and I have met about setting up the fund, and again, I want to encourage you to make rapid progress on appointing a special master, setting up the mechanisms necessary to process claims and doing

everything you can to ensure that those still suffering from the attacks will get the compensation they deserve. And I hope you will let us know if there is anything we can do to help ensure that implementation of the Act goes as smoothly as possible.

Now, getting back to the little discussion of DOMA, I don't believe that the Administration had any choice in the matter at all by looking at the legal precedence. And tell me if it isn't true that Mr. Sensenbrenner was a little mistaken because he said you chose one circuit over the others.

In fact, a number of circuits had established the rational relationship test, the Second Circuit hadn't established any test, which is why you had to look into the position of the Department in the Second Circuit case what should you do. Not whether you agreed to the Second Circuit or not is a new question which you had to consider for the first time in a new circuit. But isn't it true that the cases in the other circuits that determine that the rational relationship test was the right test all were done pre-Lawrence and post-Bowers. In other words, they were all done in a legal context in which the Supreme Court had said that the act of consensual sodomy, the homosexual act itself, could be properly made a crime. This was specifically—that was a 1986 case—was specifically overturned by the 2003 case of Lawrence which said you couldn't do that. And this had to give an entirely new context and there had been no determination by any court as far as I know, but certainly by any circuit, of the proper scope of review, or standard of review after the Lawrence case.

And if you look at the normal criteria for determining the standard of review that the Supreme Court has enjoined upon us as to what a suspect classification is, et cetera, does this class have a history of discrimination, does it have the political power to stop the discrimination, et cetera, et cetera, it meets all the tests and you really had no choice but to go that route.

Attorney General HOLDER. Well, I would agree with you. I mean, the legal environment, the legal landscape, has fundamentally changed since some of those earlier decisions were made by those other circuits. And we confronted in the Second Circuit, a jurisdiction or a circuit that had not ruled and so therefore we had to examine the legal environment as it exists today.

And on that basis, not on any political basis, but on a legal basis, a constitutional basis, the recommendation that I made to the President was that there was not a reasonable argument that could be made in favor of the constitutionality of DOMA, and the President agreed.

Mr. NADLER. In a context after Lawrence, not just in the context of social change?

Attorney General HOLDER. Exactly. In terms of what the courts have said, understanding what the court said and when they said it, what the Supreme Court said, what many lower courts have said, and in looking at the right to decide what the appropriate standard was.

Mr. NADLER. Well, I commend you for that determination. I think it was compelled by the courts. And I certainly hope that we will not start trying to intimidate the Department in terms of its

legal decisions through the use of the appropriations process. That would be wholly inappropriate.

Let me switch topics if I may. We have here your letter from Ron Weich, actually, on the State Secrets Doctrine. And you make some very interesting points. But the key point is the courts should have the information, you are going to exercise this power very sparingly, et cetera, et cetera, but it is still a power the executive is going to use.

In the Ninth Circuit, in the initial decision of the Ninth Circuit, I thought, the most important sentence was a sentence where the three-judge panel said the executive cannot be its own judge. And all the criteria which you set forward in this letter are fine criteria, but they all say, in effect, trust the Department, trust the executive branch, no recognition of separation of powers.

And my contention is that you say in here that the courts—the Department recognizes that courts have an essential and independent role to play in reviewing the executive's assertion. It should be in approving the executive's assertion. There should be secret proceedings and so forth if necessary, but the key is that the courts should have to okay or not an assertion of the fact that—a motion to dismiss on the grounds of executive privilege should have to be okayed by the court, not simply noted by the court regardless of how restrained and proper the executive is. That seems to be fundamental to our system of checks and balances and completely missing from the Department's position.

Attorney General HOLDER. What we have tried to do, what I have tried to do is really reform the process by which the invocation of that privilege is made. There are a whole series of levels of review that have to be agreed to, including by the highest levels in the Department of Justice, and I ultimately must agree that the invocation of the privilege is appropriate. Since this new process was put in place, we have only invoked a privilege on two occasions, and we only will do it in those instances where it is necessary to protect national security and not to hide anything that might have been inappropriately done by the executive branch.

Mr. NADLER. All of which——

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

Mr. NADLER. May I have one additional minute?

Mr. SMITH. The gentleman is recognized without objection for an additional 30 seconds.

Mr. NADLER. All of which may be true, and all of which may be exercised properly by you and maybe by your successor or not, but the decision is still reserved for the Department, not the court, and that is the fundamental problem which I think is inconsistent with our general system of government.

Attorney General HOLDER. Well, as I said, I think we have in place a new process that handles the concerns that you have, and we make sure that these invocations of the privilege are rare and are appropriate.

Mr. NADLER. Thank you.

Mr. SMITH. The gentleman's time has expired. If you can double-check this mic for me please. The gentleman from North Carolina, Mr. Coble, is recognized for his questions.

Mr. COBLE. Thank you, Mr. Chairman. General Holder, good to have you on the Hill. Mr. Attorney General, last June, the Justice Department contacted Alamance County in my district to inform the County Board of Commissioners that it was commencing an investigation concerning allegations of discriminatory policing and unlawful searches and seizures. The county assures me that there is no factual basis for these allegations. At a mutually convenient time, Mr. Attorney General, I would like to meet with you and/or the appropriate staffer of Justice regarding this matter.

Attorney General HOLDER. We are, I guess, in the process of trying to negotiate with the sheriff's office to get some relevant documents, and apparently there has been partial compliance with our document request. But to the extent that you have concerns, I am sure that we can work out some interaction between our staffs.

Mr. COBLE. I thank you for that. An important element, Mr. Attorney General, of our Federal bankruptcy laws is a requirement that debtors consult with an approved agency to receive a briefing and budget analysis for the credit counseling agency prior to filing for bankruptcy relief. To ensure high quality standards for pre-filing counseling, the executive office of the United States trustee is charged with approving nonprofit budget and credit counseling agencies that may provide this service. There are allegations that the trustee office has approved a number of credit counseling agencies that are not meaningfully interacting with debtors prior to certifying that they have completed the prerequisite pre-filing counseling.

There are also allegations that many of these nonprofit agencies are related or linked to for-profit entities. Are you familiar with these allegations?

Attorney General HOLDER. I have heard—I am not intimately familiar with them, but I have heard conversations in the Department about the subject that you are talking. I know that we are looking at these matters. To the extent that you have information though that you think we have not adequately addressed, again, that would be information you can share with us I will make sure that the appropriate people in the Department examine it.

Mr. COBLE. And I thank you for that. If you would get back to us on what you find out as well. Finally, Mr. Attorney General, as has been mentioned, we are in a cutting mode on the Hill, as you know. What are your priority areas for cuts?

Attorney General HOLDER. I always like to have the question asked the other way.

Mr. COBLE. Well, I didn't mean to induce laughter when I asked that question, Mr. Attorney General.

Attorney General HOLDER. You know, we are mindful of the fact that we have tough budgetary times, and the Department has to step up as other executive branch agencies have. We have our priority areas which all revolve around the protection of the American people; national security, financial fraud, prevention of violent crime, the protection of the most vulnerable among us. We want to have an adequate budget that will allow us to do those kinds of things. There are budget proposals that are floating around. We have talked to our counterparts at OMB and have made known to them what our priorities are. And my hope is that recognition will

be made of the unique responsibilities that the Justice Department has and that a budget that will allow us to serve the American people in a way that I describe will be actually enacted.

Mr. COBLE. I thank you for that. Mr. Chairman, I yield back prior to the illumination of the red light.

Mr. SMITH. Thank you, Mr. Coble. The gentleman from Michigan, Mr. Conyers, is recognized for his questions.

Mr. CONYERS. Thank you, Chairman. One of the things that I hope we can take a new look at is the State secrets privilege in which the exclusion of evidence from a legal case based solely on affidavits submitted by the government stating that the court proceedings might disclose sensitive information which could endanger national security causes the information to go and the case collapses.

And I think that is a serious problem in the way the previous Administration and this one is proceeding. What bothers me, General Holder, is that there have been cases challenging the use of rendition, of wiretapping, of torture, and the Administration has used the secret privilege, State secret privilege, to have these lawsuits dismissed. I think it is very troublesome and problematic, and I am wondering if a number of us here can begin to persuade you to reexamine the use of this technique, because it makes it very hard to challenge those in those cases to bring a case against the government.

Attorney General HOLDER. Well, I certainly heard the concerns that were expressed by Members of this Committee, and frankly other Members of Congress and people outside of Congress. And I was concerned myself about the invocation of the privilege, and I think that I have put in place a regiment that, as I indicated to Mr. Nadler, would make the use of the privilege rare and appropriate and transparent to the extent that we can. We have sent a report to Congress about the invocation of the privilege which has not been done before. I put in place a series of review steps that did not exist before, and required that the Attorney General himself or herself actually sign off on any invocation of the privilege, all of which is new. And it would seem to me that that, I think, would deal with many of the concerns, if not all of the concerns, that have been raised. But, I mean, this is a fluid process. And to the extent that there are other ideas that you or other Members of the Committee have, I would be more than glad to listen to them, work with you and see if there are further changes that we need to make.

Mr. CONYERS. Well, thank you. And I am familiar with that new report. But look, many in the legal community don't think that it changes really very much, and we have got a lot more meeting to do and discussion, and I am glad you are open to it. Let me turn now to antitrust. Now, the antitrust division has been dormant for many years in my view. And the global corporations get larger and larger and larger. It works against our economy, it certainly takes jobs away from this country as badly as we need them. And I haven't seen one major case in which your Department has refused to approve a significant merger.

Now, isn't there some way we can begin to review that? And I would like to be able to meet with you and others on this Com-

mittee that think we can make a good case that it is not good law, it is terrible for the economy, and that it would be the right thing to do to start refusing it. DOJ hasn't refused one merger.

Attorney General HOLDER. Well, we have, I think, a very vigorous antitrust policy, we have got a great Assistant Attorney General, Christine Varney, who is the head of the antitrust division, and I think that she has, in fact, revitalized the work of the antitrust division. To the extent that proposed mergers have come before the antitrust division, they have oftentimes been approved, but approved with conditions that were required by the Department; changes in business practices, divestment of certain components in the business that it sought to merge. And I think that the way in which Christine is going about it, the men and women of the antitrust division are going about their enforcement activities is appropriate. Again, based only on the facts and law there are mergers that we presently have that we are in the process of considering. I can't talk about those. But in the examination of those proposed mergers, we will be vigorously enforcing the antitrust laws.

Mr. CONYERS. Thank you, Chairman Smith.

Mr. SMITH. Thank you, Mr. Conyers. The gentleman from Virginia, Mr. Goodlatte, is recognized for his questions.

Mr. GOODLATTE. Thank you, Mr. Chairman. And General Holder, thank you very much for coming to be with us today. A few weeks ago, Director Mueller testified before this Committee and highlighted the threat of cyber crime. Please let us know what measures the Department is currently taking to strengthen our Nation's cyber security.

Attorney General HOLDER. Well, it is an issue that is a great concern to us in the Department. We have within our criminal division a computer crimes section that does a great deal of work dealing with issues that come before it. It has been publicly revealed about steps, enforcement steps, that we have taken with regard to a matter that was centered I guess in Connecticut with regard to I guess what we call botnets. The national security is potentially threatened by cyber issues. There is economic fraud that can be perpetrated through the use of cyber components. We work with the FBI and other agencies within the executive branch to try to deal with these cyber issues; child pornography, as was indicated before. A whole variety of things can happen.

I mean, the cyber world can be such a positive force, but also the potential for great negative activity is there, and so we are very active in a variety of ways in dealing with these cyber issues.

Mr. GOODLATTE. Are there additional tools that the Congress can provide to the Department that would help you in this critical mission?

Attorney General HOLDER. Well, I think that is actually a very good question, because the reality is that the cyber issues evolve. And what was state-of-the-art 6 months ago isn't state-of-the-art necessarily today. And to the extent that we can come before this Committee, work with Members of this Committee, in looking at the issues that we are confronting now, or that we expect that we will have to confront in 6 months, a year from now, and make legislative requests, that would be certainly something that we would appreciate, and I would take advantage of that offer.

Mr. GOODLATTE. Well, thank you. And so I take it you would be willing to work with us to identify these additional tools and try to enhance our Nation's cyber security, as well as your ability to combat cyber crime?

Attorney General HOLDER. Oh, absolutely, absolutely.

Mr. GOODLATTE. Another subject area I wanted to get into relates to intellectual property, which is a subset of cyber crime, if you will. There is a great interest on both sides of the Capitol in legislation to better protect the public by enhancing respect for intellectual property online.

One of the proposals being considered has been to give the Department enhanced authority to petition Federal courts to block access to Web sites, many of which may be based outside the United States, which are dedicated to offering illegitimate, physical and digital goods to American consumers.

In this regard, I wonder if you can address some key concerns. First, do you have suggestions for how this Committee can ensure that such new authorities are used often enough to serve as a meaningful deterrent to the scope of illicit online activity?

Attorney General HOLDER. Well I think you are again right to identify that as an issue that is of legitimate concern. I went to Hong Kong and to China a few months ago and gave a speech in Hong Kong about this very issue. I raised with Chinese officials who I met with about the concerns that our government has with regard to these matters. To the extent that we can identify the need for new tools or to the extent that there is proposed legislation, we would want to work with you, look at that legislation, and see if, in fact, there are ways in which we can either pass it, modify it, but there are huge economic concerns, huge economic concerns around the issue that you have raised.

Mr. GOODLATTE. What protections does the law currently provide before the government can seize or seek forfeiture of a domain name? And are there any additional steps you believe are necessary to ensure that the constitutional requirements are met, that legitimate users of these domains are protected?

Attorney General HOLDER. The difficulties there really are constitutional in nature. And to the extent that we can craft bills that allow the Department to seize domain names, to take other actions and do so in a constitutional way, that is something that I think we should explore. And we don't have all the answers in the Department with regard to how that legislation might be crafted.

And so I think working with this Committee and, frankly, other Senators who have raised this issue as well, I think would be a wise use of our time.

Mr. GOODLATTE. And given that around 100 Web sites have been ordered seized by Federal courts under existing authorities, what's your best estimate of a number of Web sites you might expect the Department would be able to target on an annual basis if something along the lines of the existing law was enacted to reach sites that are wholly based outside our borders?

Attorney General HOLDER. I don't know if I could give you a real good specific numerical estimate. But I can say that with different tools, given the nature of the threat that we face, that we would have substantially greater than the hundred or so that you have

mentioned. If we had those additional tools, as I said, working with you to identify the tools that we need, and making sure that those tools are constitutional in nature would be of great use to the Department.

Mr. GOODLATTE. Thank you. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Goodlatte.

The gentleman from Virginia, Mr. Scott, is recognized for his question.

Mr. SCOTT. Thank you, Mr. Chairman. And welcome, Mr. Attorney General.

In your prepared remarks you talked about the importance of all religions getting along. You are aware that then-Senator Obama, in Zanesville, Ohio, said that if you get a Federal grant, you can't use that grant money to proselytize to the people you help, and you can't discriminate against them or the people you hire on the basis of religion.

Is it possible in this Administration today for someone to apply for a Federal grant and articulate an intention to discriminate against people of particular religions? For example, they don't want to hire Catholics, Jews, and Muslims; would they be entitled to run a Federal program?

Attorney General HOLDER. Well, I want to say that we want to make sure that we partner with faith-based organizations in a way that is consistent with our values, in a way that's constitutional, and we will continue to evaluate any legal questions or concerns that are raised with regard to——

Mr. SCOTT. Does that mean, yes, they can get a Federal grant and discriminate?

Attorney General HOLDER. We don't want to be in a position where people are, in fact, getting Federal grants and discriminating.

Mr. SCOTT. But you have at least one Administration official who has suggested that they are going to deal with discrimination on a, quote, case-by-case basis. What kind of cases would "We don't hire Catholics, Jews, and Muslims" be okay?

Attorney General HOLDER. Obviously, that kind of situation would not be okay, would not be legally appropriate. It would be inconsistent with our values.

Mr. SCOTT. Is it legal under this Administration?

Attorney General HOLDER. It's not a question of it being legal under this Administration. It is a question of what the law says.

Mr. SCOTT. Does this Administration provide grants to organizations that actively discriminate based on religion or not?

Attorney General HOLDER. We don't want to do that. We try not to do that, but the question is, what——

Mr. SCOTT. Wait a minute. Either you do or you don't. Do you not give grants to organizations that actively discriminate based on religion or not?

Attorney General HOLDER. The attempt we make is not to do that. As I have indicated, our hope is that we do something—the grants that we give are consistent with the law, but beyond that are consistent with our values.

Mr. SCOTT. We don't have time to go into the legal memo of June 29, 2007. Could we give, could you for the record provide the Ad-

ministration analysis of that legal counsel memo which essentially suggested that the Religious Freedom Restoration Act of 1993 provides a virtual exemption to statutory nondiscrimination provisions? Could you provide that to us for the record?

Attorney General HOLDER. I'm sorry. Provide you——

Mr. SCOTT. With whether or not the status of that policy and whether or not that legal counsel memo is still in effect. Could you provide that for the record?

Attorney General HOLDER. As I understand it the memo is still in effect, as I understand it.

Mr. SCOTT. That the Religious Freedom Restoration Act gives organizations a virtual exemption to statutory nondiscrimination provisions?

Attorney General HOLDER. If you are talking about the 2007 OLC world vision opinion?

Mr. SCOTT. So if you are running a Head Start program, if they are running a Head Start program, they can discriminate. Even though there is a statutory provision prohibiting discrimination, they can discriminate anyway?

Attorney General HOLDER. What I was saying was with regard to that specific OLC opinion, we are not in the process of reconsidering it. That is not something, as I understand it——

Mr. SCOTT. I'm not talking about the memo, I'm talking about the policy. Can they discriminate, notwithstanding a specific statutory prohibition against discrimination, they can discriminate anyway based on that interpretation?

Attorney General HOLDER. Obviously, discrimination cannot occur; that is, that contravenes Federal law.

Mr. SCOTT. Well, let me ask a number of questions. My time is running out. Let me ask a number of questions just for the record since we don't have time for the answers.

The Prison Rape Elimination Act regulations apparently overlooked juveniles prosecuted and jailed as adults. We want to work with you on making sure that they are covered.

We also understand that the changes we made in the crack cocaine law are still not being applied for those who committed their crimes before the law went into effect. We need to know what changes need to be made since we have ascertained that those are unjust laws.

We also want to ask you whether or not you believe poker is a game of chance or a game of skill, and whether or not the anti-gambling laws apply to poker as they would for roulette and other games like that.

If I could get another 30 seconds, Mr. Chairman, just to ask the questions for the record, the news reports have talked about the compromise of a lot of identity information. Prosecution of identity theft and organized retail theft—not shoplifting—but organized, including E-fencing and everything else, are resource-intense activities. If you could give us an idea of what kinds of resources are needed to effectively combat identity theft, consumer identity theft and organized retail theft.

Also, on reentry, your prepared remarks talked about the importance of reentry and that you are studying what works and what doesn't work. We know that a lot more applications are in than we

have money to fund. And so we would like to know how that study is going, and also hope that you are going to continue to support the Federal Prison Industries, if you can give us a comment on that, that has shown to have a significant reduction on recidivism.

Mr. SMITH. The gentleman's time is expiring.

Mr. SCOTT. And I appreciate the Chairman's indulgence.

Attorney General HOLDER. I would be more than happy to answer all those questions except the one about whether poker is a game of chance or skill. That is beyond my capabilities.

Mr. SMITH. Thank you, Mr. Scott.

The gentleman from California, Mr. Lungren, is recognized.

Mr. LUNGREN. According to ESPN, it's a sport.

Mr. Attorney General, in 1996 while I was Attorney General of California, we helped work with the Congress to pass the Antiterrorism and Effective Death Penalty Act. One of the things was to try and create incentives for States to improve their habeas corpus procedures and to allow an expedition of their consideration by Federal courts. Unfortunately, no court ever found any State to do that.

So in 2005, we passed legislation which changed that responsibility for certifying a State from the courts to the Attorney General. You published draft regulations in March 2011. The comments on the draft are due June 2011. I would hope that I could have your commitment that we will move on this, since this goes all the way back to 1996.

Attorney General HOLDER. Yeah. I mean, we have tried to move this as quickly as we can.

Mr. LUNGREN. As long as I have your commitment, that's all I need. I would just say that with respect to DOMA, it would have been helpful if the President of the United States, as a former constitutional law professor during the time he was running for President, would have indicated that he had some constitutional questions about the DOMA when he was going around the country saying that he believes that marriage is between one man and one woman. These newfound understandings of the Constitution after one is elected are somewhat troubling, and particularly when it goes to the question of defending a law that was duly passed by the Congress and signed by a President.

Mr. Attorney General, do you support and approve the action the President and the U.S. military took in going to Pakistan, killing Osama bin Laden and taking his body?

Attorney General HOLDER. I think that the acts that we took were both lawful, legitimate, and appropriate in every way. The people who were responsible for that action, both in the decision making and the effecting of that decision, handled themselves I think quite well.

Mr. LUNGREN. Can you tell us for the public record whether we can therefore be assured that any intelligence which led to this capture and killing of Osama bin Laden was not the result of enhanced interrogation techniques?

Attorney General HOLDER. Well I think, as has been indicated by other Administration spokesmen, there was a mosaic of sources that led to the identification of the people who led to bin Laden.

Mr. LUNGREN. I understand that. But were any pieces of that mosaic a result of enhanced interrogation techniques?

Attorney General HOLDER. I do not know.

Mr. LUNGREN. If that were the case, would that have made the action we took against Osama bin Laden illegal?

Attorney General HOLDER. No. I think that in terms of the attenuation to the extent that—let's assume that that were true—those acts might have been problematic and the action that was taken just 2 days ago I think was sufficiently long, so that the action would still be considered legal.

Mr. LUNGREN. Could we have used the same tactics against Khalid Sheikh Mohammed when we captured him in Pakistan as we did against Osama bin Laden? Would that have been lawful?

Attorney General HOLDER. Could we have——

Mr. LUNGREN. Used the same tactics against Khalid Sheikh Mohammed when we captured him in Pakistan as we did against Osama bin Laden? That is, killed him rather than capture.

Attorney General HOLDER. The aim with regard to bin Laden was to kill or capture him. I would think that with regard to Khalid Sheikh Mohammed, we could probably apply those same standards of kill or capture. We had the ability to capture him as opposed to kill him.

Mr. LUNGREN. Does it seem in some ways inconsistent or a difficulty for moral relevance to say that it is per se so shocks the conscience that one would subject Khalid Sheikh Mohammed to waterboarding, but it would not shock the conscience to put a bullet in his brain?

Attorney General HOLDER. One has to take into account a whole variety of things and when you are on the scene, you want to get the person who you are trying to capture, but you also have to make sure that you are protecting the lives of the people who are on our side and who put themselves at risk. And it is for that reason that there is a safety component there and the kill-or-capture component raises itself in a way that it would not when it comes to the interrogation of Khalid Sheikh Mohammed or somebody else.

Mr. LUNGREN. Since you opposed a military commission trial for Khalid Sheikh Mohammed, would you have opposed a commission trial for Osama bin Laden had he been captured and not killed?

Attorney General HOLDER. Well, that is a hypothetical. I'm not sure that it is particularly relevant.

Mr. LUNGREN. Well, you have taken a strong position against military commissions. And the reluctance that you showed toward closing Guantanamo, you issued a rather strong statement about your disappointment with the Congress with respect to both our efforts to keep Guantanamo open and our efforts to have military tribunals. So I think it is an appropriate question to ask you whether or not, since you opposed a military trial for Khalid Sheikh Mohammed, whether you would have opposed a military trial for Osama bin Laden and rather given him the protections of a civilian trial?

Attorney General HOLDER. Well, my position is oftentimes mischaracterized. And on the same day that I indicated that it made sense—tactical sense to put Khalid Sheikh Mohammed in a civilian court, I sent five or six other cases to military tribunals,

military commissions. I don't have a problem with the military commissions. But the decision that I made in the Khalid Sheikh Mohammed case was based on my review of the facts, the evidence, and tactical decisions, tactical decisions that no Member of Congress had the ability to see, that I did.

Mr. LUNGREN. So it is tactical rather than civilian courts being the one that can uphold the constitutional notions of fair play as opposed to a military tribunal?

Attorney General HOLDER. I think our military commissions, in fact, especially since they have been modified, are constitutional and can give fair trials. But the decision with regard to Khalid Sheikh Mohammed dealt with a whole variety of things that I uniquely had access to, and that's why I made that decision and why I have been so vehement in my comments about what I think is an inappropriate and wrong decision by Congress to block our ability to try the case in that form.

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Lungren.

The gentleman from North Carolina, Mr. Watt, is recognized for his questions.

Mr. WATT. Thank you, Mr. Chairman. Welcome, Attorney General Holder.

I'm going to submit with—if I can get unanimous consent, a copy of a letter I received from the Attorney General for North Carolina, asking me about funding for the elimination of meth lab cleanup. You may not have the information at your hand; but if you could, just let me know what the basis was for the U.S. DEA halting all funding across the country for meth lab hazardous waste cleanup. Apparently it's having substantial adverse impact not only in North Carolina but throughout the country, and it would be helpful to know why they stopped that funding.

I ask unanimous consent to submit a copy of a letter and I will give——

Mr. SMITH. Without objection, the letter will be made a part of the record.

[The information referred to follows:]

State of North Carolina
Department of Justice

Roy Cooper, Attorney General

April 29, 2011

The Hon. Melvin Watt
U. S. House of Representatives
2236 Rayburn House Office Bldg.
Washington, DC 20515

RE: Meth Lab Cleanup

Dear Congressman Watt:

As you know, methamphetamine is a dangerous drug that makes people violent and paranoid. Illegal meth labs in our communities bring additional hazards of explosion, fire, hazardous waste and toxic fumes which can be particularly damaging to children. After years of funding meth lab hazardous waste cleanup, the U. S. Drug Enforcement Agency (DEA) recently halted all funding across the country.

We have been urging DEA to continue this funding. As a stop gap measure, the North Carolina State Bureau of Investigation (SBI) has so far expended in excess of $133,000 toward local cleanup costs. Since this is not in its budget, the SBI Director has informed me that the SBI will not be able to provide this funding past May 10, 2011. We are working diligently to find other sources of funding, however, local law enforcement has come to rely on this important federal assistance.

Your help in having the DEA restore this funding is important for public safety in North Carolina and across the country. If you have any questions, please feel free to give SBI Director Greg McLeod or me a call. Your colleagues should be hearing from their state and local law enforcement as this is a national problem.

With kind regards, I am

Very truly yours,

Roy Cooper

RAC/sm

Department of Justice, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001
Phone: (919) 716-6400 Fax: (919) 716-0803

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Mr. WATT. In August of 2010, after a joint working group of antitrust and FTC economists and senior attorneys and public workshops and comment opportunities, the Department of Justice made a substantial revision to its horizontal merger guidelines.

Let me ask you three questions and then I'll just give you the rest of the time to respond, to the extent you can, and if you don't have time maybe you could provide written responses.

First of all, could you briefly explain the impetus for the revisions and describe generally what the Department hoped to achieve in making the changes?

Second, could you highlight some of the most significant changes made to the guidelines, and briefly assess the impact these changes have had on recent merger reviews?

And third, what role, if any, did the new guidelines have in the Department's analysis of the merger between Google and ITA in particular; and if there are other mergers that these guidelines were significant in, I would like to have your response, probably in writing, to the last question.

But if you could respond briefly to the first two questions that would be helpful.

Attorney General HOLDER. I think what I would like to do is be able to give you a more detailed response in writing, but to say that the changes that we made that were done under the leadership of our Assistant Attorney General Christine Varney were all designed to make the Department's enforcement efforts more effective, to revivify the antitrust division, and to ensure that as we look at matters we have the tools that we need and that those tools are transparent, so that people understand where the Department is coming from, that people have some degree of certainty they can understand how things have to be structured. All, as I said, with the aim toward making the enforcement of our antitrust laws as effective as we can and we are as aggressive as we can.

With regard to the specific questions that you have asked, we will get you something in writing.*

Mr. WATT. Is it likely that this new approach is going to make it less likely—it seems to me that you are moving toward a more compromised approach, as opposed to an enforcement approach, of saying this violates the antitrust laws; therefore, we will not approve it.

And am I misreading that or—and I think that may be the discomfort that Mr. Conyers was raising earlier, that there have been no disapprovals, not that we are looking for disapprovals—is this a shift in poll policy in the Department, I guess, is a better question.

Attorney General HOLDER. To the extent that you are concerned or others are concerned that we are somehow stepping back from being aggressive in the enforcement of the antitrust laws, I want to put your minds at ease. That is not what we are attempting to do. In fact, we take these cases and examine them one by one, as we have to. And as I think I indicated to Mr. Conyers with regard to the decisions that have been made, we have oftentimes required things of the parties before the mergers were approved. The fact that there has not been one that has been rejected, I would have to look to make sure that is accurate. Let's assume that that is true; that is not an indication that there is any timidity on the part of the antitrust division, the Justice Department, to enforce the antitrust laws, or any indication going forward, some of the more

*As of September 10, 2012, Mr. Watt nor the Committee had received a response from the Dept. of Justice.

high-profile ones that we are now in the process of considering, might not pass muster.

Mr. WATT. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Watt.

The gentleman from Ohio, Mr. Chabot, is recognized.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Attorney General, I would like to comment on the gentleman from Virginia, Mr. Scott, whom I agree with on one of the few issues I think we agree on: the importance of the Federal Prison Industries. And I would encourage you to look into that matter.

I think it's an important program. I think once we have people locked up—at this level, it is Federal prisons, I have dealt with them at the local level as well—I think we ought to make sure we are utilizing those resources, and most of them are going to be out in the street someday, and to the extent that they can get job skills and improve themselves so that when they are back out, some at least can become productive citizens. I think that is very important.

Let me move to an entirely different topic, then, and that is Guantanamo Bay, or Gitmo. I have been there three times. The first time I was there was shortly after it opened. It was about 9 years ago, not much to it at the time; that's where we, of course, held the detainees or terrorists or enemy combatants, whatever terminology one prefers to use now, or even back then, most of them captured in Afghanistan. And the reason, of course, we set up Gitmo is we needed a safe and secure place to keep the most dangerous people, essentially the worst of the worst, the terrorists, most of them, and the goal was not to do it on U.S. soil. And at that time they were at Camp X-ray within Guantanamo Bay. It really wasn't much more than a bunch of cages out there and I think a great disservice was done when we had initial photographs and they had bags over their heads and they were kneeling and the impression, the wrong impression, was given that that's the way we kept them all the time. And the world press pretty much went wild and it was, I think, a blow to the stature of the United States around the world because that's not how these prisoners are treated for the most part. At its zenith—and I was there the second time about 5 years ago, and then most recently about 1 month ago, and so I have seen it pretty recently and through the whole process.

At its height we had somewhere around 800 detainees is what my information is there. We are now down to about 172. A number of them have been transferred back to the countries of their origin. In some cases, the countries didn't want them back, and we tended to try to give back the folks that we thought were least dangerous to the country. But even at that, the record shows that about 25 percent have taken up arms again against the United States or some other country, essentially, so one out of four have become terrorists again. And that to me is very disturbing.

And they are treated—there is a lot of allegations out there about how terribly they are treated; for example, the waterboarding. First of all, the waterboarding that's out there, this did not occur at Guantanamo Bay; is that a fact, Mr. Attorney General?

Attorney General HOLDER. I think that is correct.

Mr. CHABOT. So no waterboarding there. So first of all, when we hear that term and we have an equivalent that it's torture, people can think what they think, but the definition is it is not torture, but it didn't happen at Guantanamo Bay, and I think that is an important point to make. When prisoners are there, they probably eat better than they have in their lives, get the same medical treatment that our own soldiers get, they have cable TV, 22 channels, exercise equipment, a Koran, a prayer rug, clothing, access to legal care, among other things. Would that be accurate, sir?

Attorney General HOLDER. I don't know about all the specifics. I was in Guantanamo shortly after I became Attorney General. And it is a place that I think treats people as they should be treated. I don't know about all the details that you have just gone through.

Mr. CHABOT. And there is a separate section and it's classified, so I can't go into a lot of this. But there's about 20 people there. The worst of the worst is Khalid Sheikh Mohammed. But I think our men and women in uniform have been really disparaged unfairly, and these are quality people who have handled a tough job with great professionalism and restraint. Are you familiar with the term a Gitmo cocktail?

Attorney General HOLDER. A Gitmo cocktail? I think I know what that is.

Mr. CHABOT. Yes. And it is what you think it is. It's fecal matter and other pretty horrific things that get thrown by prisoners at our guards, and even under those circumstances there's an awful lot of restraint that is handled there. But I know this is one thing where I agree with the Administration now, where they have changed their opinion about closing down Gitmo and also bring those people back here to the United States. There's absolutely—that was a terrible idea, sir, to bring them to the United States and try them here; to have the anti-American vile mindset of some of these radical jihadists spread among the prisoners in our Federal prisons, and that's where they ought to be tried. We shouldn't give people an opportunity—can I have 30 seconds Mr. Chairman?

Mr. SMITH. The gentleman is recognized for an additional 30 seconds, without objection.

Mr. CHABOT. Thank you. To give a master propagandist like Khalid Sheikh Mohammed a soapbox to spew that anti-American venom around the world is just not the way to go. So I commend you for bringing them back here now—excuse me—for keeping them at Gitmo. We also built a $16 million court facility there that was virtually unused. And so now it is going to be used, and should be, and full speed ahead with that. Thank you.

Mr. SMITH. Thank you, Mr. Chabot.

The gentlewoman from California, Ms. Lofgren, is recognized for her questions.

Ms. LOFGREN. Thank you, Mr. Chairman.

And thank you, Mr. Attorney General, for being here today. A couple of years ago the Immigration Subcommittee held a hearing on ICE's raid of a meatpacking plant in Postville, Iowa. And the factory workers there were literally rounded up and herded into a cattle area and then figuratively treated like cattle. They had

group hearings with shared counsel, no translation services, and very questionable guilty pleas and prison time.

Judge Mark Bennett who sentenced a number of the immigrants said this about that proceeding: "I found the plea agreement [that the immigrants were asked to sign] personally and professionally to be offensive, and I thought it was a travesty, and I was embarrassed to be a United States District judge that day."

Now that was then, this is now. One way to look at these prosecutions is the impact in terms of due process rights and our adherence to law as to the defendants. Another way to look at it is how are we using our resources. I've had my—the attorneys on the Subcommittee—take a look at the data, and I understand that illegal reentry after deportation is now the most prosecuted Federal felony in the United States, and that misdemeanor prosecutions of immigration offenses in border districts has tripled from 2007 to 2010, and that these prosecution decisions—making reentry felony prosecutions the most commonly prosecuted felony, Federal felony—has come at the expense of prosecuting other crimes, and nonimmigration felony prosecutions in nonborder districts have declined 6 to 8 percent in the same time frame.

Now I raise this because many of us when we go home every week, get this question from our constituents: As far as we can tell, the Department has not brought a single prosecution of a high-ranking Wall Street executive or major financial firm in the wake of the Wall Street scandals that contributed to the global economic crisis. So it looks to me that the Department is spending its resources prosecuting nannies and busboys who are trying to get back to their families, illegally reentering, and yet we have not brought any prosecutions on the bandits on Wall Street who brought the Nation and the world to the brink of financial disaster.

Could you explain these priorities, Mr. Attorney General?

Attorney General HOLDER. Well, there's a lot packed into that question. The fact that there are so many prosecutions along the border is an indication of the nature of the problem that we confront. This Administration has always stood for a comprehensive approach to——

Ms. LOFGREN. No. No. No. I would like to know about the lack of Wall Street prosecutions.

Attorney General HOLDER. All right. I was just dealing with some things that you said. The fact that we have these prosecutions on the border is not any indication that we are not taking the Wall Street potential offenses seriously. We have prosecuted a great many cases that deal with fraud with regard to the mortgage area, with regard to financial schemes.

A case was brought, just decided in the last couple of weeks, a $3 billion fraud scheme that involved Colonial Bank, Mr. Lee Farkus. The Department is looking right now at the report prepared by Senator Levin's Subcommittee that deals with Goldman Sachs. People have to disabuse themselves of the notion that somehow or other this Department of Justice, the prosecutors who look at these cases, don't want to bring these cases. They come to the Department of Justice to look at matters like this to apply the law, look at the facts, and to bring these cases. We are extremely aggressive in that way.

Ms. LOFGREN. May I ask how many investigators and U.S. Attorneys are assigned to the prosecution of executives on Wall Street who may have committed misconduct?

Attorney General HOLDER. I can't give you an exact number. But I can tell you that a substantial number of people in the Southern District of New York, as well as the criminal division here in Washington, numerous FBI agents——

Ms. LOFGREN. Maybe we can get that number after this hearing.

I would like to turn to the whole mortgage industry. There was tremendous misconduct undertaken relative to the mortgage industries, including fraud. And as you are aware, I am sure, all 50 attorneys general have engaged in settlement discussions with banks about their misconduct. Recently the Comptroller of the Currency released a draft cease-and-desist order which one expert described as the regulatory equivalent of a Potemkin Village.

I'm wondering if you could tell us—I understand the Department is also engaged in the negotiations—what should the top priorities for a global settlement of legal claims against the servicing industry include? Do you concur with the attorneys general's outlined settlement, or do you have a different approach?

Attorney General HOLDER. Well, I'm not sure you can say that the attorneys general are a model. They have a variety of approaches. Tom Perrelli, who is the Associate Attorney General, is intimately involved in that process, and we are trying to work with the financial institutions as well as the State attorneys general to try to work our way through an appropriate settlement.

Ms. LOFGREN. Well, they have a framework and I'm just wondering if you agree with that framework or not.

Attorney General HOLDER. Well, there is a framework. But there are still a whole bunch of different views, believe me. There's a stated framework. But in terms of the interaction that goes on in these negotiations, there are a variety of positions that we are trying to harmonize and trying to work with the financial institutions to reach a conclusion.

Ms. LOFGREN. If I could ask for unanimous consent for 30 seconds, Mr. Chairman. Could you tell us if the——

Mr. SMITH. The gentlewoman is recognized for an additional 30 seconds.

Ms. LOFGREN [continuing]. If the settlement discussions fail, are you prepared to prosecute these institutions, since that is the basis for the settlement discussions?

Attorney General HOLDER. If the negotiations fail, if there is a basis for prosecutions, we will bring them.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. SMITH. Thank you Ms. Lofgren.

The gentleman from California, Mr. Issa, is recognized for his questions.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Attorney General, I would like to thank you for the work that the U.S. attorney Laura Duffy is doing in San Diego going after coyotes, going after gun traffickers at the border. The work in my border district area of making our city safer, because the crime in Mexico often stops at the border, because her work and willingness to prosecute human traffickers and gun traffickers is

very much appreciated. So just so you hear two sides of the California story for a moment.

Mr. Attorney General, we have two Border Patrol agents who are dead, who were killed by guns that were allowed, as far as we can tell, to deliberately walk out of gun shops under the program often called "Fast and Furious." This program, as you know—and the President has been asked about it, and you have been asked about it—allowed for weapons to be sold to straw purchasers, and ultimately many of those weapons are today in the hands of drug cartels and other criminals.

When did you first know about the program officially, I believe, called "Fast and Furious"? To the best of your knowledge, what date?

Attorney General HOLDER. I'm not sure of the exact date but I probably heard about Fast and Furious for the first time over the last few weeks.

Mr. ISSA. Now that you have been briefed on it, the President has said on March 22 that you didn't authorize it. Did your Deputy Attorney General James Cole authorize it?

Attorney General HOLDER. I'm sorry, did the——

Mr. ISSA. The Deputy Attorney General, James Cole——

Attorney General HOLDER. Did he—I didn't hear. Did he——

Mr. ISSA. Did the Deputy Attorney General authorize it?

Attorney General HOLDER. My guess would be no. Mr. Cole, I don't think was in the Department at the time that operation started.

Mr. ISSA. But he has been aware of it much longer.

Attorney General HOLDER. Been aware of it much longer?

Mr. ISSA. Than you have, since you have only been aware of it a few weeks. How about the head of the criminal division, Lanny Breuer, did he authorize it?

Attorney General HOLDER. I'm not sure whether Mr. Breuer authorized it. You have to understand the way in which the Department operates although their operations—this one has gotten a great deal of publicity.

Mr. ISSA. Yeah, there are dead Americans as a result of this failed and reckless program. So I would say that it hasn't gotten enough attention, has it, Mr. Attorney General?

Attorney General HOLDER. Not necessarily. There's an investigation that is underway——

Mr. ISSA. I'm aware of that investigation. Let me follow up with a couple of questions.

Attorney General HOLDER. We will have to look at that to see exactly what happened with regard to that——

Mr. ISSA. Mr. Attorney General——

Attorney General HOLDER. I take very seriously the allegations——

Mr. ISSA. Mr. Attorney General, do you take seriously a subpoena signed by the Clerk of the House?

Attorney General HOLDER. Of course.

Mr. ISSA. After 14 days waiting for a letter to be signed or acknowledged or responded to, we sent a subpoena signed by the Clerk of the House. Thirty-two days later, last night, your people responded by giving us 92 pages, representing three documents

that were public records already, all are available, and saying that the other 400 or so responsive pages were not going to be produced. Do you stand by that? And were you aware of that?

Attorney General HOLDER. I think we indicated that the other 400 pages would be made available for review, to be accurate, I think. So those in essence were being made available as well.

Mr. ISSA. And that took 32 days to get that answer.

Attorney General HOLDER. The information was gathered as quickly as it could. I have taken steps to enhance our ability to to respond to subpoenas and document requests in that regard. I was not satisfied with the pace at which these things were happening. And as I said, I have taken some steps to make sure that we are more responsive.

Mr. ISSA. Mr. Attorney General, do you agree that Congress has an independent responsibility, particularly when U.S. persons have been killed because of a failed and reckless program, to investigate those who authorized, approved, knew about it, and in some other way were responsible for it?

Attorney General HOLDER. As I indicated to you last night when we spoke about this at the White House, I think there is a legitimate oversight responsibility that Congress has. But I think also Congress has to use that oversight responsibility in a responsible way. We have cases, 20 matters, that will go to trial in June of this year——

Mr. ISSA. Mr. Attorney General, isn't it true that those cases that will go to trial in June—I have very limited time, I'm sorry—those cases are basically a bunch of meth addicts who did the buying, that you do not have what this program was supposed to produce, you don't have the kingpins, you don't have the places it went. What you have are the people that you already had on videotape, many many months before indictments were brought. Isn't this true?

Attorney General HOLDER. There are cases that are important that we are trying to bring, that we want to try successfully, and they are part of a scheme. You can't look at a case as an individual matter and think it is unimportant, because small cases lead to larger ones. And that's why it's important——

Mr. ISSA. I would ask unanimous consent for an additional 30 seconds.

Attorney General HOLDER. That's why these cases are important, and that is why——

Mr. SMITH. Without objection, the gentleman is recognized for an additional 30 seconds.

Mr. ISSA. Mr. Attorney General, my final question, though, is from what you are saying about a scheme and so on, do you stand by this program; in other words—and it's not a hypothetical, really—if you knew this program, knew about this program 90 days ago, 180 days ago, would you have allowed it to continue? And if not, then what are you going to do about the people who did know and allowed it to continue?

Attorney General HOLDER. Well, what I have told people in the Department of Justice is that under no circumstances in any case, that any investigation that we bring, should guns be allowed to be distributed in an uncontrolled manner.

Mr. ISSA. So that would be consistent with the March 9 letter from Deputy Attorney General James Cole in which he said that we should not design or conduct undercover operations which include guns crossing the border; if we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border and so on. That's your policy today.

Attorney General HOLDER. That is our policy. That has certainly been the policy that I have tried to impose since I was Attorney General.

Mr. ISSA. And isn't Fast and Furious inconsistent with that policy?

Attorney General HOLDER. Well that's one of the questions that we'll have to see, whether or not Fast and Furious was conducted in a way that's consistent with what Jim wrote there, what I have said today, and that's what the Inspector General is, in fact, looking at.

Mr. ISSA. And will you agree to work with both this Committee, of course, and the other Committee investigating this as to—we're not looking at the straw buyers, Mr. Attorney General, we're looking at you, straw purchasers; we're looking at you, we're looking at your key people who knew or should have known about this, and whether or not your judgment was consistent with good practices and whether or not, instead, the Justice Department is basically guilty of allowing weapons to kill Americans and Mexicans.

So will you agree to cooperate with that investigation both on the House and Senate side?

Attorney General HOLDER. We'll certainly cooperate with all the investigations, but I'm going to take great exception to what you just said. The notion that somehow or other this Justice Department is responsible for those deaths that you mentioned, that assertion is offensive. And I want to tell you——

Mr. ISSA. But what if it's accurate, Mr. Attorney General?

Attorney General HOLDER [continuing]. That it is the policy of the Justice Department to make sure that we do all that we can to protect law enforcement agents. It is one of the reasons why I have tried to look at a whole variety of methods, techniques that we can use to protect the lives of law enforcement agents. It is something that this country is not focused enough on.

Over the last 2 years, the rate at which our people in law enforcement have been killed has risen about——

Mr. ISSA. What am I going to tell Agent Terry's mother about how he died at the hand of a gun that was videotaped as it was sold to a straw purchaser fully expecting it to end up in the hands of drug cartels?

Attorney General HOLDER. We'll have to see exactly what happened with regard to the guns that are at issue there. And I have attended funerals. This is something that isn't theoretical, this is not political, this is extremely real for me as Attorney General.

Mr. ISSA. It is for us, too. I thank the gentleman.

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

Attorney General HOLDER. I have had to look into the eyes of widows, of mothers who have have lost sons. I have felt their pain. And the notion that somehow, some way, we are less than vigilant,

less than strong in our determination to keep the people who put their lives on the line every day to protect the American people, that we're not doing all that we can to protect them is inconsistent with the facts, inconsistent with the people who serve in the Department of Justice.

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

The gentlewoman from Texas, Ms. Jackson Lee, is recognized for her questions.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Mr. Attorney General, I consider these opportunities a chance for us to work as a team. We are, in fact, a team. I have been privileged to serve on this Committee since being elected to the United States Congress. And it is an honor because we hold in our hands, as you do, the lives of Americans as it relates to the laws of this land.

First of all, I too want to add my appreciation for what I know was a combined effort on the capturing and, of course, the ending of the evil actions of Osama bin Laden. Obviously the intelligence and various law enforcement officers, certainly the CIA at the lead, certainly had over the years a longstanding effort. And I thank you, the expanded team and President Barack Obama, and it should be said over and over again. I thank you also for the very astute team, legal talent, that you have combined under your leadership at the DOJ. And what I would like to see most of all is our enhanced cooperation. We have worked together in the past.

And I have a series of questions, some of which I want to have answers. But I would really like you to, say, be in touch with—and that person, please have them be in touch with me in my office. Some of these require a detailed answer.

You may not have had the details. I associate myself with Congresswoman Wasserman Schultz on the Rubashkin case, Rabbi Solomon Sholom Rubashkin, excuse me. And I think we can talk about this very briefly only because this person has been convicted and has been sentenced for 27 years. It is a nonviolent crime, first offender, they have eight or seven or nine children, maybe ten children, and they have been disallowed bail while they're on appeal, I think on the basis of an issue of a flight risk.

I would ask for a review of this case on the basis of the potential of bail. And I need to work with someone on that. I've given you the parameters and I don't want to engage, and I want to do it not as interfering in a prosecution which is already done, it's the question of a bail.

The second question very quickly is regarding the communication management units, 60 to 70 individuals are in it, two-thirds are Muslims, it is a very harsh unit. A story was told us by Sara Joyyousi, that was her dad, no communication with his children. I'd like to know what your thoughts are about the practices surrounding CMUs and whether or not they are extremely harsh in light of the population. It seems to me that that needs to be someone getting back to me, if you would, and that is on the CMUs.

The IRS criminal division, we have had a lot of colorful stores about actors and others, but it's serious when it comes to our neighbors and friends. I would like to meet with the IRS, DOJ, IRS or individual dealing with the ability to resolve what seems to be

innocent cases, meaning bad facts, payroll taxes—I know sends horns out of our head—but individuals who have been in small business, who have had some mishaps in their health and they are now caught up in this system. I really think we're better than this. And I really think the Justice Department is better than this. And I think we have the latitude, as a barred lawyer, as someone who has a license, I'm certainly aware of ex parte contacts, but I would be very interested in having that opportunity. On those three, would you be able to let me work with individuals under your staff?

Attorney General HOLDER. We will try to certainly look at the requests that you have made and get information back to you.

Ms. JACKSON LEE. I would greatly appreciate that, particularly on Rabbi Rubashkin and why he cannot have a bail.

Let me go now to the ATF situation. We had a report by the OIG that indicated that the greater guns, that long guns have a shorter time to crime than handguns in Mexico. We know that the ATF has no permanent director. But I believe that, as the OIG has said, that ATF needs to have reporting responsibility and be able to get data and be able to have more enforcement opportunities of these AK-47s that are killing people on both sides of the border with these horrible drug cartels. What is your answer to that?

Attorney General HOLDER. Well, we have certainly proposed that with regard to long guns along the border with one to four States, that there be a reporting requirement if somebody buys two long guns over the space of 5 days that are larger than 22-caliber, if they are semi-automatic, and if they have detachable magazines. It's a proposal that OMB is in the process——

Ms. JACKSON LEE. So we are working on that. I have a short period of time, and I will pursue it further with you. I would like to see that happen.

Specifically with respect to Harris County, I have a whole series of questions, but I will get on and ask them in writing. We submitted to the Justice Department a police brutality tape regarding Chad Holy and have asked for the Justice Department to investigate. We have heard nothing from that. We have heard announcements from Seattle and Miami, Florida, and nothing from Houston, Texas. I also need to have a status report, I would like your answer on this, status reports on the question of the Harris County jail. You issued a report that there were constitutional violations. The question is: What has been the oversight of the Department of Justice and have they completed?

I also want to ask the question—I would ask for an additional 30 seconds so you can answer this—the issue of the ContinentalUnited merger that is finished. I want to thank your assistant attorney general for antitrust for a very open discussion. But I would like to know whether there is a follow-up and whether or not we need to strengthen the Clayton Act's section 7A for the Justice Department, because we frankly feel there is no oversight.

Could you answer the question about the brutality case, excessive force and why there has not been a response, and including that in a police brutality situation? And then what is the status of the Harris County jail?

Attorney General HOLDER. We will try to get you answers to all of those questions and I might ask for a budgetary increase, given

the nature of all of the things you have now put on our plate. But we will get you answers to all——

Ms. JACKSON LEE. Well I can say, Mr. Attorney General, I am one of your strongest advocates and supporters, and so I expect no less from you. And as relates to budgets, you can be sure that Sheila Jackson Lee will not be asking to cut the COPS budget of 600 million. You might want to answer whether that will hurt you. Or the FBI at 83 million. Anything that I will be doing will be increasing the funding for the Department of Justice, because I believe in what you do both in terms of your juvenile division and your civil rights division.

And if I could add one more thing, I need to understand what you're doing with respect to redistricting and the oversight over the numbers of cases that will be coming forward and the involvement of the Department of Justice.

Attorney General HOLDER. We will certainly answer all those questions. I was kidding you, but you have been a big supporter of the Department, and for that we are very thankful institutionally, and I thank you very personally for all the support you've given me over the years.

Ms. JACKSON LEE. I will add amendments so that you can get more money on this appropriation. I'm sure Chairman Smith will support me on those amendments and greater funding for the Department of Justice.

Mr. SMITH. Thank you, Ms. Jackson Lee.

Ms. JACKSON LEE. Thanks. I yield back.

Mr. SMITH. The gentleman from Virginia, Mr. Forbes, is recognized.

Mr. FORBES. Thank you, Mr. Chairman. And Mr. Attorney General, thank you for being here.

Forgive me for talking quickly but I only have 5 minutes. I want to begin, I was interested that the Ranking Member deferred his questions at the beginning today to the head of the Democratic National Committee who asked two questions, one relating to gas prices and the other child pornography. So I would like to pick up on these two questions.

The first one on gas prices was this: The indication was that somehow this spike-up is a result of illegal activity by major oil companies in terms of either price gouging or illegal influence in the market. Six months before the Administration came into office in July of 2008, it was the highest spike we had, $4.11. The President talked about it in the campaign; the Administration came in concerned about energy and the price of gas at the pump.

In the last 2½ years since you've been in office, can you tell us what evidence you have uncovered that you can present to the Committee today that the prices at the pump have been affected by illegal activities of major oil companies in terms of price gouging or illegal influences on the market?

Attorney General HOLDER. Well, the purpose of the task force will be to examine——

Mr. FORBES. I'm sorry to interrupt you. I'm talking about evidence that you currently have, not task forces or studies. But in 2½ years, have you uncovered any evidence that you can present to this Committee today of such activities?

Attorney General HOLDER. I'm not prepared to present them at this point. But what we tried to with the task force——

Mr. FORBES. So you don't have any to present to us today. Have you made any prosecutions?

Attorney General HOLDER. But the task force would look at all this stuff and see what has happened over the course of time——

Mr. FORBES. When did you set up the task force, Mr. Attorney General?

Attorney General HOLDER. The task force was constituted over the last couple weeks.

Mr. FORBES. Last couple of weeks. So we have had 2½ years, knew these concerns were there, and except for the last 2½ weeks you've done nothing to ascertain if we have any such evidence, and you have none to present to the Committee today?

Attorney General HOLDER. Well, given the situation that we are now confronting that is relatively recent in terms of the recent price hikes that we have seen——

Mr. FORBES. But we knew, Mr. Attorney General, in July it was higher. Today it's 3.9 per gallon, it was $4.11 then. No prosecutions, no recommendations of any changes to the law from anything you have found out in the last 2½ years.

Let me skip that and go to the pornography issue.

Do you believe that there's any connection, we've talked about child pornography, do you believe there's any connection between hard-core adult pornography and child pornography, human trafficking, violence to women and sexually violent behavior?

Attorney General HOLDER. There are a number of things that you have put together there, and there are relationships between certainly some of them. And we have certainly tried to look at those violence against women issues.

Mr. FORBES. Which ones do you feel there is no connection to, so I can take that one off the table? Let me repeat them. Human trafficking. Any connection?

Attorney General HOLDER. With?

Mr. FORBES. Between hard-core pornography and human trafficking.

Attorney General HOLDER. Probably, yes, there is probably some connection.

Mr. FORBES. Violence to women, yes or no?

Attorney General HOLDER. Probably.

Mr. FORBES. Sexually violent behavior?

Attorney General HOLDER. That, I don't know.

Mr. FORBES. So you don't know if there's any connection between hard-core pornography and sexually violent behavior?

Attorney General HOLDER. I don't know.

Mr. FORBES. How about child pornography?

Attorney General HOLDER. Probably, yes.

Mr. FORBES. Okay. Of those, then, can you tell me how many agents that you have had assigned to investigate hard-core pornography in the United States right now?

Attorney General HOLDER. We have a child enforcement and obscenity section that looks at these patterns——

Mr. FORBES. No, no. Hard-core pornography, not on child pornography, hard-core adult pornography.

Attorney General HOLDER. Congressman, if you let me answer the question, I have an answer for you.

Mr. FORBES. Sure. Go ahead.

Attorney General HOLDER. But I have to speak.

Mr. FORBES. Go ahead.

Attorney General HOLDER. We have to work this out. You ask a question and give me a chance to answer.

Mr. FORBES. And if I can get time, I would love to take as much time——

Attorney General HOLDER. I would be more than glad to give you more than 5 minutes if the Chairman is willing to do that. We have a child enforcement and obscenity section that handles as part of its responsibilities examination of obscenity matters. It is not only a child exploitation section, it looks at obscenity matters more generally, and has recently been reformed to include a task force that looked at strictly obscenity matters, that has now been moved into CEOS.

Mr. FORBES. We had a task force that was set up under the previous Administration that got 52 convictions for hard-core pornography cases. Have you disbanded that task force?

Attorney General HOLDER. It has not been disbanded. It has been incorporated into CEOS.

Mr. FORBES. Can you tell me how many prosecutions in the last 2½ years of hard-core pornography cases this Administration has undertaken and how many convictions you have obtained?

Attorney General HOLDER. We have a number, and I can get that number to you. I don't have it at my finger tips.

Mr. FORBES. Will you get that number for us?

Attorney General HOLDER. Yes.

[The information referred to follows:]

U.S. Department of Justice

Office of Legislative Affairs

Assistant Attorney General *Washington, D.C. 20530*

December 7, 2011

The Honorable J. Randy Forbes
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Forbes:

This responds to the questions you posed to the Attorney General at the Judiciary Committee's oversight hearing of May 3, 2011, expressing your concern that the Department of Justice is inadequately enforcing laws prohibiting obscenity and protecting children, and requesting data about the Department's enforcement activities. We apologize for our lengthy delay in responding to your inquiry.

As the Attorney General noted, after thoroughly reviewing the activities of the Obscenity Prosecution Task Force, the Department concluded that the Task Force's objectives could better be achieved by reincorporating its responsibilities within the Child Exploitation and Obscenity Section ("CEOS"). This decision is consistent with other organizational changes made within the Department, including the merger of litigating sections that have duplicative or overlapping missions. However, the Department remains committed to bringing obscenity cases where appropriate. As you may know, CEOS is actively prosecuting *U.S. v. Isaacs*, a significant adult obscenity case. Earlier this year we obtained a ten-count superseding indictment against the defendant, and the case is expected to proceed to trial on February 28, 2012.

We believe that it is appropriate to focus limited prosecutorial resources on obscenity cases with a nexus to children, such as those that facilitate child exploitation and those involving the sexual abuse of children, including obscene depictions of child rape. For that reason, the significant majority of the federal obscenity cases we have charged involve the exploitation of children.

Based on statistics maintained in the case management system used by the Executive Office for United States Attorneys ("EOUSA"), in fiscal years 2008, 2009, 2010, and 2011, the United States Attorneys' Offices filed 309 cases charging violations of the federal criminal obscenity laws found in Chapter 71 of Title 18 of the United States Code. According to that database, 187 of the 309 obscenity cases in this time period alleged violations of 18 USC §§ 1466A or 1470, which relate specifically to minors. Unfortunately, the case management system cannot readily identify cases originally charging violations of child pornography statutes in which a defendant subsequently pleaded guilty to a violation of an obscenity statute. Likewise, the case management system does not reveal whether the remaining 122 cases involved allegations of child pornography. We have been able to positively identify four cases in which the Department has brought new charges of adult obscenity.

The Honorable J. Randy Forbes
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According to EOUSA's case management database, in fiscal year 1998 United States Attorneys' Offices filed 13 cases charging violations of the federal criminal obscenity laws found in Chapter 71 of Title 18 of the United States Code. For the following fiscal years, the respective numbers are: 1999 – 11; 2000 – 20; 2001 – 15; 2002 – 70; 2003 – 78; 2004 – 62; 2005 – 54; 2006 – 54; 2007 – 86; 2008 – 105; 2009 – 79; 2010 – 59, and 2011 – 66. Each "case" represents a single defendant. If multiple defendants are charged within one indictment, they are counted as separate "cases." As previously noted, EOUSA's case management system cannot readily or reliably capture the number of cases in which multiple charges were filed. At least 187 of the obscenity cases filed involved violations of 18 USC §§ 1466A or 1470, which relate specifically to minors. The case management system does not reveal whether the remaining 122 cases involved allegations of child pornography. We have only been able to locate more detailed information dating back to the Bush Administration; although that information is not comprehensive, we have positively identified at least twelve cases involving adult obscenity that were prosecuted during that time.

The Department does not currently assign prosecutors solely to the prosecution of obscenity cases involving adult pornography. Doing so would needlessly stovepipe information, resources, and expertise, which would impair effective law enforcement and result in an inefficient allocation of scarce federal prosecutorial resources. It is clear that federal obscenity cases may implicate other crimes, such as child exploitation violations or other federal offenses. Moreover, because many obscenity violations involve the Internet, the investigative and prosecutorial resources and expertise needed to effectively pursue those cases necessarily overlap with the resources and expertise needed to investigate and prosecute online crime generally. Accordingly, to best serve the public, the Department believes that CEOS, in conjunction with U.S. Attorneys' Offices around the country, can most effectively discharge these responsibilities.

For the same reasons, the FBI currently does not assign special agents solely to the investigation of adult obscenity. As noted above, fully dedicating agents to the investigation of adult obscenity cases would needlessly stovepipe information, resources, and expertise to the detriment of the public good and run counter to the Department's decision to prioritize cases obscenity cases with a nexus to children.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Mr. FORBES. Can you also let us know, if you would, how many attorneys that you have assigned to adult hard-core pornography and how many agents that you have assigned to adult or hard-core pornography.

And if you would, when you give that to us, would you let us know the evidence that you've received of any major oil companies'

illegal activities that have resulted in gas prices, evidence you have today; secondly, any prosecutions you have had to date; and third, any recommendations you've made to change the laws.

And with that, Mr. Chairman, my time is up.

Mr. SMITH. Thank you, Mr. Forbes.

Attorney General HOLDER. With regard to the oil question, the task force that we're putting together would look at not only what is going on now, but what has happened over the past, and make determinations about whether or not there are inappropriate market manipulations or price gouging. Which is not to say that we are not dealing with something that might be market-driven. We don't go into this with any preconceived notions. And what the task force will look at is the situation and then make appropriate determinations and then we'll take action that is appropriate. We don't go into this with any preconceived notions, though.

Mr. FORBES. Mr. Attorney General, my point was that we knew this was a big problem in July 08, we've gone 2½ years, and we've just set up a task force 2 weeks ago.

Attorney General HOLDER. In July 2008, I was not the Attorney General of the United States, just for the record.

Mr. SMITH. The gentleman from Tennessee, Mr. Cohen, is recognized for his questions.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Attorney General, you were asked a question earlier which reminded me—you smiled when the question was asked, kind of a smile—and it reminded me of a nice article I read on the web this morning that said that President Obama, when he engaged in activities over the weekend, going to Alabama, going to Florida, dealing with Mr. Trump at the dinner, and all those things, that he had a poker face. Now, it's been said, I believe, that you and the President have played poker together. Is that correct?

Attorney General HOLDER. No. I've never played poker with the President. I don't know if the President plays poker.

Mr. COHEN. You don't know that.

Attorney General HOLDER. I don't know.

Mr. COHEN. Let me ask you this. You seem to think that maybe you didn't know whether it was skill or luck in poker. Do you think Phil Ivy is just lucky? He's the world's greatest poker player. Do you think he is lucky, and Annie Duke, or do you think they have some skill involved?

Attorney General HOLDER. I'm not sure I know who Mr. Phil Ivy is, but I'm sure there is some degree of skill that is involved in this. I'm not a poker player myself.

Mr. COHEN. You're not. I didn't realize that. You might become one, because it's one of the rapidly increasing popular activities in America, and it has been going on for years. And people used to play at tables, like in the kitchen they play poker. Now they do it on the Internet because there are things that—it's amazing the things you do on the Internet. I even got one of these. I'm moving into the age.

Attorney General HOLDER. I've got one, too.

Mr. COHEN. You pay bills and you do things you used to not do there, but you do them. Do you think we really ought to be spending a lot of time in trying to deal with Internet poker and/or do you

think we should find a way to make it legal, to tax it, and to bring revenue in to help pay for the folks that Mr. Sensenbrenner wants to take out of your budget?

Attorney General HOLDER. Well, we have to enforce the law as it exists. And there are laws on the books with regard to Internet gambling that we have to enforce. We recently announced an action in the Southern District of New York. It is for, I guess, Congress to decide what the law is going to be, and then we will enforce those laws.

Mr. COHEN. I agree with you generally. I understand there were civil rights laws in the forties and fifties that the government had to defend. And then maybe 10, 12, 15 years later, after Thurgood Marshall's arguments and the Court's agreement, that they realized those weren't valid laws, and the law changed because society changed, people's thinking changed?

Same thing with DOMA. There are certain laws and things change, and you change. Even though it's the law Congress passed, there's a change in the cultural lag and it kind of catches up and the people's perception of it changes. Some of the same people that gave us DOMA, most of them gave us the laws against Internet poker. It was that family's value crowd that, yeah, and—quotes—and they gave us those laws, but sometimes they might not have been the right laws. And some of Mr. Forbes' folks, so you could be prosecuting some of those obscenity cases with some of the people you've otherwise got concerned with some of these laws concerning Internet poker. And there are priorities. We can't do everything.

Don't you think that maybe in the priority range, that Internet poker would be down at the bottom of the level and beneath obscenity and hard-core pornography and child rape and things like that?

Attorney General HOLDER. Well, there are a whole variety of things that we have responsibility for. The cases that we brought, for instance, in the Southern District of New York involve pretty substantial amounts of money in big financial institutions. And I think those cases are appropriate.

There are going to be some other cases in this area that aren't really Federal cases because they're not really large enough—the degree of harm is not serious enough. Even within a certain class of cases, certain ones are going to be worthy of our attention and then some will not be.

Mr. COHEN. Did the Southern District coordinate with the Criminal Division or you particularly about the policies of your office which has been kind of in flux underlying the decision to effectively criminalize poker, going after these folks?

Attorney General HOLDER. Yeah, the Southern District worked with the Criminal Division, worked with main Justice in the formulation of that case, though the primary responsibility was in New York.

Mr. COHEN. We are coming down on time, which is my fault, but freedom is a big issue with me and the opportunity to do things. And a lot of people, the cocaine and crack sentencing, we made progress. But is the Department seeing that we are asking for sen-

tences that are maybe on the lower range for those people that were indicted before the law changed?

Attorney General HOLDER. I have told our prosecutors, I have given them discretion, so that they ask for sentences that are appropriate looking at the facts of each individual case. The Department is going to take a position with regard to whether or not the loss should be made retroactive before the sentencing commission. But while we are still in that process, I have asked my prosecutors to make sure that we only ask for sentences that are appropriate and consistent with the facts.

Mr. COHEN. Expungement is an issue I am interested in, too. Do you believe we should have for like low-level crimes, whether misdemeanors, an expungement law on the Federal level, whereby after say 7 years a first offender for a nonviolent offense could get the record expunged to maybe get a job?

Attorney General HOLDER. I think that is certainly something that I would want to work with the Committee on and consider. It is certainly something we had here in Washington, D.C., when I was a judge for a relatively small number of offenses, obviously nonviolent, so that the stigma that goes with a conviction, especially for younger people, might not harm their ability to get meaningful employment to otherwise make themselves productive members of society, and so the ability to have that as a tool in the Federal system is certainly something I am willing to consider.

Mr. COHEN. The red light has come on, and I am going to do the hypothetical yield back the remainder of my time that doesn't exist. But I am going to bring up if I can in the extra 30 seconds I know the Chairman is going to give me——

Mr. SMITH. Without objection, the gentleman is recognized for an additional 30 seconds.

Mr. COHEN. Thank you. I am going to bring up an issue that the Chairman wouldn't want me to bring up, which is the fact that——

Mr. SMITH. In that case, he is not recognized for an additional 30 seconds.

Mr. COHEN. The Memphis Grizzlies beat the San Antonio Spurs 4-2. I know you play basketball with the President. Has he caught on to Zack Randolph in the Grizzlies of being a dynasty in the making——

Mr. SMITH. The gentleman's time has definitely expired.

The gentleman from Arizona, Mr. Franks, is recognized for his questions.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Thank you, General Holder, for being here.

Sir, money is indeed the lifeblood of terrorism. Without funding terrorism, it would be nearly impossible. The 2008 Holy Land Foundation case was the largest terrorism finance case in U.S. history, as you well know. And according to the volumes of case history and evidence available on the Web site of the Federal Court of the Northern District of Texas, hundreds of U.S.-based persons or entities are listed as unindicted co-conspirators who allegedly funneled millions of dollars to the designated terrorist organization Hamas under the guise of funding a Muslim charity.

Now, the sources have told us that the case was the product of 19 years of investigations, consuming thousands of hours, thou-

sands of man-hours of manpower and millions of dollars. But over the past year, the Department of Justice has signaled that it will not further prosecute this case, despite the voluminous evidence that the unindicted co-conspirators are financing terror from within the United States.

Chairman Smith of this Committee and Chairman King of the Homeland Security Committee are interested, obviously, in learning why this case was dropped, as you well know. You have received correspondence recently from both of them. Now, you have claimed that the career attorneys made the decision to drop the case, but the press reports are saying that prosecutors, FBI agents and even your own spokesperson at DOJ are telling a different story. They claim that the decision to scuttle the largest terrorism finance case in U.S. history now spanning three Administrations was made not by career attornies but instead by senior Obama administration political appointees.

Now, the scuttling of this case obviously has outraged the career lawyers. And according to Congressman King, we just learned from his office that his letter today was responded to in a completely unresponsive way. It never did speak to the questions that he asked. So I guess I ask you here then today, which individuals, and I hope you will say the names, which individuals are responsible for scuttling the Holy Land Foundation prosecutions of the unindicted co-conspirators?

Attorney General HOLDER. Well, the premise of your question is inaccurate. There was no scuttling of the case.

Mr. FRANKS. Do you intend to—I am sorry, I don't know what happened here. I didn't mean to do that. I wasn't yelling at you; the microphone kind of went off on me.

Do you intend to prosecute these cases?

Attorney General HOLDER. The decisions that were made not to prosecute those cases were made initially in the Bush administration and continue in this Administration. And I have to take exception——

Mr. FRANKS. Let me just, I have to stop you on that. You claim that the decision to drop the case was a continuation of the approach taken by the Bush administration, but that really isn't true.

The Bush administration successfully prosecuted the first round of defendants. They aggressively secured convictions on all 108 counts. And the first—you know, the first round didn't conclude until after, until 3 weeks after the election of Barack Obama, and essentially the Bush administration just ran out of time. They were pursuing this.

And Peter King has said that, you know, it is hard to hide behind the deliberations of the Bush administration that pre-date the successful prosecution of the Holy Land case. So you are obviously not following the Bush administration's path, because they did prosecute, and they got 108 convictions.

Attorney General HOLDER. But a decision was clearly made in not indicting certain organizations and people in that initial case. That is why they were, as you said, unindicted co-conspirators.

But the other thing is that what you say about the concerns about the career prosecutors seems very inconsistent with press reports that I have read from the guy who handled that matter, a

career prosecutor, who said that there was no political pressure brought to bear on anybody in connection with the decision not to proceed. That was in the Dallas Morning News, I believe that is the newspaper, and I would be more than glad to get a copy of that article.

Mr. FRANKS. I am sorry the microphone is giving me so much trouble here, but let me just ask you, did you or the case abandon or not, did you do that?

Attorney General HOLDER. No.

Mr. FRANKS. Did anyone in your Department do that?

Attorney General HOLDER. No.

Mr. FRANKS. Okay. Were you personally involved in any decision to delay any prosecution of the case?

Attorney General HOLDER. No.

Mr. FRANKS. Have you communicated with the White House about the Holy Land Foundation case? Was the White House involved in any sort of issue to try to delay or not to persecute the case—prosecute the case?

Attorney General HOLDER. No.

Mr. FRANKS. Were any of the unindicted co-conspirators communicating outside the legal process now with the White House or the Department of Justice about the Holy Land Foundation case?

Attorney General HOLDER. Not to my knowledge.

Mr. FRANKS. All right. Well, I think my time is up here.

And thank you, General, for coming.

Mr. SMITH. Thank you, Mr. Franks.

The gentleman from Illinois, Mr. Quigley, is recognized for his questions.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Welcome.

You know, coming from Chicago, I can't help reflect on the fact that there is a trial taking place there, and while I don't ask you to comment on that, I note that there always seems to be a trial taking place there or other places in the country that deal with public integrity.

As you know, the court has struck down the honest services section of the statute, a very valuable tool that prosecutors had to go after public officials using their office for personal gain. We could really use your office's help preparing a replacement.

I think it was probably appropriate the statute was struck down because it was probably, as they said, too vague. But I appreciate your comments on what we need to do to fill that void.

Attorney General HOLDER. Well, that obviously is a very valuable tool. It has been used over the years in any number of instances. It is a statute that has had a somewhat troubled history. It has been declared unconstitutional. I guess that has been applied on at least a couple of occasions. So I think what we need to do is come up with a statute that will survive constitutional scrutiny once and forever. And obviously, we would be willing to work with this Committee and others so that we could have that tool back in place.

Mr. QUIGLEY. Thank you.

And I would like to afford you the opportunity here to talk about another issue that is important to everyone here, and that is the recent extraordinary increase in police officer shootings across the

country. I think since January, 29 police officers have been shot in this country. This is an increase in fatal police shootings of more than 50 percent over last year. I believe you convened a conference on this last month. I would again appreciate your office's help on what else we can do to help you in this vein.

Attorney General HOLDER. That is something that is of great concern to me and is the reason why I convened that summit a few weeks ago. It is one of the reasons why we have tried to increase our funding of bullet-proof vests that are made available to State and local police agencies and why we have tried to now require that there be a mandatory wear policy, as well. We have something also called the VALOR program so that officers can be trained as to handle themselves in these situations when their lives are most likely to be put at risk. That is something I think that is really worthy of this Committee's time, certainly my time, and I would be glad to work with you in that regard to try to keep our law enforcement officers safe.

Mr. QUIGLEY. I can't help but inject another statistic that is bothering to me. The 29 officers fatally shot this year, 20 were killed by individuals who would have been barred by Federal law from possessing guns. In my vein, this gets to the greatest loophole of all, and that is the gun show loophole. The fact that you could be barred from getting on an airplane, you can have multiple felonies, you could have been adjudicated as being dangerously mentally ill, but you can go to 33 States and go to a gun show and buy just about anything you want without a background check whatsoever. Your thoughts on this?

Attorney General HOLDER. Well, I think we have to look at the laws that we have on the books. We need to certainly enforce them. We need to be asking questions about whether they are adequate, whether they are keeping our people safe, whether they are keeping law enforcement officers safe. And we also have to focus on, and I think the point you made is a very, very good one, who has these guns.

It is not only a question of what guns we are dealing with, but also who has them. Obviously, everybody has Second Amendment rights. The Supreme Court has ruled that in the Heller case. This Department of Justice respects that decision. But I think questions can be asked about are there felons, too many felons who for whatever reason are in possession of guns; people who have mental issues, whether they should have guns; people who have domestic violence issues, whether they should have guns. There are a whole variety of questions as to the who that I think we should focus on as well.

Mr. QUIGLEY. And I agree. And to close, I would suggest to those who are very supportive of the Second Amendment that while that case did grant Second Amendment rights, that majority opinion did talk about limitations. One was who and one of the others was what. And I think it is fair to ask if you are out to protect your home or you are hunting deer, whether you need a 30 round clip. But that is my own editorial comment for the day.

Thank you, Mr. Chairman, and I yield back.

Mr. SMITH. Thank you.

Thank you, Mr. Quigley.

The gentleman from Texas, Mr. Gohmert, is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman.

And thank you, Attorney General, for being here. I want to follow up on what Mr. Franks was talking about, the case involving the Holy Land Foundation. You have mentioned the Dallas Morning News article. I have a copy of it here. I have also got a copy of the political article. And the person you are talking about is Jim Jacks, who is the interim U.S. attorney for the Northern District of Texas, because the President has not made a nomination for U.S. attorney for the Northern District of Texas. So as long as Mr. Jacks stays in the good graces of the President, he serves at the will of the President or of the judges in that area; he might even get the nomination if he does a good enough job from the President. He serves at his will.

So let's go to this. Are you aware that this same career prosecutor that you have mentioned filed pleadings in the case before Judge Solis and before the Fifth Circuit where he supported the decision of Judge Solis that there was evidence to keep the unindicted co-conspirators listed? Because some of them were wanting to be eliminated as co-conspirators, he filed documents with the court. And I am rather sensitive, as a former judge and chief justice, to lawyers filing things and saying things they don't believe. Because it seems that the position Mr. Jacks is taking now, which could be viewed as supportive of the President's position on some of the people and some of the organizations that are unindicted co-conspirators, are inconsistent with his position in his pleadings. And I have copies of those as well.

But the judge found after reviewing Mr. Jacks' pleading that there was plenty of evidence to keep them in as unindicted co-conspirators. Now, if a lawyer files something that he doesn't believe and he knows he doesn't believe it, some judges think it is a fraud upon the court that requires punitive actions to be taken. So I am also aware that when someone makes a statement to the Dallas Morning News, even if he believes it is not true, though it may help him in the political appointment, there is no actionable punitive measures that may be taken.

So I wonder which Mr. Jacks' opinion we are relying on; the one that is the interim, that possibly hopes to be nominated or stay in that position, or the one that filed pleadings before the court.

Now, are you aware that one of the unindicted co-conspirators is the Islamic Society of North America, ISNA? Were you aware of that?

Attorney General HOLDER. I don't have at the tip of my fingers all the unindicted co-conspirators. But there is not an inconsistency in——

Mr. GOHMERT. Wait a minute. My time is limited. I have to ask questions and get short answers. The FBI has recruited through the ISNA magazine. ISNA has advertised in FBI publication—in their publications. And even in the White House's own Deputy Assistant National Security Advisor went out and spoke and met with and spoke out at the—let's see, the All Dulles Area Muslim Society, or short for that is ADAMS, ironic. But Deputy National Security Advisor Denis McDonough even in his opening remarks thanked

the president of ISNA and that thank you is on the White House Web site.

So I am wondering, when you say that you nor anyone else, as I understood, in your Department assisted at all in the decision not to pursue prosecution of the most important funding case for terrorism in American history, do you need time to reflect on that, or can you absolutely be certain that no one in your Department had any consultation with Mr. Jacks or anyone making the decision in this case before the decision was made not to pursue it?

Attorney General HOLDER. I am not sure that is the question I was asked. But beyond that, the notion——

Mr. GOHMERT. Well, that is the question I am asking. That went beyond Mr. Franks'. That is the question I am asking.

Attorney General HOLDER. Now, you asked me one question and you are saying—your question is what now?

Mr. GOHMERT. My question is very specific. Is there anyone in your Department who consulted with Mr. Jacks or whoever made the decision before the decision was made not to pursue any of the unindicted co-conspirators in the Holy Land Foundation trial?

Attorney General HOLDER. It is my understanding that in fact there was contact between Washington national security professionals and the U.S. Attorney's Office in Texas in that regard. But one thing——

Mr. GOHMERT. Are those Washington national security professionals part of your Department, because that was the question?

Attorney General HOLDER. Part of the National Security Division.

Mr. GOHMERT. But are they under you?

Attorney General HOLDER. Yeah. The National Security Division is part of the United States Department of Justice.

Mr. GOHMERT. Did they consult with you in any way?

Attorney General HOLDER. No.

Mr. GOHMERT. All right. Thank you. I see my time is up.

Attorney General HOLDER. But one thing I want to say that I think is grossly unfair. You have cast aspersions on a person who I don't know, who has served, I understand, the United States Department of Justice and the people of this country quite well for a good number of years and you have implied that he would take a position in order to maintain a position as an acting U.S. attorney or to become the U.S. attorney.

These are the kinds of things that you know will get reported in the newspapers. People don't know this gentleman. They will wonder about him. And I think that is a very unfair thing to do, given the fact that I don't think there is any basis for the assertions that you have made.

Mr. GOHMERT. Now, wait a minute. You are saying there are no basis for the assertions——

Mr. SMITH. The gentleman is recognized for an additional 30 seconds.

Mr. GOHMERT. No basis for the assertions that he said one thing in the pleadings before the trial court and the same things before the pleadings in the Fifth Circuit and yet he comes out and says something entirely different later, that there is no evidence to support that, and basically what he is telling the Dallas News there

was no basis for a case there. And you are saying I have no basis for saying that? I have got the Dallas News article. I have got the pleadings he filed. That is what I am basing that on.

Attorney General HOLDER. No, it is not inconsistent, his saying that there is a basis to keep these people, these organizations as unindicted co-conspirators.

Mr. GOHMERT. Have you looked at the documents that were made available in this case before you say that I am being unfair by making allegations? Have you looked at the evidence in the case? Here is ISNA, here is documentation of the money they provided which ended up supporting terrorism as found by the court, and you are saying I have no basis for saying what I did. There is a basis for what he said before the Fifth Circuit and before the trial court. And so I don't appreciate the allegation that I am making unfounded allegations.

Attorney General HOLDER. I am just responding to what you said. You essentially said that he would take a position in order to maintain a position. That is certainly what you implied.

Mr. GOHMERT. I raised the issue. And sir, I don't know how many cases you have ever tried in court or prosecuted, but I can assure you if you tried a case and you had someone with the impeachment material that was available for Mr. Jacks on his inconsistencies and you didn't pursue it, you would not be an effective trial lawyer. These are a basis for impeachment of his stating that there was no politics involved because there was no case there.

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

Mr. SCOTT. Mr. Chairman, the Attorney General was trying to explain why there was no inconsistency and he kept getting cut off. Could the Attorney General respond to the question——

Mr. GOHMERT. I was responding to the allegations about me having no basis for my statements, and I deserve to have a chance to respond to those.

Mr. SCOTT. Can the Attorney General respond?

Mr. SMITH. Does the Attorney General have anything to add?

Attorney General HOLDER. I was simply saying that the notion that the filing of something that says that these people, organizations, should be treated as unindicted co-conspirators is not inconsistent with this notion that there wasn't political pressure brought to bear on that decision. I don't see how one necessarily affects the other.

And you know, I am going to stick up for my people. That is what I am doing. I am not going to let people who work in the United States Department of Justice have their characters assailed without any basis.

That might be something that people in this Committee feel is easily done. It is not going to happen as long as I am Attorney General of the United States. It is just not going to happen.

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

Mr. GOHMERT. Now, Mr. Chairman, I should have a chance to respond since there are allegations made about me. But I do appreciate the Attorney General now letting us know that Mr. Jacks is one of his people. Thank you.

Attorney General HOLDER. As are the 114,000 other people who work in the United States Department of Justice.

Mr. SMITH. Thank you, both.

Mr. GOHMERT. So he is part of your Department?

Attorney General HOLDER. These are my people.

Mr. SMITH. Thank you, both.

The gentlemen from Florida——

Mr. GOHMERT. So people in your Department did make that decision not to prosecute?

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

The gentleman from Florida, Mr. Deutch, is recognized for his questions.

Mr. DEUTCH. Thank you, Mr. Chairman.

General Holder, thank you for being here. The Wall Street Journal reported today that the U.S. Has filed a lawsuit against Deutsche Bank for lying repeatedly about the quality of mortgages so that they could profit from the resale. According to the lawsuit, when selecting mortgages from the Federal Housing Administration's insurance program, Deutsche Bank did not consider whether the borrowers would be able to repay. In clear violation of Federal Housing Administration's mortgage insurance program, these government-insured mortgages were then sold off, earning the bank a massive profit while leaving homeowners to face foreclosure and the government on the hook to pay billions of dollars in insurance claims. The claims are startling, and the charges highlight the efforts to seek profit at any cost while leaving thousands of people and their families to lose their homes and the taxpayers being forced to pay for the bank's actions.

First, I would like to commend you for the Department's vigorous pursuit of these charges against Deutsche Bank, and I would like to ask whether—first, whether the Department is investigating any other large banks in possible deceptive actions that they may have taken to fuel the mortgage crisis that the country has been facing? We will start with that.

Attorney General HOLDER. Well, we have a very active program under way looking at a variety of players in the mortgage field. We brought a number of cases already. There are a number of investigations that are pending.

Mr. DEUTCH. Next, would the Department pursue criminal charges that would result in jail time for the heads of these large banks and servicers if it is found that they knowingly took actions like those described in the lawsuit filed against Deutsche Bank?

Attorney General HOLDER. The scrutiny that we would bring would not simply be at the organizations and be looking to punish the organizations. If there are individuals who have taken actions that would warrant individual liability, that is something that we will pursue as well.

Mr. DEUTCH. And if I could just pursue one possible line of prosecution that has been raised. I would love your thoughts on it. And that is under Sarbanes-Oxley, the requirements under Sarbanes-Oxley, that executives at Wall Street firms have to establish and maintain adequate systems in internal control; that they have got to regularly test those controls and make sure that they are adequate; and as I understand it, that that statute provides that in the case of knowingly making false claims, one would be subject to fines up to $1 million and imprisonment of up to 10 years; and that

if those claims were willful, those violations were willful, fines then of up to $5 million and jail time of up to 20 years in prison. Is this the basis—would this be the basis of potential claims against individuals in connection with the mortgage foreclosure cases that are being pursued?

Attorney General HOLDER. Those are potential statutes. There are other statutes that we can bring, including some as old and tried and true as wire fraud and mail fraud. I mean, there are a whole variety of tools that we have, including those that you have mentioned, and we will try to make use of all of those as we continue in these investigations.

Mr. DEUTCH. And so as you pursue these claims, at what point is the determination made? Obviously, my colleagues asked, others have asked, certainly been a big topic of conversation, while there is a $1 billion case that has been filed today, which I applauded you for, given the vast array of potential claims that could be, individual claims that could be brought, that would bring the potential of criminal violations, when might we expect to see some of those cases filed as well?

Attorney General HOLDER. I mean, that is hard to predict. We are serious about the investigating that we are doing, and it is always hard to determine exactly when decisions will be made either to prosecute or to decline prosecution. All I can tell you is that we are looking at these cases seriously. We are going to pursue them aggressively, and as soon as we can make a determination and share that with the American people, we will.

Mr. DEUTCH. So then there is, just to conclude, General Holder, there is—we should know, the Members of this Committee and the American people should know that your Justice Department is vigorously investigating these potential claims and that under Sarbanes-Oxley and a whole array of other statutes, the possibility for criminal prosecution against individuals in connection with the mortgage foreclosure crisis is real and we should look forward to the potential of those cases being brought?

Attorney General HOLDER. I mean, I don't want to over promise, but the possibility that those cases could be brought, yes, that is certainly the case. I mean, we are in the process of looking at a whole variety of these matters, and it is possible that criminal prosecutions will result. Civil actions might result. We are going to try to take whatever enforcement action we can to try to hold people responsible where that is appropriate.

Mr. DEUTCH. Thank you.

And I yield back, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Deutch.

The gentleman from Utah, Mr. Chaffetz, is recognized.

Mr. CHAFFETZ. Thank you, Mr. Attorney General. I appreciate you being here. I would like to go back to Project Gunrunner and Operation Fast and Furious. You said that in just the last few weeks is when you had heard this. The President made statements to this in a report on Univision back on March 22nd. Were you aware of this operation before the President or after the President made those comments?

Attorney General HOLDER. My guess would be probably before the President.

Mr. CHAFFETZ. Who briefed the President about this? He obviously knew something about it, he made a statement about it. Who briefed the President?

Attorney General HOLDER. I don't know.

Mr. CHAFFETZ. Who would typically—who would do that? If not the Attorney General, who would brief the President on this?

Attorney General HOLDER. Well, I mean, we have a White House contacts policy so that the Justice Department interacts with the White House Counsel's Office. Now, I don't know what process goes on from the White House Counsel within the White House.

Mr. CHAFFETZ. Let me move on. Are you familiar with the President's comments then on March 22nd? He said, quote, there may be a situation here in which a serious mistake was made. If that is the case, then we will find out and we will hold somebody accountable. Would you agree with that comment or not agree with that comment?

Attorney General HOLDER. Yeah, I would agree with that.

Mr. CHAFFETZ. Would you agree that there were some serious mistakes made in this situation?

Attorney General HOLDER. I don't know. That is one of the things that we are trying to investigate. That is what I have asked the Inspector General to look at.

Mr. CHAFFETZ. Now, it has been reported that at the death of Brian Terry, one of our Border Patrol agents, that there were guns from the operation found at that scene. Is that in dispute?

Attorney General HOLDER. I don't know that to be factually accurate. I don't know. I have heard that. I have asked the Inspector General to look into that, and I am awaiting that report.

Mr. CHAFFETZ. Is there a scenario if those guns were found at that scene where—is there a possible scenario where mistakes weren't made and yet we have guns at the scene of the death of one of our Border Patrol agents?

Attorney General HOLDER. I think that is right. I think if those facts are in fact accurate, I suspect that mistakes in fact were made.

Mr. CHAFFETZ. Now, this program was approved by the Justice Department. My understanding is in January of 2010. I guess I am struggling to understand why an operation as big and as large and as important as this has not come to your attention for more than a year after it was originally authorized. Can you help me understand that?

Attorney General HOLDER. Well, you have to understand that something you described as big, in comparison to all the other things that are going on in the Department at any one given time, might not seem quite as large. I have, as I said, 114,000 or 115,000 employees; the FBI, the ATF, the DEA. You know, a whole variety of things that we talked about here today.

Mr. CHAFFETZ. I guess my concern is here is an operation where we are knowingly allowing more than 1,500 guns to go across the border, maybe with good intention but obviously with consequence that is unparalleled. I am just not aware of us on a regular basis allowing and knowingly, allowing guns to be put in the hands of bad guys and now we got—I just don't understand why that doesn't come to your attention.

Also, my understanding is that they are receiving task force money. And these types of programs, the task force must be approved at some very high levels, including the level of deputy attorney general. Who did know about this? Who did authorize this, and when did they authorize it?

Attorney General HOLDER. Again, that is part of what the Inspector General will be looking at; who exactly was involved, what the level of knowledge was, who should be held accountable if in fact there were mistakes that were made. That is what the Inspector General will be looking at.

Mr. CHAFFETZ. So it is not—is it your intention to not comply with our subpoena because the attorney—because Inspector General is doing that? Or do you believe—that is, are you precluded from complying with the subpoena because the IG is looking into it, or can you do both simultaneously?

Attorney General HOLDER. We can do both simultaneously. What I have asked is that with regard to replying to the subpoenas, that we try to minimize the impact on the ongoing cases. It is not the Inspector General's report. And we have tried to come up with ways in which we will make information available to the Committee in a timely fashion and not harm those ongoing investigations.

Mr. CHAFFETZ. The ATF office involved in this was evidently the Phoenix office. Are there any other ATF offices that you are aware of that may have been involved or engaged in this?

Attorney General HOLDER. May be involved in?

Mr. CHAFFETZ. In the Project Gunrunner or Operation Fast and Furious, or was it just the Phoenix office?

Attorney General HOLDER. I don't know.

Mr. CHAFFETZ. Let me move to a different issue if I could in my short time here. I just recently went down to the border with Mexico. I think one of the statistics that the Border Patrol puts out there is that they only have 15 percent, 15 percent operational control. What do we need to do to secure the border? Because I was shocked and surprised. I mean, I went for hours in places right along the border where there is nothing more than a barbed wire fence cut in many places and never even saw a Border Patrol agent. So we are pouring a lot of resources into this. But what from your opinion do we have to do to actually secure the border, because it is not happening?

Attorney General HOLDER. Well, I think that the situation along the border is better now than it probably ever has been——

Mr. CHAFFETZ. But how do you come to that conclusion?

Attorney General HOLDER. You base it on the number of people who are stopped, the amount of drugs we recover, the number of guns that are recovered.

Mr. CHAFFETZ. So if that stat goes up, if the number of apprehensions goes up, is it better, or is it if the number of apprehensions goes down, is it better?

Attorney General HOLDER. It depends on a whole bunch of things. It certainly is a function of the number of people who are trying to get in. It also is a function of how effective our enforcement efforts are, which is not to say that there aren't still issues or still problems along the border. And I think we have to do all

we can to secure our border. And I think that one of the ways in which we do that is to really look comprehensively at this whole immigration question.

Mr. CHAFFETZ. No doubt. I think that we have got to fix illegal immigration and do a lot of other things. But the statistic of apprehension, if it goes up, are we doing a better job securing the border, or if apprehensions go down, are we doing a better job securing the border?

Attorney General HOLDER. As I said, that is a difficult one to answer.

Mr. CHAFFETZ. I know, that is why I asked you.

Attorney General HOLDER. You can say that if we are apprehending more people, that means we are stopping more people coming through. On the other hand, if we are getting fewer people, it is entirely possible our enforcement efforts are working and fewer people are trying to get in. It is a difficult question to answer.

Mr. CHAFFETZ. I at some point would love to know the answer to that question, Mr. Chair, but I appreciate it. Thank you.

Mr. SMITH. Thank you, Mr. Chaffetz.

The gentleman from Puerto Rico, Mr. Pierluisi, is recognized.

Mr. PIERLUISI. Greetings, Mr. Holder.

In the brief time that I have, I want to address the problem of drug-related crime in Puerto Rico. Through the first 3 months of this year, 301 homicides were committed in Puerto Rico, a 35 percent increase over the same period last year. And this is unacceptably high for 3.8 million people.

You might say, you know, why am I raising this local issue? Well, the fact of the matter is that unfortunately Puerto Rico has long been a transshipment point for drugs coming into the U.S. mainland, so this is tied to the U.S. as a whole.

When I look at the Federal Government's efforts to combat drug-related violence in Puerto Rico, I am troubled that key DOJ offices on the island have vacancy rates between 17 percent and 57 percent. From speaking with you and others at the Department, I understand that apparently you are having difficulty recruiting agents for places like Puerto Rico, high-crime localities or high-cost localities.

And I wonder, how are you making these decisions? When you assign personnel throughout the Department, different agencies; ATF, DEA, FBI, to your knowledge, I mean, are you taking into account homicide rates, for example, the level of violence, issues such as recruitment difficulties? Are you giving any incentives to your agents to locate in places like Puerto Rico, or it could be Miami or it could be LA, I mean, different places, maybe Detroit, places facing high crime at a certain point in time, New Orleans? How are you doing this?

Attorney General HOLDER. We try to deploy our resources in places where they are most needed. And the concerns you raise are legitimate ones, not only because Puerto Rico is a transshipment point, which is right, but because people who live in Puerto Rico are American citizens and are deserving of the protection of their government.

We try to come up with ways in which we get investigators and agents into places that need them, such as Puerto Rico, by coming

up with incentives, by coming up with what we call TDYs, temporary duty, by putting people there for—if people don't want to relocate, putting people there for maybe 90 days, 180 days, something along those lines, to try to keep the numbers up.

We are doing the best we can trying to get our resources to the places where they are most needed. You and I have talked about this issue. And I am very concerned about the homicide rate in Puerto Rico and the influence of drugs on that part of our country, part of our Nation, on the island.

Mr. PIERLUISI. One other thing, in looking at this issue, I got statistics from all the different agencies within your Department but for the FBI. Would you assist me in providing me that this is the number of positions that you have authorized or available and the number that are vacant? I just want to compare. And I believe I should have this information.

Attorney General HOLDER. I will get you that information.

Mr. PIERLUISI. Thank you so much.

I yield back the a balance of my time.

Mr. SMITH. Thank you, Mr. Pierluisi.

The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

Attorney General Holder, if you would, I would be indebted to you if you would let the AUSAs and the Federal law enforcement officers in the District of South Carolina know how grateful I am for their service and how much I appreciate they do a fantastic job. And I am sure it would mean more to them to hear it from you than it would from me. So if you would let them know that, I would be grateful to you.

Attorney General HOLDER. Well, I thank you for that, and I will pass it on. I will make a point to do that.

Mr. GOWDY. Thank you. And what I hope to do with the remainder of my time is have a constitutional conversation with you as opposed to a political conversation.

You do not disagree that Congress has the authority to define marriage. Your position is not that the interstate commerce clause doesn't allow us—you are not making a States' right argument; you are making an argument based on the three tiers of constitutional scrutiny, right?

Attorney General HOLDER. Typically marriage has been defined as something that has been seen as something that is a State issue as opposed to the Federal Government.

Mr. GOWDY. It is. But there are thousands of instances where Congress has to define what the family is in order to be instructive with respect to other statutes. So you are not challenging that Congress has the authority to define marriage.

Attorney General HOLDER. I think we may be quibbling here, but not define marriage as much as to define in Federal statutes how married people are to be treated, something along those lines; I think I would agree in that regard.

Mr. GOWDY. All right. And would you agree with me that the rational basis test is the appropriate test to be used with respect to consanguinity, the marrying of family members, that is the appropriate test, right, rational basis? You are not arguing for a height-

ened level of scrutiny on whether or not cousins can marry each other?

Attorney General HOLDER. No, I would not argue that. I don't know if there is law on that. But again, off the top of my head, I am not sure that you would need a heightened scrutiny standard in that regard.

Mr. GOWDY. And age restrictions, we wouldn't need a heightened level of scrutiny with respect to age restrictions?

Attorney General HOLDER. No. There is a four-part test I have right here that I don't think you have a heightened scrutiny as well.

Mr. GOWDY. And we don't need an intermediate or heightened level of scrutiny with respect to polygamy, right?

Attorney General HOLDER. I would think not.

Mr. GOWDY. And since Lawrence, two Courts of Appeals have upheld a rational basis test for sexual orientation. So that is two that have upheld the rational basis; one that has applied a heightened level of scrutiny. So my question is, why would you single out the one Court of Appeals that has applied a higher level of scrutiny ignoring the two that applied to a rational basis test? That just strikes me as a political calculation and not a constitutional calculation.

Attorney General HOLDER. No, not a political calculation. I think what we had to do was look at—you know, Courts of Appeals make decisions that sometimes the Department of Justice will disagree with. To the extent that Courts of Appeals have taken different views of what the appropriate level of scrutiny is, we think those Courts of Appeals are wrong. The Supreme Court will ultimately have to decide this issue. But I want to assure you and everybody else that the decision that we made with regard to DOMA did not have a political component to it; it was a legal determination.

Mr. GOWDY. I want to believe you, I really do. I mean that earnestly. But you know, when I was an AUSA, there was a Court of Appeals that said that law enforcement officers didn't have to read Miranda warnings anymore. It was an unusual opinion, and it was one we didn't follow. It was one Court of Appeals that ruled that way. There are—heavens knows, the Ninth Circuit Court of Appeals is presumptively wrong, so we don't change our course of conduct when the Ninth Circuit—I said that, not you, right. When the Ninth Circuit Court of Appeals comes up with something crazy, we don't change our course of action. It is difficult to explain why it is not a political calculation or a decision when two Courts of Appeals post-Lawrence have said the rational basis test is the one that applies and only one has argued for a heightened level of scrutiny, it is tough to see how that is not political.

Attorney General HOLDER. I think one example, and I might be wrong in this one, but if my memory serves me correctly, when it came to the Dickerson case, the Fourth Circuit indicated that that statute was passed to essentially overrule Miranda. I think the Fourth Circuit said that that statute was in fact constitutional. The Justice Department just argued against that statute, said that it was unconstitutional, before the Supreme Court. So you have the Justice Department both arguing in the Supreme Court against the statute passed by Congress and also taking on a Federal Court of

Appeals. So there is a basis, there is history to these kinds of actions that we took with regard to DOMA. It is unusual. It is, you know, rare, but it happens on occasion.

Mr. GOWDY. But you would agree the Supreme Court has never applied a ightened level of scrutiny to sexual orientation, so there is no precedent from the Supreme Court and only one of the Courts of Appeals has even suggested there is a heightened level of scrutiny while two have not.

And Mr. Chairman, could I have 30 seconds just to ask one other question?

Mr. SMITH. Without objection.

Mr. GOWDY. Thank you, Mr. Chairman.

We will continue this conversation hopefully at some other point.

You said that there were tactical reasons to try terrorists in a civilian court rather than military tribunals. You would agree the evidentiary rules are more relaxed in military tribunals than in civil court.

Attorney General HOLDER. There are certain rules; they are not as lax. The difference is not as great as some people think. Certainly with regard to hearsay, you can get more hearsay evidence in the military commissions than you can Article III courts.

Mr. GOWDY. Discovery rules are different.

Attorney General HOLDER. Slightly.

Mr. GOWDY. Jury qualification and selection is certainly different.

Attorney General HOLDER. Yeah, different systems there.

Mr. GOWDY. Right. So, I mean, to the extent you can, what tactical decisions made you believe that it was better to try these defendants in civilian court than in military court, because you used the word tactical, and as a prosecutor, I am thinking more likely to get a conviction.

Attorney General HOLDER. Well, you would be right when it comes to tactical and how I view that. What I don't want to do, with all due respect, because you have asked questions I think in good faith, I don't think I can answer that question out of concern that what I might say could have a negative impact on the case that is pending now in these military commissions. The tactical reasons or tactical concerns that I saw, were I to reveal them might give to the defense an opportunity to raise issues that otherwise might not exist.

Mr. GOWDY. Fair enough.

Thank you, Mr. Chair.

Mr. SMITH. Thank you, Mr. Gowdy.

Attorney General HOLDER. But I do want to say, Mr. Gowdy, I appreciate what you have said about the assistants there, and I will share with them those good thoughts.

Mr. GOWDY. Thank you very much.

Mr. SMITH. The gentleman from Georgia, Mr. Johnson, is recognized for his questions.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Attorney General, I welcome you here today. And as head of the Justice Department, you are responsible for, among other things, enforcing the Federal criminal laws, defending the United States against civil actions and also protecting our national secu-

rity. Now, at a time when your Department has been adversely impacted by the ravenous budget cutting, I was puzzled by one of my colleagues on the other side's questioning you about the allocation of your precious resources to the issue of adult hardcore pornography.

And I really would like to know what is adult hardcore pornography? But because my time is limited, I will forego that question.

But Mr. Attorney General, over the last couple of years, you have successfully prosecuted many terrorist cases, and in fact, under your leadership, the Justice Department has successfully prosecuted more terrorists than any other 2-year period in history. The recent military operation which led to the death of Osama bin Laden is a testament as to how this Administration handles national security in a disciplined fashion, using all the tools at its disposal that are available in an effort to protect the American people.

And I must take this opportunity to recognize the great, the fabulous success of the mission which was carried out by the CIA and the Joint Special Operations Command that resulted in the apprehension of Osama bin Laden over the weekend.

And I know that your Department is just as effective when it comes to prosecuting terrorists, and I deeply regret the fact that your decision to prosecute Khalid Sheikh Mohammed, the mastermind of 9/11, your decision to prosecute him in the civil—I mean in the criminal courts of this country, I regret that Congress, politicians in Congress usurped your ability to exercise the discretion that you have with respect to where to try that gentleman.

And because he will be tried in a secret military tribunal, many of the things about the case that have not been publicly revealed will not be revealed, and so the American people will be left without the information, which I think would generate true closure for them in this matter.

I appreciate all that you have done at Justice to protect all Americans at home and abroad, and I applaud the Justice Department's commitment to transparency. Under your leadership, the Department has processed a record number of Freedom of Information Act requests, and you have testified before this Committee numerous times, and your dedication to State and local law enforcement by supporting the COPS program certainly does not go unnoticed, especially in this tight economy.

Now, General Holder, I sent you a letter on March 28th of this year requesting information pertaining to three Federal intelligence contractors; HBGary Federal, Palantir Technologies and Berico Technologies, who collectively refer to themselves as Team Themis. Are you familiar with my letter?

Attorney General HOLDER. I can't say that I am.

Mr. JOHNSON. Well, in that letter, I expressed concern that the three firms may have broken the law by conspiring to harm American citizens using illegal techniques, such as hacking, planting malware, blackmail and fraud. Nineteen of my colleagues in the House of Representatives echoed those serious concerns in a letter sent to House Committee chairs earlier in March, and I also requested copies of all Department of Justice contracts with those firms within 10 days.

I have grave concerns that the law may have been broken, and I understand that there are many demands on your time and that your staff is busy, but will you commit to looking into that matter?

Attorney General HOLDER. Yeah, we will—I have a great staff, many of whom are right behind me, and they are undoubtedly taking notes right now with regard to the letter you talked about—I hope they are—about March 28th.

Mr. JOHNSON.Well, I hope they are also.

Attorney General HOLDER. They are writing. They are writing.

Mr. JOHNSON. Okay. I would appreciate you all getting back to me. And when additional information arises, I will definitely send it to you on that case. And with that, I will yield back. Thank you.

Mr. SMITH. Thank you, Mr. Johnson.

The gentleman from Iowa, Mr. King, is recognized for his questions.

Mr. KING. Thank you, Mr. Chairman.

I thank Attorney General Holder for his long testimony here, and this is always a challenge and always an interesting day to serve on this Committee when the Attorney General of the United States is to testify before the Judiciary Committee, and I do appreciate it.

I have a series of subjects I would like to examine, perhaps not in the depth that some of the others have. But I recall your testimony here roughly a year ago, and we had a discussion and exchange about Arizona's SB1070 law. And at that time, I had asked you if there was a provision in the Constitution that you believed it had violated or if there was Federal preemption that it had perhaps violated or if there was any controlling case law that it perhaps crossed the line on it. At that point, you weren't prepared to respond to that. And I don't ask you to do that today, but to make this point that subsequent to that, then, of course, Justice filed a lawsuit against Arizona. And in reading that, I come across this—it seemed to be something I hadn't encountered before—a careful balance that makes the case that Congress has established a careful balance between the various and sometimes competing immigration laws, and it is the job of Justice and the other departments to maintain that careful balance, just to put that in summary.

Attorney General HOLDER. I am sorry, again, what kind of balance? I couldn't hear you.

Mr. KING. A careful, careful balance. And I have been involved in a lot of immigration debates, and I don't know that anyone has alleged they had introduced legislation on immigration that was designed to achieve or enhance a careful balance. And so I just ask if that, I will call it illegal theory, the careful balance theory, does that exist anywhere else in law that you know of?

Attorney General HOLDER. Well, the positions that we have taken in that lawsuit have been upheld by both the District Court and a Court of Appeals, theories that we have brought. The theories that we have used, which I think are mainstream theories, as I said, by two courts now that have said that we are in the right.

Mr. KING. Boy, this is the microphone. It is not Trent Franks' fault. The careful balance theory, however, regardless of the two courts ruling, and we are on our way to the Supreme Court, I presume, do you know that that careful balance theory exists anywhere else in law?

Attorney General HOLDER. To the extent that we have used particular theories, particular phrases, I am sure that the lawyers who filed those briefs did so carefully, did so with regard to——

Mr. KING. Attorney General, just let the record show I think it is a unique theory myself, and I would be very interested if there is any other place that you could direct my reference. It seems to me that that is the one that is convenient for this case. And if there is—if it is out there anywhere, I would like to know the answer to that.

But let me move on. And that is—and I didn't ask you the question whether you read SB1070. But we have another piece of legislation out there now that has been passed by one of the States; it is called HB116. That is Utah's legislation that I will just contend for the sake of simplified vernacular creates Utah as a sanctuary state. Have you examined and have you read HB116?

Attorney General HOLDER. I have read the Utah law.

Mr. KING. And have you made a determination on whether to bring suit against Utah?

Attorney General HOLDER. No, we have not. As I indicated I think in a prior question, what we typically do is try to interact with the State and try to work our way through any disagreements we might have without bringing suit. The statute doesn't go into effect until 2013, I understand. We are prepared to bring suit if that is necessary, but that is a decision we will make in about a year or so.

Mr. KING. Let me just make the point that if Arizona is preempted, then Utah establishing a sanctuary Sate certainly is preempted. I would make that point between us here today.

And I move on, also, you have reviewed since your last testimony before this last Committee the sworn testimony of the Christian Adams and Chris Coates before the Civil Rights Commission under oath when they had made the point that the Justice Department has a racial component to the equation of whether they will enforce discrimination if it disadvantages a minority. Have you reviewed that testimony, and do you accept it as truthful, their sworn testimony?

Attorney General HOLDER. I have not reviewed the testimony, but their characterization of that is totally inaccurate.

Mr. KING. And I just ask, have you then looked into the Department and evaluated, done a further investigation, though—I mean, you disagree with that, but have you actually done an extra investigation within your own Department to satisfy yourself, or was that your judgment a year ago and is that just simply your same judgment today?

Attorney General HOLDER. No. If you look at the assertions that they have made, it seems to me that they are inconsistent with the findings that the Office of Professional Responsibility has made looking at the whole Black Panthers matter where the OPR made the determination that politics, race did not play a part both in the filing of the case or in the decision as to how the case was disposed of, which seems to me is inconsistent with what they are claiming.

Mr. KING. And Mr. Attorney General, I point out that I believe that Thomas Perez was less than truthful with this Committee

when he testified that they achieved the highest penalty involved under the law.

And I just ask unanimous consent for an additional minute.

Mr. SMITH. Without objection, the gentleman is recognized for an additional 30 seconds.

Mr. KING. Thank you, Mr. Chairman.

I also wanted to bring up the issue of Pigford Farms. And can you cite for this Committee the authorization that you had or may believe you had to open up negotiations for a second round of Pigford Farms we refer to as Pigford II?

Attorney General HOLDER. The Attorney General has the ability to settle cases. That is part of what the—that is I think an inherent part of what the Attorney General's——

Mr. KING. Would you cite the 2008 farm bill as the authorization for that specifically to conclude Pigford II?

Attorney General HOLDER. I am not sure I quite understand your question.

Mr. KING. Well, I can understand why. And then, so I would ask, did you negotiate with John Boyd on settlement for Pigford II?

Attorney General HOLDER. Did I?

Mr. KING. Yes, or did anyone from your office authorized by you do so?

Attorney General HOLDER. I am not sure I know who Mr. Boyd is.

Mr. KING. That is instructive to me, and I won't push my time limits any further.

Thank you, Mr. Attorney General. I appreciate it.

Mr. SMITH. Thank you, Mr. King.

The gentlewoman from California, Ms. Chu, is recognized.

Ms. CHU. Thank you, Mr. Chair.

Thank you, Mr. Attorney General, for being here. Two nights ago, President Obama announced that Osama bin Laden had been killed. And as Americans around the country rejoiced, President Obama also reminded us that on that day, no matter where we came from, what God we prayed to or what race or ethnicity we were, we were united as one American family.

But in the wake of 9/11, we have seen a disturbing increase of hatred and discrimination against the Muslim community in America and those thought to be Muslims, such as South Asians and Sikh Americans. Most recently the House Homeland Security Committee in fact held hearings that targeted the American Muslim community.

Considering the importance that intelligence information played in finding Osama bin Laden, how could an antagonistic relationship between an American Muslim community and law enforcement hurt our efforts to combat any homegrown terrorist threat, and what have you been doing to engage the community and maintain their trust?

Attorney General HOLDER. Well, I think that is a good question. If there were an antagonistic relationship between law enforcement and those communities, that would have a negative impact on our ability to protect the American people.

What we have seen is a pretty consistent level of cooperation and provision of information from the Muslim community here in the

United States. We have started a series of outreach efforts where I think the Department of Justice has been leading the way in order to dispel myths, make sure that there are open lines of communication, make sure that people understand that our aim is to protect all Americans, Muslim Americans as well as everyone else. And to the extent that there is discrimination or inappropriate actions directed toward that community, our Civil Rights Division has tried to step in and take action.

Ms. CHU. Then let me ask about a guidance that the DOJ has. Even 10 years after 9/11, there is racial and religious profiling against the South Asian, Muslim and Sikh communities, and it is of widespread concern. I do commend the Department and especially the Civil Rights Division, the FBI and the U.S. Attorney General's Office, which has investigated over 750 incidents involving violence, threats and vandalism and arson against Arabs, Muslim, Sikhs and South Asian Americans in the United States between 9/11 and March 2007. And in June 2003, the DOJ issued guidance banning the practice of racial profiling. Giving evidence that shows that racial profiling is ineffective and counterproductive, policies that prohibit it are certainly admirable. However, there needs to be much more strength on this kind of guidance. And the guidance doesn't profile—doesn't ban profiling on the basis of religion or national origin and lacks a meaningful enforcement mechanism. What is the progress of the review that I believe that you are doing right now involving this guidance? Where is it at?

Attorney General HOLDER. Well, I would say, first, as a general matter, the use of profiling techniques is not generally good law enforcement, is not generally good law enforcement. We have under review the policy that was initiated back, I believe, in 2003. That review is under way, and my hope would be that I will have some recommendations from the group that is looking at that policy.

Ms. CHU. And I certainly would urge that you do look at the issues of religion and national origin, as well as the enforcement mechanisms.

Let me also say that the DOJ has engaged in this much needed outreach, and I certainly acknowledge that, but there certainly is also a need to better institutionalize current ad hoc initiatives. Would the DOJ consider formalizing the initiative to combat post-9/11 discriminatory backlash within the Civil Rights Division of the DOJ by designating a special counsel for post-9/11 discrimination and a special counsel for religious discrimination?

Attorney General HOLDER. Well, that is an interesting idea. I think that we have laws that our Civil Rights Division traditionally enforces that handle those kinds of issues. We have a community relations service as well in the Justice Department that can contribute in this regard. So I think we have the tools that we need, and we certainly have the dedication of the people who are career employees and who will be there after I leave as Attorney General who I think will remain dedicated to the enforcement of those regulations and those laws.

Ms. CHU. I hope you might consider that.

And my last question has to do with hate crime statistics. And the Hate Crime Statistics Act mandates the collection of data on

hate crimes, but it lumps together those acts that are anti Muslim or anti Arab, hence, those acts that are actually committed against Sikh Americans or South Asian American are not distinguished. Would the Department of Justice consider formally tracking hate crimes suffered by Arabs, Hindus, Sikhs and South Asians separately?

Attorney General HOLDER. I think that is something we could consider. I think the greater the amount of granularity we have with regard to who is the victims of these kinds of acts, the more effective we can be in our enforcement efforts. So I think your suggestion is a good one, and that is certainly something that we can consider and work with you in trying to determine whether that is something that we can appropriately do.

Ms. CHU. Thank you and I yield back.

The CHAIRMAN. Thank you Ms. Chu.

Before I recognize the gentleman from Arizona, Mr. Quayle, for his questions, let me say that two votes have been called, and we will need to stand in recess and go vote and then we will return, Mr. Attorney General, if that is all right with you. There are still several Members who would like to ask questions.

The gentleman from Arizona.

Mr. QUAYLE. Thank you, Mr. Chairman. And thank you, Mr. Holder.

I just want to get some clarification on what you talked about with Mr. King. Is the reason that there hasn't been any action on the Utah case, is it based on just the fact that it is not getting implemented until 2013 and you still do see some possible supremacy clause violations within that law?

Attorney General HOLDER. I think they are certainly issues that we see now. Our hope would be that between now and 2013, there might be some way that we can work our way through those concerns without having to bring a lawsuit. But if we have to, we will.

Mr. QUAYLE. So just working through possibly the legislature, the State legislature passing a different law, making some amendments to that law?

Attorney General HOLDER. Right. That way interpretations that the Attorney General might take of the law, there are a number of ways in which we might try to work our way through it.

Mr. QUAYLE. Changing gears. But I read last month that the Wall Street Journal reported that the DOJ and the FTC have resorted to coin flips, sometimes trades and bargains when determining which agency might have jurisdiction over cases, which can cost the interested parties additional time and expenses.

Recently the DOJ's anti-trust division, FTC and Congress have conducted investigations into online search engines and online advertising markets. As this area of our economy continues to grow, how do you plan on dividing the work between the agencies while preserving institutional knowledge and consistency?

Attorney General HOLDER. That is a very good question, and something that we are trying to work our way through.

The FTC and the Justice Department anti-trust division have generally been in a good place in dividing up responsibility for anti-trust enforcement. There have, however, been instances where we have not been on the same page and I think we need to get to-

gether and try to work together and that is what we are trying to do. To figure out what the rules of the road are going to be so that we don't end up with as you indicated either coin flips or other ways in which we decide these matters.

Mr. QUAYLE. So the DOJ and the FTC are working together to try to get some guidance and see who is going to be overseeing those matters?

Attorney General HOLDER. Yes.

Mr. QUAYLE. The other question I have is what role do you think that the anti-trust division has in helping to maintain an online marketplace that rewards without necessarily foreclosing new competition and preventing ideas from reaching consumers?

Attorney General HOLDER. I think the anti-trust division, it is an interesting way that you phrase it but I think it is right. Anti-trust is generally seen as trying to stop mergers consolidation but I think the effect, the collateral, the impact of that work is to make sure that things are kept open, things are kept free and that is especially important when one looks at cyber issues, the Internet, where innovation happens so rapidly and where consolidation is not necessarily a good thing. And so we are constantly looking in that sphere for things that might inhibit the growth, the development of the Internet.

Mr. QUAYLE. And in those investigations, have you seen any active and actual bottlenecks or gatekeepers on the Internet that actually is keeping content from consumers? Have you seen any actual evidence of that? Or are we starting to get down to conjecture and it is going to the possibility of the gatekeepers rather than actual factual evidence pointing to that?

Attorney General HOLDER. That was a good question. I am not sure that I am capable of answering that. We can get you something in writing from the folks in the anti-trust division who would be able to tell you more, in a more complete and contemporary way what concerns they have in that regard. I am not aware of any. But just because I am not doesn't mean that maybe there aren't things going on in the anti-trust division that would be responsive to your question.

Mr. QUAYLE. So you don't know anything but you can give me information if there is any?

Attorney General HOLDER. We will get you something.

Mr. QUAYLE. Okay, perfect. Thank you, Mr. Holder.

And with that, Mr. Chairman, I yield back.

Mr. SMITH. Thank you, Mr. Quayle.

Mr. Attorney General, we will stand in recess for 20 minutes and be back then.

[recess.]

Mr. SMITH. The Judiciary Committee will reconvene. Welcome back, Mr. Attorney General.

And the gentlewoman from California, Ms. Sánchez, is recognized for questions.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Attorney General Holder, I want to thank you for joining us here today. It is always nice when the AG takes the time to come and talk about the many issues facing the Department of Justice and how they impact the population here in the United States. I want

to start with a couple of quick questions regarding the anti-trust division first. As I am sure, the Members of the Committee are aware, one of the major issues facing the anti-trust division is the proposed merger of AT&T and T-Mobile. I serve on the Intellectual Property Subcommittee, and I am sure that they are going to be holding hearings to consider the various impacts of this merger.

I just want to talk to you really quickly about the DOJ's investigation into this proposed merger and the questions I have specifically on this issue are, if you can give the Committee a sense of how long you expect that review to take, and then also what factors are you going to be considering as you review that merger?

Attorney General HOLDER. I am not sure that I can give you, with any degree of certainty, how long the review would take. It will be one that will be done thoroughly and expeditiously, and then I think the normal things that would be considered will be the ones that will drive the inquiry, the whole question of what the impact of the merger will have on, the potential merger would have on consumers, on the market. It would be just a traditional analysis even though it involves some cutting edge technologies.

Ms. SÁNCHEZ. Thank you. I want to talk to you a little bit about the state criminal alien assistance program. When I was a new Member of Congress, law enforcement came to visit me in my office to talk about how a reinterpretation by the Department of Justice had a profound impact on their budgets. SCAAP program was established to help reimburse State and local governments for the costs associated with housing undocumented criminals, but in 2003, the Department of Justice reinterpreted SCAAP in a way that caused a drastic drop in every State's reimbursement, and that has had repercussions throughout the law enforcement community at a time when, quite frankly, when law enforcement can least afford it. In my State of California, for example, SCAAP reimbursement payments have declined from $220 million in fiscal year 2002, that was prior to the reinterpretation of the statute, and it has dropped to 112 million in fiscal year 2009.

And as I am sure you are aware, many States are experiencing budget shortfalls and having to scale back on many services.

And I am wondering if you would be willing to reexamine the award criteria for the SCAAP program and review the reinterpretation and see if that merits continuance?

Attorney General HOLDER. When I testified before the Budget Committees, I was very conversant with SCAAP and where we were in terms of our budget. To be honest with you, I am not now. What I can do is promise to get you something that indicates where we are in our budget with regard to SCAAP and also look at that opinion and see how that impacts the——

Ms. SÁNCHEZ. I don't want to get into the weeds of it, but it really is criteria that is nonsensical and doesn't make a lot of sense. I am asking if you would take the time to sort of review that opinion and figure out if that still makes sense?

Attorney General HOLDER. We can do that.

Ms. SÁNCHEZ. Okay, great. And then finally, I want to address an issue that some of my colleagues earlier asked you some questions but about the recent indictments of several online poker Web sites. Those have a significant impact on many of my constituents

because I have heard a lot from them on this matter. As Mr. Cohen, I believe, stated, it is a game that is gaining in popularity and there are about 10 million Americans that currently play poker on line and it also ends up being about a $16 billion industry in this country.

Now, I know that there has been successful regulation of online poker playing in places like Europe and Australia, and I happen to be a strong supporter of legislation that would legalize online gambling in this country and allow us to tax it reasonably and efficiently and make sure that people were not being cheated out of their money. I am sure you can appreciate, again, in challenging economic times, when States are experiencing deep budget shortfalls and the Federal Government is trying to find a way to get its fiscal house in order, that is one area in which we could potentially increase revenue for the coffers.

So I am hoping that that is an area that you will look at, again, in terms of where you dedicate your precious resources. I think time would probably, in my humble opinion, be better spent dealing with bigger and more impactful, serious violent crimes, for example, than trying to trying to interrupt this industry which, as I said, has been efficiently regulated in other countries. And with that, I will yield back my time to the Chairman.

Mr. SMITH. Thank you, Ms. Sánchez.

The gentlewoman from Florida, Mrs. Adams.

Mrs. ADAMS. Thank you, Mr. Chairman.

Mr. Holder, I have a few questions and I am going to go quickly because I only have 5 minutes and I would really like to have a lot more, to be honest with you. Earlier, I listened and you said there were determinations as to why to follow through on enforcing the law or not enforcing the law, and I have a couple of questions. We are a Nation of laws, are we not?

Attorney General HOLDER. We are—I can't hear you.

Mrs. ADAMS. We are a Nation of laws?

Attorney General HOLDER. Yes.

Mrs. ADAMS. And what determination, what do you do to make—what do you go through to determine which laws your agency will enforce or not enforce?

Attorney General HOLDER. See, I wouldn't put it that way. I say we enforce all the laws. The question is——

Mrs. ADAMS. Well, we would probably disagree on that and I am just wondering is there a process which you go through to determine which ones you will actively enforce and which ones you will inactively enforce?

Attorney General HOLDER. I think it is a question of prioritizing. That is how I would say it.

Mrs. ADAMS. So you have a process to prioritize the laws which you will enforce?

Attorney General HOLDER. No. Prioritize our enforcement efforts. You try to find what is the potential greatest harms, for instance, when it comes to violent crime, what is the most impact when it comes to financial crime, given the limited resources we have on those determinations that is how we decide where we deploy our resources.

Mrs. ADAMS. Well, as someone who comes from a law enforcement background, I know that I was tasked with enforcing the laws that were on the books. If there was something wrong with the law or we found there was an issue we went to our legislative branch to deal with those, and I would ask that you would do that, you would give us that opportunity because if they are on the books, the American people expect for us to enforce them.

Do you not agree with that?

Attorney General HOLDER. As I said, we enforce the laws. We take into account the impact.

Mrs. ADAMS. But do you agree the American people expect us to enforce the laws that we have on our books?

Attorney General HOLDER. Sure. And we do.

Mrs. ADAMS. The other thing is with the final end to the chapter of bin Laden, and he is now deceased and I commend everyone involved with his capture and ultimate demise, my question to you is in last year, you reauthorized the reinvestigation of CIA operatives in Gitmo even after they were cleared once by career Department of Justice investigators.

Were any of these CIA operatives involved in getting the detainee information that led to Osama bin Laden's death?

Attorney General HOLDER. The inquiries that I ordered, I guess, was last year——

Mrs. ADAMS. Were any of them involved?

Attorney General HOLDER. The investigation that I ordered last year——

Mrs. ADAMS. Were any of those involved in the ultimate information that——

Attorney General HOLDER. I was trying to answer the question.

Mrs. ADAMS. It is a yes or a no.

Attorney General HOLDER. Well, I can't answer that way. The investigation I ordered last year was people who potentially went beyond the OLC opinions——

Mrs. ADAMS. Who were previously cleared?

Attorney General HOLDER. Well, their information that is being examined by a special prosecutor who had been appointed by——

Mrs. ADAMS. But I am not asking exactly that. I was wanting to know were they involved in getting the information that ultimately caught bin Laden?

Attorney General HOLDER. I am not in a position to answer that. I don't know. I am not allowed to answer the question.

Mrs. ADAMS. Okay.

Attorney General HOLDER. I am——

Mrs. ADAMS. Maybe in another venue you can answer that for me.

Attorney General HOLDER. No. What I am saying is that I was trying to answer the question. You are looking for yes or no. I don't think I can give you one in that way.

Mrs. ADAMS. Okay. The task force that has been created, and I am looking forward to seeing the outcome of that task force, I know there is a lot of factors playing into what is going on with the prices of gas and oil, and a lot of people in America want answers, and I agree with them. They should be afforded those answers.

One of the things I noted was that your central mission of financial fraud enforcement task force is to enhance the government's effectiveness and combat financial fraud. As part of your investigations, will you also be probing into the Department of the Interior for its efforts to restrict trade by closing lands and holding our natural resources hostage?

Attorney General HOLDER. I am not sure that I am familiar with those allegations.

Mrs. ADAMS. Well, we have had some closed, and permits pulled back, and people are wanting to know and have a right to know the answers to those questions, why? And if that plays into the cost, the American people would like to know if it does.

Also, the value of the dollar. Is that playing into the cost of our oil and gas? Those are questions that I would hope that you will answer for the American people since you have created this—just one other thing. I am curious. Does your agency not have the authority to do this without this Commission being created?

Attorney General HOLDER. Sure, we could. But in trying to be an effective task force, you bring into the task force those agencies that have particular expertise. And by combining that, we make a task force that is better than one that we might be able to create out of simple Justice Department personnel.

Mrs. ADAMS. You had already started an investigation prior to the task force being created?

Attorney General HOLDER. I couldn't hear you.

Mrs. ADAMS. You had already started investigating prior to the task force being created?

Attorney General HOLDER. No.

Mrs. ADAMS. Thank you.

Mr. SMITH. Thank you, Mrs. Adams.

The gentlewoman from California, Ms. Waters, is recognized.

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

And I thank the Attorney General for the time that he is spending here today, and the fact that he waited for us to come back from the vote. I wanted to come over here despite the fact that I am Chairing a Subcommittee of the Financial Services Committee because I want to talk about mergers. I have spent, I spent an awful lot of time on the Comcast-NBC merger as you, a lot of people know. And I am concerned. I am concerned about consolidation.

But Mr. Holder, it appears across all industries that anti-trust enforcement under the Administration, under this current Administration does not appear to be much different from the previous Administration's kind of rubber-stamped approvals of multiple mergers and consolidations. The mergers of Ticketmaster, Live Nation, Continental-United, Southwest-AirTran, Comcast-NBC and Google-ITA have all been approved by your anti-trust division. It appears that the anti-trust division is chartering new territory and positioning itself as more a regulator than a legal enforcement agency.

The consent decrees from the Comcast-NBC, Google-ITA and other mergers attach conditions that temporarily require DOJ monitoring enforcement actions if breached. In my estimation, it takes more resources for DOJ to regulate through the Judiciary than to simply block or audit divestiture when appropriate.

Is regulating through consent decree in areas such as competition over the Internet and tech industry really the most effective, efficient and transparent way to create rules of the road for merger reviews? It is kind of a dual question here. I just want to understand where you are going over there with these merger questions?

Attorney General HOLDER. Well, I think the anti-trust division it is tough on enforcement where it finds violations of the anti-trust laws. And I don't think those consent decrees or those conditions that were placed on those mergers are insignificant. The anti-trust division doesn't go into this with a notion that we want to try to find a way in which we make a merger occur. You look at the anti-trust laws, apply them, and then make a decision as to whether or not a merger can go through or there are ways in which a merger might be constructed that it could. But we don't go into it with a presumption or a mindset that we want to make mergers occur. And I think that we have through the leadership of our assistant attorney general, I think we have been appropriately aggressive.

Ms. WATERS. Have you denied any since you have been there?

Attorney General HOLDER. Let's see. I could probably get back to you with that. I am not sure.

Ms. WATERS. Well, let me just register this. I spent hours upon hours working on the Comcast-NBC merger and raised significant, we think, questions about that merger. We understand how they operate now. We learned an awful lot about some of the agencies and programs that came in to support them. We learned about how they make contributions to nonprofit organizations. We were not talking about whether or not you contribute to churches and civil rights groups and all of that. We were talking about whether or not your company, your business, is diverse, whether or not it is reflected in your management, we talked about whether or not the programming at NBC, et cetera, opened up opportunities for independent operators. We talked about some serious and significant issues. We got outplayed because they were able to roll in a lot of folks who had gotten contributions for their yearly conventions and their churches and all that of that. And I am just wondering whether or not those of who us who are concerned about consolidations and mergers should just stop fighting these things altogether and allow them to come in with the conditions that you think play well and you all just adopt those conditions and let these mergers could go through. I am really concerned about it.

Attorney General HOLDER. Well, as I said, the anti-trust division is taking its enforcement responsibilities seriously. I think, again, as I said before, we are being appropriately aggressive in handling these matters in a way that is consistent with the law.

Ms. WATERS. I am going to ask you something that is very sensitive. At the time that we were fighting, at the time that we were trying to fight to get people to pay attention to Comcast and NBC and how huge this merger was, NBC, that is owned by GE, CEO was being considered to head up the President's business council. Are you aware of that?

Attorney General HOLDER. I was not aware of it at the time. I am aware of it now.

Ms. WATERS. Was that something that should be taken into consideration as you made a decision about that merger?

Attorney General HOLDER. It should not have been and was not taken into consideration.

Ms. WATERS. It should not have been taken into consideration?

Attorney General HOLDER. It was not.

Ms. WATERS. Why not?

Attorney General HOLDER. That is not the consistent with what the enforcement responsibilities are of the anti-trust division.

Ms. WATERS. At the time that you were considering the merger, the key player was GE that owned NBC, and it appears that there was a relationship here with the Administration and with GE that would cloud their objectivity about that merger. You don't think that is worth considering? Or you don't think that is in your mandate to consider?

Attorney General HOLDER. No, we certainly shouldn't consider it, did not consider it. You have to understand that the Justice Department acts when it comes to its enforcement responsibilities independent of anything that the White House might be doing with regard to——

Ms. WATERS. Oh, the appointees on the FCC acts independent of the White House also? The DOJ and the FCC have nothing to do with each other when they are considering these mergers?

Attorney General HOLDER. I am talking about the Justice Department and its responsibilities when it comes to the enforcement of the laws that are our responsibility, we act independently of other executive branch agencies——

Ms. WATERS. Including the FCC, you are not interacting with the FCC?

Attorney General HOLDER. I was going to say there are instances where we will interact with other agencies if they have a particular expertise or if there is a reason for us to interact with them when it comes to a particular statute, but when it comes to our enforcement responsibilities and determinations as to whether or not the anti-trust laws were violated and if those were the responsibility of the Justice Department, we act in an independent manner.

Ms. WATERS. We are not talking about whether or not the anti-trust laws were violated past tense. We are talking about consideration of the request or the attempts to get the merger, and looking at all aspects of whether or not this merger is in the best interests of the citizens of this country, the people of this country, that is what I am talking about.

Do you, in looking at that merger interact with the FCC who have appointees by the President and what is going on in that overall discussion?

Attorney General HOLDER. Let's cut to the quick here. The Justice Department's determinations in that case or any other case is not affected by relationships that exist between the White House and the head of GE or anything like that. That didn't come into play in the determination that the Justice Department made in that case. That is the bottom line.

Ms. WATERS. And should not come into play.

Attorney General HOLDER. And that is the bottom line.

Mr. SMITH. The gentlewoman's time has expired.

Ms. WATERS. Thank you. Thank you very much.

Mr. SMITH. The gentleman from Pennsylvania, Mr. Marino, is recognized for his questions.

Mr. MARINO. Thank you, Mr. Chairman. General, welcome. I want to thank you and your staff for waiting for us. I know how busy you are. I was U.S. attorney from 2002 to 2008 and I was very busy. I multiply that by a thousand for you and your staff, and I know how you multitask. So with that said, sir, I have to put in a plug for my middle district of Pennsylvania staff who I miss dearly and they made me look good.

Attorney General HOLDER. Well, don't take this off Mr. Marino's time, but I tried my second and third cases in Scranton. I am an admirer of Judge Nealon, and he is a great judge and was very kind to a young lawyer when I was up there in the 1970's.

Mr. MARINO. I know what you mean. I tried several cases there.

Let's just switch gears here for a moment and let's talk about the Federal Bureau of Prisons. We know over the years, we have had officers who have been murdered, killed by inmates. And no one knows better than I do the seriousness of when we talk about having officers carry guns and just visiting a Federal prison last week I sat down with the inmates and had a chance to talk with them a little bit about how things are operating.

And you know some of those inmates stood up and were concerned about the safety of some of the guards believe it or not. I had to take what they were saying as the truth. But also the guards and I discussed the fact that the guards should not be carrying guns for obvious reasons at least between us. But, do you see any harm in the officers carrying mace, carrying a spray of some type? There is a situation where a guard was killed, he was stabbed several times by two inmates, got away from them down into another landing, they came down and finished him off. And I have to think that perhaps just the fact that having some mace to fight them off for a few seconds until help got there, it may have saved his life. So I would ask you to please consider that.

Attorney General HOLDER. Yeah.

Mr. MARINO. And let me know what the downside is to that if you would because we couldn't come up with any other than the fact that an inmate could grab that but still there would be time to handle that situation. So if you would please.

Attorney General HOLDER. I am not an expert in that field, but I am more than glad to run your suggestion by the folks at BOP and we will get back to you on what their response is.

Mr. MARINO. Thank you. Now I want to switch gears here to Countrywide Financial, particularly Angelo Mozilo. He was the former chair and CEO of Countrywide Financial. And the SEC filed charges against him and others on June 4, 2009, alleging that they failed to disclose to investors the significant credit risk that Countrywide was taking on as a result of its efforts to build and maintain market shares.

The SEC's complaint further alleged that Mozilo engaged in insider trading while he was aware of material nonpublic information concerning Countrywide's increasing credit risk and the risk regarding the poor expected performance of Countrywide originated loans.

This gentleman received or made over, from 2001 to 2006 470 million in salaries and stock options and things of that nature. The Federal prosecutor in Los Angeles dropped these criminal investigations on this man in February 2011. He was assessed civil penalties to the tune of almost $68 million and I don't know all the facts, haven't read any indictments or anything or potential investigator reports, only what I read in the newspaper and catch from other individuals.

But I understand this person is still enjoying his yacht out in the Mediterranean and based on the limited material that I read, I think there is a question there, I think there is a serious question that at least could have been brought before a grand jury to determine whether to indict. I can see why he probably wanted to hand over $68 million if he made 470 and not spending any jail time on that.

If you are familiar with that, could you elaborate on it a little bit and if not, could you have someone look into that, please?

Attorney General HOLDER. Well, I am not sure there is an awful lot of information we would be able to share. I am not intimately familiar with the case. In any case, I am not at all certain we would be in a position to share information about a closed matter, as you will remember from your DOJ days, that is not something that is typically done.

What we try to do obviously is to look at these matters, be aggressive, we have good lawyers again as you know, around the country who look at these matters and try to make cases. And that is something that I hope I conveyed today, that these matters are examined by prosecutors who come to the Justice Department to try these matters, to investigate these matters and take these matters to court and then to hold people responsible.

If determinations are made not to proceed, it is not for lack of trying. It is because they have made a determination that they can't.

Mr. MARINO. You made it very clear today. I applaud you for those efforts. My office was involved in prosecuting a case similar to this. And I never would question a U.S. attorney as to why they did or didn't. I am sure there are reasons. But this is the kind of situation where my constituents say, how can someone this wealthy get away with that, and you know how they are couching it in terms of wealth and get away with it. I know that is not the case with the Justice Department. Thank you so much for being here today, and I yield my time.

Mr. SMITH. Thank you, Mr. Marino.

Mr. Attorney General, I would like to ask you a few questions just to follow up on some subjects that were raised earlier, and my guess is that there are easy answers.

Does the Administration still favor having background checks conducted by those who purchase firearms at gun shows? We were told by your earlier answer whether the Administration had changed its earlier position or not, but do you still favor having those background checks conducted?

Attorney General HOLDER. I will say that I think that having a system where people who are exercising their Second Amendment rights in purchasing firearms, we would all be better served by

having background checks done. We are presently engaged in a dialogue with a variety of members of the firearms community. We will be having working group meetings at the Justice Department, we talk to retailers, a whole variety of people. We are in the process of trying to look at the state of the law and come up with proposals about things that we might consider to make the law better and to make the American people being more safe.

Mr. SMITH. But you do favor the background checks being conducted?

Attorney General HOLDER. I would say that, as I said, I think the American people are better served and are more safe by having people exercising their rights in a way that when you get to a licensed firearms dealer, you have an instant background check done. I think that is a better way to do it.

Mr. SMITH. I am talking about at a gun show, though, and you do favor the background checks there?

Attorney General HOLDER. I think that having everybody who purchases a gun——

Mr. SMITH. Everybody including that. Okay. I understand.

You were asked a question earlier about price-fixing by oil companies. Are you aware of any oil companies who have engaged in that conduct? I know you appointed a task force that might or might not discover that. But are you aware of any of that type of activity today?

Attorney General HOLDER. I am not aware of any activity like that today. I have to await the results of the investigation. That is what the investigation is for.

Mr. SMITH. I understand. In regard to my question about the Utah immigration law, when I ask why you weren't filing suit against Utah as you had Arizona, you said we are trying to work something out with them. What were you referring to when you said trying to work something out with Utah?

Attorney General HOLDER. It would depend on what Utah does. Once we have raised the concerns that we have, the legislature might decide to change the law. There might be enforcement ways, there might be ways in which the law might be enforced that are consistent with how we view our immigration responsibilities.

Mr. SMITH. It would seem it is unconstitutional, at least it is suspect on its face because you have a law that professes to give legal status to people in the country who are here illegally. Why wouldn't, I don't know how you work that out, and it seems to be a clear violation of current immigration law so——

Attorney General HOLDER. It might be. The law as it exists in 2011, it could be a violation that we would sue, by 2013, we may be in a position that we are in a different place.

Mr. SMITH. If they change the law, it would take something like that. Okay, fair enough. Do you still favor closing Gitmo? I wasn't sure by an earlier answer whether that was the case.

Attorney General HOLDER. I have indicated and the President has indicated we both think the closure of Guantanamo would be in our national interests.

Mr. SMITH. Fair enough. Mr. General, thank you for being here today. Thank you for answering all of our questions and we will be in touch with you as well.

Attorney General HOLDER. Okay, thank you.

Mr. SMITH. Before we adjourn, without objection, all Members will have 5 legislative days to submit additional written questions for the witness and to submit any additional materials for the record. With that, we stand adjourned. Thank you again.

Attorney General HOLDER. Thank you.

[Whereupon, at 2:25 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 31, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Attorney General Eric Holder before the Committee on May 3, 2011. We hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Member

Questions for the Record
Attorney General Eric H. Holder, Jr.
Committee on the Judiciary
U.S. House of Representatives
May 3, 2011

QUESTIONS POSED BY REPRESENTATIVE KING

1. **In the course of reaching a settlement with the claimants in the suit known as *Pigford v. Vilsack*, with whom did you negotiate? Who were the representatives of the claimants/plaintiffs? Who represented the Department of Justice (DOJ)?**

Response:

For *In re Black Farmers Discrimination Litigation* (Pigford II), attorneys from both the Department of Justice and from the United States Department of Agriculture were involved in negotiating the settlement agreement. They generally negotiated with representatives for the putative plaintiff class, including principally attorneys from Crowell and Moring, which took the lead to negotiate for the numerous plaintiffs' counsel involved in the litigation.

2. **Did President Obama or anyone in the administration order or suggest that the DOJ open up a second round of *Pigford* negotiatons?**

Response:

The Department's decision to engage in settlement discussions regarding the *Pigford II* litigation was made before President Obama took office. The decision was made based on the Department's evaluation of the long-term interests of the United States in the context of the facts and law of the litigation in which the United States had been sued. In the 2008 Farm Bill, in Section 14012 of Public Law 110-246, Congress created a cause of action for certain farmers who had been denied compensation in *Pigford I* on the ground that they were "late filers" in that settlement. Shortly after passage of the 2008 Bill, lawsuits were filed in federal district court in the District of Columbia. Settlement discussions commenced almost immediately, starting in the summer of 2008. A settlement was reached in February 2010, which was voidable if Congress failed to appropriate additional funding for the settlement. In December 2010, Congress passed the Claims Resolution Act of 2010, Public Law 111-291. Among other things, the Claims Resolution Act appropriated funds to implement the terms of the settlement agreement, and it provided additional terms to be incorporated in that agreement. The settlement agreement was modified in March 2011 to take into account the additional funding, as well as issues raised by Congress and Judge Friedman.

3. Did you or anyone in the DOJ have any conversations with John Boyd regarding the *Pigford* settlement?

Response:

John Boyd initiated conversations with officials in the Department of Justice regarding the *Pigford* litigation. No officials from DOJ conducted settlement discussions with Mr. Boyd.

4. What is the extent of any and all internal and external investigations by the DOJ into alleged fraud surrounding *Pigford I* and *Pigford II.*

Response:

The Administration takes any evidence of fraud very seriously. Fraud diverts money from those who deserve it, and takes money from the taxpayers. The Justice Department, from the FBI to U.S. Attorneys' Offices across the country, has paid and will continue to pay close attention to any reports of fraud it receives.

There has been a suggestion that the volume of claims filed is evidence that taxpayer funds are being paid to ineligible claimants. Of the claims that were filed in *Pigford I*, thousands were denied as ineligible for payment. Even in Track A, the track that contained the lower of the two proof thresholds, more than 30% of claims were denied; the fact that an invalid claim is filed does not mean that it will get paid. In addition, the USDA Inspector General reviewed a number of claims and forwarded appropriate cases to the FBI, which in turn reviewed the referrals and forwarded appropriate cases to prosecutors.

With respect to *Pigford II*, claims have not yet been submitted. When they are submitted, there will be a number of protections in place to ensure that the available funds are paid to the appropriate individuals. First, the *Pigford II* overall settlement value is capped, so that fraudulent claims will not result in any additional liability for the taxpayer

In addition, there will be a number of audits designed to identify any potential fraud and get that information into the hands of proper authorities. GAO is required to conduct two separate audits during the claims process, and report the results to Congress, and the USDA Inspector General is required to conduct a statistical sampling of claims. The Claims Administrator is also required to provide information to the USDA Inspector General and DOJ.

5. Is the DOJ aware of any fraud (alleged or actual) in *Pigford* I and II? If the DOJ is aware of an allegation(s), what has the DOJ done to investigate these claims?

Response:

See response to No. 4, above.

6. How many fraudulent applications were submitted in the course of the *Pigford* I settlement?

Response:

See response to No. 4, above.

7. How many fraudulent applications were processed in the course of the *Pigford* I settlement?

Response:

See response to No. 4, above.

8. What was the authority for the DOJ entering into a second *Pigford* settlement? Does the DOJ derive its authority in all or in part from provisions in the 2008 Farm Bill that authorized money for *Pigford* settlements?

Response:

The Department of Justice generally has authority to settle litigation pursuant to 28 U.S.C. 516. The 2008 Farm Bill, in Section 14012 of Public Law 110-246, established a cause of action for the case, which created potential liability to the government. In the Claims Resolution Act of 2010, Congress appropriated funds to implement the terms of the settlement agreement, and provided additional terms to be incorporated in that agreement. The settlement agreement was modified in March 2011 to take into account the appropriation, as well as issues raised by Congress and Judge Friedman.

9. Are you aware of any ongoing fraud in the *Pigford* settlements?

Response:

None, other than the instances listed in response to No. 4, above.

10. Has Shirley Sherrod, formally or informally, agreed not to bring suit against the DOJ or the USDA, owing to any discussions or agreements between herself or her representatives and yourself or your representatives?

Response:

We are not aware of any such discussions or agreements between Shirley Sherrod and the Department of Justice.

11. Was the DOJ ever involved in any litigation or settlement with Shirley Sherrod or New Communities, Inc. prior to the *Pigford* lawsuits? What was the disposition of this litigation and/or settlement?

Response:

The Department of Justice participates in thousands of lawsuits involving thousands of parties, and thus the Department cannot provide absolute assurance on this question. However, the Department of Justice is unaware at this time of any litigation or settlement with Shirley Sherrod or New Communities, Inc. prior to the *Pigford* lawsuits.

12. Was there direction from the White House to tie the *Pigford* settlement to the *Cobell* settlement?

Response:

As a litigation matter, *Pigford* and *Cobell* were in no way tied together. The decision to settle each case was made based on the Department's evaluation of the long-term interests of the United States in the context of the facts and law of the litigation in which the United States had been sued. The White House gave no direction to tie together the two settlements.

As a legislative matter, on February 12, 2010, the President transmitted to the Speaker of the House an amendment to Fiscal Year (FY) 2010 proposals in the President's FY 2011 Budget. The amendment included legislation that addressed both *Pigford* and *Cobell*.

13. How many applications do they have in the total universe of *Pigford* I and *Pigford* II applications?

Response:

In *Pigford*, there were about 87,000 applications, which included the late-filers who were not allowed to participate. There were an additional 17,666 letters submitted to the Administrator that were deemed too general to qualify as applications and were not processed. There are no applications yet for claims in *Pigford* II.

14. How many *Pigford* I applications are there?

Response:

See response to No. 13, above.

15. How many *Pigford* II applications are there?

Response:

See response to No. 13, above.

16. What is the total dollar amount of cash distributions to claimants in the *Pigford* I settlement?

Response:

$770,000,000 was distributed for Track A claims; $34,739,783.43 was distributed for Track B claims; and $1,536,000 was distributed for non-credit claims.

17. What is the total dollar amount of loan forgiveness of claimants in the *Pigford* I settlement?

Response:

The principal amount was $29,072,133.10 and interest was $13,374,236.63.

18. What is the total dollar amount of tax forgiveness of claimants in the *Pigford* I settlement?

Response:

$192,500,000 was paid directly to the IRS on behalf of successful class members.

19. What is the total dollar amount of cash distributions to claimants in the *Pigford* II settlement?

Response:

None to date. The total amount of distributions is capped at $1.25 billion, per congressional appropriations.

20. What is the total dollar amount of loan forgiveness of claimants in the *Pigford* II settlement?

Response:

None to date. The total amount of distributions is capped at $1.25 billion, per congressional appropriations.

21. What is the total dollar amount of tax forgiveness of claimants in the *Pigford* II settlement?

Response:

None to date. The total amount of distributions is capped at $1.25 billion, per congressional appropriations.

22. Assuming there are over 90,000 claims, how have these claims exceed the number of black farmers during the period by a factor of approximately 5 to 1?

Response:

The Department does not maintain records on the number of black farmers in the United States. The settlement class in *Pigford II* tracks the class of farmers for whom Congress revived discrimination claims against the government. Congress revived those claims in the bipartisan 2008 Farm Bill, in Section 14012 of Public Law 110-246, and defined the universe of individuals who are eligible to bring claims.

23. Were attorneys paid out of each $50,000 settlement and, if so, how much?

Response:

In *Pigford* I, the attorneys' fees were not paid from the $50,000 awards. In *Pigford* II, class counsel are not paid on a per-claim basis for Track A claims out of the settlement; if a claimant chooses to use his or her own individual attorney, that attorney can be paid up to 2% of the Track A award. In *Pigford* II, for Track B claims, attorneys are capped at receiving up to 8% of the recovery.

24. What would the above dollar values be if cash, loan forgiveness, and tax forgiveness if they were only given to farms with farm ID numbers?

Response:

Possession of a Farm Services Agency (FSA) commodity program farm number was not a prerequisite to applying for an FSA farm loan. For example, an FSA farm loan applicant may not have had a number if the applicant had never previously received credit from FSA, or if the applicant was farming on land that the applicant rented from a landowner who possessed the number himself or herself. Because possession of a farm number was not a prerequisite for applying for an FSA farm loan, claims submitted in the *Pigford I* settlement were not tracked by commodity program farm numbers.

25. Please produce the names and sufficient personally identifiable information for all claimants and recipients.

Response:

For *Pigford* I, the Department of Justice does not have the names and personally identifiable information for all claimants and recipients. Information on all claimants and recipients is maintained by USDA. For *Pigford* II, the District Court has not yet issued final approval of the settlement agreement, and thus the settlement agreement has not yet been implemented. Accordingly, there are no claimants or recipients as yet under the settlement agreement.

26. Has the DOJ ever agreed to waive any potential conflict of interest for former Secretary Mike Espy or firm with which he is affiliated so that he, or such firm, may represent *Pigford* claimants against the USDA and/or DOJ?

Response:

No.

27. Did Shirley Sherrod request or receive an ethics waiver for her employment at the USDA/DOJ?

Response:

The Department of Justice is not aware of Shirley Sherrod ever having requested nor received an ethics waiver from this Department, where she was not an employee.

QUESTIONS POSED BY REPRESENTATIVES POE AND KING

28. Why have you not issued guidelines to the US attorneys telling them as legal ethics experts have concluded they should not meet before a raid *ex parte* with a federal district judge who may reside over a trial following the raid?

Response:

As you know, this issue has been raised in ongoing litigation. However, as a matter of public record, we can tell you that on September 16, 2011, the Eighth Circuit Court of Appeals affirmed the denial of Mr. Rubashkin's request for a new trial and affirmed his conviction and sentence. In that opinion, the Court noted that Mr. Rubashkin conceded that the evidence of the pre-raid logistical planning meetings would not likely affect the jury's verdict on retrial. On October 11, 2011, Mr. Rubashkin filed a petition for rehearing or rehearing *en banc*. The petition is still pending before the Eighth Circuit Court of Appeals.

29. I would like to ask you regarding the case of Sholom Rubashkin. I've sent you two letters about this case. Are you aware that 45 members of congress have written letters to you urging you to investigate the alleged prosecutorial misconduct in the case of Sholom Rubashkin?

Response:

Department records indicate that we have responded to the numerous letters from Members of Congress on this issue.

30. As you may know, in May of 2008, ICE raided Agriprocessors, a plant in Postville, Iowa of which Mr. Rubashkin was Vice President, and arrested 389 illegal immigrants. Subsequently Mr. Rubashkin was arrested and later convicted of financial fraud charges. He was later sentenced to an astonishing 27 years. Following Mr. Rubashkin's sentencing in July 2009, evidence was obtained from a FOIA lawsuit that the judge who presided over his case, Judge Linda Reade, had met with prosecutors and ICE agents in numerous meetings up to six months prior to the raid -- some times on a "weekly" basis. Leading national authorities on judicial and legal ethics have declared that what was done in this case amounted to judicial and legal misconduct. The evidence shows that she said in January 2008 that she was "willing to support the operation in any way possible." In March 2008, Judge Reade participated in a meeting that discussed "an overview of charging strategies, numbers of anticipated arrests and prosecutions, logistics, the movement of detainees, and other issues related to the [Agriprocessors] investigation and operation." According to one e-mail, Judge Reade made specific requests for a "final gameplan" to be submitted to her about one month before the raid took place. She also "requested a briefing on how the operation will be conducted." In another

email she was even called a "stakeholder" in the raid. What's most troubling is that neither the judge or the prosecutors ever disclosed information about these meetings to Mr. Rubashkin's lawyers so they could have the opportunity to file a recusal. This case shows real systemic problems in the Department of Justice and in its responsibility to have self-oversight.

So my question is: is it the policy of the Department of Justice to allow these kind of ex-parte communications to take place? Is this acceptable behavior for Department of Justice lawyers to be part of? And is it the Department of Justice's policy to hide this information from a defendant? And further, is it your policy to completely ignore the request of 45 members of congress to formally investigate a case when allegations of misconduct such as this comes up?

Response:

It appears that your questions are premised on incomplete or incorrect information regarding the logistical planning of a very large enforcement operation. The Northern District of Iowa has two District Courthouses: one in Sioux City and the other in Cedar Rapids. There are a total of two District Court Judges, two Magistrate Court Judges and two Senior District Court Judges that are split between the two courthouses. Judge Reade is the Chief Judge for the Northern District of Iowa and therefore is the individual responsible for administrative matters arising in that district. In FY 2007, the United States Attorney's Office of the Northern District of Iowa filed a total of 315 felony cases during the entire year.

It was anticipated that the planned worksite enforcement action would lead to the arrest of hundreds of illegal workers with initial estimates of approximately 700 people being arrested. In fact, 389 illegal workers were encountered during the worksite enforcement action which ultimately resulted in the prosecution of 305 of the illegal workers. That meant that in one enforcement action, which took place on one day, the Northern District of Iowa initiated almost the same amount of cases that it prosecuted for the entire fiscal year of 2007. Based on the large number of anticipated arrests, the United States Attorney's Office contacted the Chief Judge regarding the logistics of bringing the large number of individuals before the court as soon as possible following their arrest as is guaranteed by Rule 5 of the Federal Rules of Criminal Procedure.

The communications between the United States Attorney's Office and Chief Judge Reade were strictly limited to logistical planning such as finding a site to house the individuals arrested and to provide the arrestees access to their attorneys and family members; securing judges, defense attorneys, interpreters, and court personnel to handle the 305 felony cases filed from the worksite enforcement action; and the preparation of a handbook to assist defense counsel and their assigned interpreters.

At no time was Chief Judge Reade advised of where the worksite enforcement action was to take place or of who were the subjects of the investigation. All arrest warrants and search warrants were presented to and signed by Magistrate Judge Scoles, not Chief Judge Reade.

Notably, Mr. Rubashkin was not arrested during the worksite enforcement action. Charges against Mr. Rubashkin were not filed until October 30, 2008, over five months after the May 12, 2008 enforcement action. Thus, the discussions between the United States Attorney's Office and Judge Reade regarding the logistics of the enforcement action did not involve any logistics regarding the prosecution of Mr. Rubashkin.

In addition, the defense was aware of the communications between the government and Chief Judge Reade prior to the defendant's trial. In fact, on December 9, 2008, Judge Reade specifically set January 30, 2009 as the deadline date for the defense to file its motion to recuse the court. However, the defendant did not file a motion to recuse and did not seek discovery regarding Judge Reade's contacts with the government prior to the worksite enforcement action.

31. And have you indeed launched an investigation into these allegations that there were improper ex-parte communications between the judge and prosecutors involved in the case?

Response:

The issue of ex-parte communications is the subject of litigation currently pending before the U.S. Court of Appeals for the Eighth Circuit. As described above, the Eighth Circuit Court of Appeals has affirmed Mr. Rubashkin's conviction and sentence. Furthermore, in affirming the denial of his motion for a new trial, the Court of Appeals specifically found that Mr. Rubashkin failed to make a timely recusal motion but instead waited until after his conviction and his sentencing to raise the issue with the court. Furthermore, Mr. Rubashkin conceded that the evidence of the pre-raid logistical planning meetings would not likely affect the jury's verdict on retrial. Therefore, the Court of Appeals concluded that the district court did not err by denying Mr. Rubashkin's motion for a new trial. Mr. Rubashkin is currently seeking further review of the Eighth Circuit's opinion. On October 11, 2011, Mr. Rubashkin filed a petition for rehearing or rehearing *en banc*. The petition is still pending before the Eighth Circuit Court of Appeals.

QUESTIONS POSED BY REPRESENTATIVE CHABOT

32. **Recently, reports have surfaced that as part of its annual children's artwork competition, Google gathered sensitive personal information, including partial social security numbers and city of birth information about children participating in the contest. When this year's contest was launched, the Parent Consent Form required for participation each child's name, date of birth, place of birth, grade level, and the last four digits of the child's social security number, along with the parent's name, street address, telephone number, and fax number. Google initially claimed that it needed this information to identify duplicate entries but later acknowledged that it could adequately administer the contest with less information. After being subjected to scrutiny, Google released a revised Parent Consent Form that did not seek the last four digits of the submitting child's SSN (although it required all of the rest of information initially sought). Google has declined to say how many children submitted entries with social security number information.**

    Can you tell us what laws are in place to protect children and their parents from these practices?

Response:

The Children's Online Privacy Protection Act (COPPA), 15 U.S.C. §§ 6501-6506, and its implementing regulation, the Children's Online Privacy Protection Rule (Rule), 16 C.F.R. Part 312, deal with private information concerning children. That statute and Rule prohibit internet site operators from obtaining personal information directly from children without parental consent. In addition, under COPPA, an operator may not condition a child's participation in an activity on the child's provision of more info than is necessary to participate in such activity. Section 312.7 of the Rule provides: "An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity." However, nothing in COPPA prohibits an operator from seeking excess information on a parental consent form. The thrust of COPPA is to prevent over-reaching directed at children.

The Federal Trade Commission (FTC), which administers COPPA and promulgated the Rule, does have an interest in ensuring under general privacy principles that businesses only obtain personal information from individuals that is reasonably necessary to complete the transaction that brought the consumer into contact with the business. Thus, the FTC staff has articulated a "privacy by design" principle as outlined in a Dec. 2010 Report. There the FTC staff stated that companies should not collect more information than they need to provide services. *See* http://ftc.gov/os/2010/12/101201privacyreport.pdf.

With respect to Google's own privacy practices, the FTC recently brought an action against Google alleging that the company deceived consumers by using information collected from Gmail users to generate and populate a new social network called Google Buzz. *Google, Inc.*, FTC File No. 102 3136 (Mar. 30, 2011) (consent order accepted for public comment). As

part of the FTC's proposed settlement, Google must protect the privacy of all of its customers, and significantly here, the order requires Google to implement a comprehensive privacy program and conduct independent audits every other year for the next 20 years. Implementation of this order, if finalized, may address the situation you described.

QUESTIONS POSED BY REPRESENTATIVE CONYERS

33. The Department of Transportation in a recent rulemaking noted the need for vigorous antitrust enforcement in the travel sector, including disputes between several airlines and the legacy distribution companies. What is the appropriate role for the Department of Justice in this area? Is DOJ actively monitoring this issue?

Response:

The Department of Justice is committed to protecting competition in the global distribution system industry. While the Attorney General cannot comment on an active investigation, the Antitrust Division is investigating the possibility of anticompetitive practices in the global distribution systems industry and will take appropriate enforcement action if we determine that the antitrust laws have been violated.

34. I am very concerned that there might be companies engaged in monopoly conduct that is stifling competition and hurting consumers. I was heartened when Assistant Attorney General Christine Varney, in her Senate confirmation hearing in March 2009, pledged renewed enforcement of the Sherman Act prohibition against unlawful monopolies, and then withdrew the Bush administration's single firm conduct report that sought to justify the absence of enforcement activity at DOJ during the Bush Administration years. Yet, I have seen no meaningful DOJ enforcement in this area to date.

Is this area still an enforcement priority at DOJ? Do you expect DOJ to file any monopolization cases anytime soon? Without revealing any nonpublic information, can you tell me whether there are any pending DOJ investigations in this area?

Response:

Enforcement of Section 2 of the Sherman Act is one of the Department's antitrust priorities. While we cannot comment on ongoing investigations, we can say that the Department is vigilantly evaluating on a case-by-case basis dominant firm unilateral conduct when it believes there may be a potential violation of the Sherman Act, and the Department is prepared to bring a Section 2 case if warranted by the facts. For example, in February, 2011, the Antitrust Division brought its first case since 1999 arising solely under Section 2 of the Sherman Act, challenging a monopolist with engaging in anticompetitive unilateral conduct. In that case, a monopolist with a 90 percent share of general acute-care inpatient hospital services, United Regional Health Care System of Wichita Falls, Texas, unlawfully used contracts to maintain its monopoly, causing consumers to pay higher prices for health care services. The Department reached a settlement that prohibits United Regional from entering into contracts that improperly inhibit commercial health insurers from contracting with United Regional's competitors. In addition, the Department has brought antitrust enforcement actions in industries that are important to the

nation's economy involving prominent companies with large market shares for engaging in conduct that harms the competitive process. Most notably, the Department is currently litigating a civil antitrust lawsuit against Blue Cross Blue Shield of Michigan alleging that provisions in its agreements with hospitals increase prices to its competitors, preventing other insurers from entering the marketplace and insulated it from competition. The Department is committed to pursuing enforcement of Section 2 of the Sherman Act and will act vigorously against violations as they arise.

35. What are you doing to address FBI overreach in the form of investigations and infiltration of the peace movement and other domestic political organizations as sited in the 2010 IG report, in particular the case of the 23 Midwest anti-war activists targeted for investigation, house raids, and grand jury subpoenas?

Response:

The 2010 report by the Department of Justice (DOJ) Office of the Inspector General (OIG) addressed allegations that the FBI had improperly investigated certain domestic advocacy groups. The OIG found no evidence that the FBI had targeted any group or individual based on First Amendment activities. As to the specific case referenced in the question, longstanding DOJ 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 an FBI investigation.

The Attorney General Guidelines (AG Guidelines) and FBI policy contained in the Domestic Investigations and Operations Guide (DIOG) are designed to ensure that FBI activities are conducted with respect for the constitutional rights and privacy interests of all persons in the United States. The DIOG contains numerous measures designed to ensure that investigative authority, whether in an assessment or in a predicated investigation, is used properly. For example, FBI agents must always have a proper purpose for their activities; FBI policy is very clear that employees cannot initiate investigative activities based solely on an individual's exercise of First Amendment rights or on protected characteristics such as race, ethnicity, national origin, or religious affiliation or on a combination of only those factors.

Furthermore, the AG Guidelines and the DIOG authorize only minimally intrusive investigative techniques in assessments. Specifically, except in the context of an assessment designed to recruit a human source, during an assessment the FBI can obtain publicly available information; access data in government databases or files; use online services and resources; use and recruit human sources; interview, request information and accept information from the public; engage in observation or surveillance that does not require a court order (*i.e.*, that does not intrude into any reasonable expectation of privacy); and may use a grand jury subpoena for the limited purpose of obtaining telephone subscriber or electronic mail subscriber information. These techniques must be used in conformance with all federal laws, including the Privacy Act of 1974. In order to use more intrusive techniques (*e.g.*, mail covers; consensual monitoring of

conversations; closed-circuit television; compulsory process), the FBI must have a predicated investigation open, meaning there is some indication that the target is engaged in wrong doing.

The AG Guidelines regarding assessments designed to recruit sources are slightly different. Here again, however, the FBI has implemented specific policies that are designed to protect privacy. While under the AG Guidelines any investigative technique can be used in such an assessment, the FBI has made the policy decision to allow only two techniques to be used that are not generally available during assessments: polygraph examinations and searches not requiring a court order (e.g., trash covers). Moreover, even these techniques can only be used if an assessment has been opened – which means that a supervisor has approved assessing the particular person as a source because he or she is believed to have "placement and access" to information that would be of value to the United States.

In addition to setting policy that is respectful of privacy and civil liberties interests, the FBI has also designed a number of compliance mechanisms to ensure that the rules are followed and there is adequate oversight of the process. Investigations involving defined "Sensitive Investigative Matters" must be reported to DOJ. DOJ's National Security Division, in conjunction with the FBI's Office of the General Counsel, conduct regular reviews of all aspects of FBI national security and foreign intelligence activities, including assessments. The FBI's Inspection Division conducts annual audits of assessments. The results from both types of reviews are reported to the FBI's Office of Integrity and Compliance, which considers whether new policies, training, or controls are needed.

36. In light of the Supreme Court's decision in *Holder v. Humanitarian Law Project*, how does DOJ determine what constitutes material support of terrorism? What is the standard for determining whom to investigate, given that the label of being known as the subject of such an investigation can impose a social stigma, psychological pressure and monetary costs on an individual, even before any criminal charges are filed?

Response:

The Department of Justice relies upon the definitions set by Congress in 18 U.S.C. § 2339A to determine what constitutes material support to terrorism. Congress defined material support or resources as "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, personnel, and transportation, except medicine or religious materials." The term "training" means "instruction or teaching designed to impart a special skill, as opposed to general knowledge." The term "expert advice or assistance" means "advice or assistance derived from scientific, technical or other specialized knowledge."

In *Holder v. Humanitarian Law Project*, the Supreme Court addressed the provision of training, expert advice or assistance, service and personnel to a designated foreign terrorist

organization. The Court held that the statute is not unconstitutional and that the provision of material support could include a narrow category of speech when that speech is "to, under the direction of, or in coordination with" a foreign terrorist organization. The Court relied upon Congress's determination that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct."

Determining whether to charge a violation of the material support statute involves, among other factors, a fact-intensive, case-by-case assessment of the support provided. Charging decisions related to international terrorism cases, including ones brought under the material support statutes, are closely coordinated within the Department.

QUESTIONS POSED BY REPRESENTATIVE NADLER

37. On January 25, 2011, I wrote to you about reports concerning the conduct of DOJ personnel leading up to, during, and following the May 12, 2008 raid on the Agriprocessors, Inc., plant in Postville, Iowa. I have not yet received a response to the many questions I raised in that letter. When can I expect a response to that letter?

Response:

A response was mailed on March 17, 2011.

38. In my letter, I asked about reports that the Department of Justice opposed a bail application by a Jewish defendant in that case, Mr. Sholom Rubashkin, on the grounds that he was a flight risk solely because, as a Jew, he was eligible for Israeli citizenship under that country's Law of Return. I hope that it is not the position of the Department of Justice that a defendant's religion, in the absence of any other evidence, would make him ineligible for bail. Please let me know the Department's position on the role of religion in bail proceedings, and what steps you are taking to ensure that defendants are treated fairly in our courts regardless of their religion.

Response:

The government's request for detention was based on a variety of factors that suggested he met the criteria set forth in the federal detention statute demonstrating risk of flight and a risk that he would commit additional crimes including obstruction of justice, if released. In addition to the fact of the defendant's eligibility for Israeli citizenship, the government argued for detention based on evidence of the following:

1. Additional acts of bank fraud committed by the defendant after execution of the warrants continuing through October 2008;

2. Deliberate attempts to obstruct justice and destroy evidence committed while defendant was already under pretrial court supervision, including directing an employee to destroy evidence;

3. Defendant's efforts to get fake identification documents for a high number of his illegal workforce immediately prior to execution of the warrants;

4. Information that two of Agriprocessors' managers had fled to Israel following execution of the warrants (several sources gave information that Hosam Amara, a manager in the poultry area, had fled to Israel with his family, possibly through Canada. On March 31, 2011, Amara was arrested in Israel);

5. Evidence found on the day of his arrest, that the defendant had already made preparations to flee including a bag, discovered in the defendant's bedroom closet, containing thousands of dollars in cash (thousands were located in a "travel pouch" which is to be worn under a traveler's clothing), original birth certificates for the defendant and his wife, and passports for several of the defendant's children.

QUESTIONS POSED BY REPRESENTATIVE SCOTT

39. My understanding is that the PREA regulations don't protect youth in adult facilities and that you are reviewing the comments to DOJ right now. Can you tell me what the federal position is on this issue (e.g. BOP position)?

Response:

In its PREA Notice of Proposed Rulemaking, the Department specifically asked commenters to address whether the final rule, in contrast to the recommended standards submitted to the Department by the National Prison Rape Elimination Commission, should include a standard that governs the placement of juveniles in adult facilities—and if so, what such a standard should require. *See* 76 Fed. Reg. 6248, 6266 (Feb. 3, 2011). In response to its request, the Department received numerous comments that addressed this issue. The Department is now in the process of reviewing and analyzing those comments, and it will make any appropriate adjustments or changes in the standards when it issues its PREA final rule, which it expects to issue by the end of this year. With regard to the Bureau of Prisons (Bureau or BOP), the Bureau houses very few juvenile offenders, and those offenders are never housed with adults; rather, they are placed in contract juvenile facilities.

A. My understanding is that the overwhelming evidence demonstrates that youth held in adult jails and prisons are at great risk of sexual assault and abuse or other dangers such as suicide. I'd like to know what the evidence is that is needed that would justify keeping these youth in adult facilities?

Response:

As you note, the risks to youth held in adult jails and prisons extend beyond the risk of sexual abuse. In the last Congress, the Department supported S.678, the Juvenile Justice and Delinquency Prevention Act Reauthorization Act of 2009, which would have, among other things, extended the Juvenile Justice and Delinquency Prevention Act's sight and sound separation and jail removal core requirements to youth under adult criminal court jurisdiction awaiting trial.

40. As you are well aware, the Fair Sentencing Act was enacted in an effort to remedy the unfairness of crack cocaine sentences. Do you support making the law retroactive so that those whose conduct occurred before the enactment of the Fair Sentencing Act can be relieved of the unfair sentences that served as the basis for the law change?

Response:

The Attorney General personally testified on June 1st before the U.S. Sentencing Commission in favor of applying retroactively the sentencing guidelines implementing the Fair

Sentencing Act, with exceptions for certain categories of dangerous offenders. The Attorney General believes it is appropriate to rectify sentences that were based on the discredited 100-to-1 quantity ratio to the extent consistent with public safety and the fair and efficient administration of justice. We would be happy to discuss this matter further with you and your staff and to explore all of the various issues involved.

41. Most people who play poker recognize that it is a game of skill. To the extent the Administration believes poker is a game of chance and therefore consists of illegal gambling, I note that federal law does not prohibit gambling by individuals. The practical effect of prosecuting well-known poker sites is that consumers will migrate to other sites outside of the Department of Justice's jurisdiction which are less likely to have any fundamental consumer protections. What is the Department's position on H.R. 1174, the "Internet Gambling Regulation, Consumer Protection, and Enforcement Act?"

Response:

The Department of Justice continues to review H.R. 1174. We remain committed to continuing to work with Congress regarding the important issue of internet gambling and enforcing existing federal criminal law in this area.

42. Playing poker for monetary stakes is practiced by many Americans. As a nation, we believe that this is okay, or at least not harmful to our communities. Given this background, and the fact that Congress is seriously considering revising federal law to bring Internet poker under a regulatory framework, why would the Justice Department use scarce resources to bring criminal prosecutions against those who allow citizens to participate in an activity that most people accept as unobjectionable?

Response:

The Department of Justice enforces federal law as it is currently written by Congress. As with any federal prosecution, the Department uses its limited resources to ensure that we are targeting the most egregious conduct. For that reason, several of the current prosecutions concerning internet gambling involve cases where the illegal gambling activity is part of a larger criminal prosecution or the prosecution involves organized crime.

In the internet poker case brought by the United States Attorney's Office for the Southern District of New York, for example, in addition to violations of the Illegal Gambling Business statute, 18 U.S.C. § 1955, and the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5363, the criminal indictment alleges violations of the conspiracy to commit wire fraud and bank fraud, 18 U. S.C. § 1349, and conspiracy to commit money laundering, 18 U.S.C. § 1956(h). The indictment and civil complaint allege that the defendants used fraudulent methods to circumvent federal law to trick U.S. banks and credit card issuers into processing payments on

their behalf. Furthermore, the indictment alleges that the defendants arranged for monies received from U.S. gamblers to be disguised as payments to hundreds of non-existent online merchants purporting to sell merchandise such as jewelry and golf balls. The poker companies also are alleged to have used payment processors who obtained accounts at U.S. banks for the poker companies. It is further alleged that the payment processors lied to banks about the nature of the financial transactions they were processing and covered up those lies, by among other things, creating phony corporations and websites to disguise payments to the poker companies.

43. Extensive research has revealed that misguided policies purporting to be "tough on crime" in fact increase incarceration rates, disproportionately impact poor youth and youth of color, exacerbate the problem of gang-related crime, funnel a disproportionate number of youth who have a cognizable mental health and/or substance abuse disorder into the justice system, and often make communities less safe. Meanwhile, research from top scholars in a variety of fields including economics, educational psychology, and public health reveals that public dollars spent on effective prevention and education programs are far more effective in stemming violence, curtailing crime and delinquency, and discouraging gang affiliation than broadening prosecutorial powers or stiffening criminal penalties for young people accused of crimes.

In light of this research,

A. How will the Department of Justice increase its efforts to prioritize juvenile justice and youth violence prevention in this Administration?

Response:

The Administration and Attorney General have both identified the prevention of youth violence as top priorities. In October 2010, as directed by the White House, the Department along with other Federal partners established the National Forum on Youth Violence Prevention (the Forum) to tackle this complex social issue. The Forum selected six cities - Boston, Chicago, Detroit, Memphis, Salinas, and San Jose – to pilot the development and implementation of comprehensive plans to prevent youth and gang violence using multi-disciplinary partnerships, balanced approaches, and data-driven strategies. This year, the Forum hosted the first Summit on Preventing Youth Violence (the Summit) where these plans were presented. Federal, local, and congressional leaders as well as public and private organizations were brought together in a collaborative effort to address youth violence and share innovative ideas. Following the Summit, the cities began implementation of their plans. A Forum listserv and internal and external web sites were created to ensure effective information sharing and coordination. The President's FY 2012 Budget includes a $6 million request to expand the number of participating localities from 6 to 18.

The Attorney General, moreover, launched the Defending Childhood initiative to address the exposure of America's children to violence as victims and as witnesses. A recent DOJ-funded study concluded that more than 60 percent of our children have been exposed to crime,

abuse, and violence, and research confirms that these early experiences can lead to later criminality. Research also shows that early intervention is effective in countering the effects of violence. The President's FY 2012 request includes $25 million for the Children Exposed to Violence (CEV) Initiative. A substantial portion of those funds would support evidence-based demonstration and seed projects in local communities.

The importance of evidence-based prevention programs is recognized by the Department in a number of other areas. For instance, the Second Chance Act Adult and Juvenile Offender Reentry Demonstration Program support the development and implementation of strategies to ensure successful reentry into communities. Another initiative, the Youth Gang Prevention and Intervention Program, provides funding for localities to replicate selected gang prevention and intervention programs that are considered promising or effective for those between the age of 7 - 14 already displaying early signs of problem behavior or who are exposed to multiple known risk factors for gang activity. Additionally, OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) has funded research projects, such as the 2009 National Youth Gang Survey and 2010 Evaluation of OJJDP's Gang Reduction Program, to examine the dynamics of youth involvement in gangs, the nature and scope of different types of gangs, and the most effective strategies, programs, and practices for communities to prevent and intervene with gang-involved youth. OJJDP will also fund an assessment of the nature and scope of youth gangs in juvenile detention and correctional facilities. Finally, the Department's Civil Rights Division investigates and litigates cases concerning the civil rights of juveniles confined in public detention facilities, as well as cases concerning a pattern or practice of conduct that violates the constitutional or statutory rights of children in the administration of juvenile justice.

B. Will the Department support legislation and policies that invest in effective prevention and education programs designed to stem violence, curtail crime and delinquency, and discouraging gang affiliation, including the Youth PROMISE Act, Reauthorization of the Juvenile Justice and Delinquency Prevention Act, and Reauthorization of the Juvenile Accountability Block Grant?

Response:

DOJ supports legislation that effectively addresses the needs of children, youth, and their families, including the development and implementation of evidence-based, coordinated, and promising programs to address the prevention of delinquency, youth violence, youth gang involvement, and related juvenile justice concerns. If the stated Acts are introduced in this current Congress, DOJ anticipates supporting this legislation and looks forward to working with the Committee on any technical amendments or improvements that may be warranted.

C. Will the Department oppose legislation and policies (including mandatory minimum sentencing) that will widen the net of youth in the juvenile and adult criminal justice systems, over-criminalize and increase federal penalties for minor and nonviolent adolescent misbehavior, exacerbate racial and ethnic disparities in the juvenile and criminal justice systems, and increase incarceration rates in the United States?

Response:

The Department supports promising and evidence-based policies, programs, and practices that promote alternatives to youth incarceration, provide youth involved with criminal and juvenile justice systems with appropriate rehabilitative and reentry services, and eliminate racial and ethnic disparities in these systems.

44. You mentioned that the Department is studying reentry based programs. What findings have been made this far? The Department received $20 million in appropriations. What level of appropriations would you need to fund all of the applications to the program which would significantly reduce crime and save money?

Response:

In FY 2009, the Department's Office of Justice Programs awarded more than $28 million in grant funding to states, local governments and non-profit organizations under the Second Chance Act (SCA) Prisoner Reentry Initiative. In FY 2010, OJP awarded $100 million to support reentry efforts, including 188 SCA grantees across the country. These reentry programs will address a number of areas, including job training, education, mentoring, substance abuse and mental health treatment, family-based services, literacy classes, housing, and employment assistance. The FY 2010 appropriations included $10 million "for prisoner reentry research" that the National Institute of Justice (NIJ) used to fund evaluations of the effectiveness and impact of reentry programs.

OJP's primary lesson learned to date is that there is a tremendous unmet need for reentry-related services. In terms of substantive evaluation findings, it is just too soon to report findings. We are closely tracking grantees, and NIJ is overseeing rigorous, independent evaluations on seven of the SCA Adult Demonstration Projects and nine of the SCA State, Local, and Tribal Reentry Courts Program. NIJ is also conducting a multi-site demonstration field experiment using an innovative reentry model. This rigorous experiment will provide critical knowledge about what really works to promote successful transitions from prison to the community. Preliminary information from these multi-year studies should be available in approximately three years.

As noted above, the demand for reentry services is high. In FY 2010, we received over 1,100 applications for all of our SCA programs. Each year, more than 700,000 individuals are released from state and federal prisons. Another nine million cycle through local jails. When reentry fails, the costs—both societal and economic— are high. Statistics indicate that more than two-thirds of state prisoners are rearrested within 3 years of their release and half are reincarcerated. High rates of recidivism mean more crime, more victims and more pressure on an already overburdened criminal justice system. The President has included in the FY 2012 budget request $100 million for SCA programs and related research.

45. What are the Department's plans for Federal Prison Industries? What initiatives are you proposing for Congressional action?

Response:

Federal Prison Industries (FPI) – a self-sustaining government corporation that is an operational component of the Bureau of Prisons – is one of the Bureau's most important correctional programs. FPI has been proven through rigorous research to have significant recidivism-reducing benefits for participating inmates. In addition, it assists in the safe and efficient operation of federal prisons by keeping inmates constructively occupied and providing a 'real-world' work experience.

While operating at no cost to taxpayers, FPI provides important job skills training for inmates, many of whom have never had legitimate employment experience prior to incarceration. Beyond learning skills specific to the prison industry in which they work, inmates also learn fundamental employment skills such as arriving at work on time, engaging in productive work throughout the work day, responding appropriately to supervision, and collaborating effectively with co-workers to yield completed projects.

FPI currently operates 93 factories that provide job skills training to 14,847 inmates (as of April 30, 2011). Unfortunately, this represents a decrease of more than 4,000 inmate workers and eight fewer factories since the beginning of FY 2010. Recent developments, some legislative and others relating to the current economic climate, have resulted in FPI incurring substantial financial losses in fiscal year 2009 and 2010. As such, the Department is concerned about the future viability of this critical inmate reentry program.

We are working to identify new opportunities and potential legislative measures that may help the FPI remain a viable, self-sustaining correctional program. Support for such initiatives is critical to ensure the future of FPI, and to the Bureau's goal of assisting inmates with a successful reentry to their communities upon their release.

46. Organized Retail Theft is a growing problem of interstate theft perpetrated by rings who often operate with impunity. Please let me know what resources are necessary for the Department to play a central role in coordinating these efforts? Also, please let me know what resources you need to enhance your efforts to investigate and prosecute those who engage in identity theft.

Response:

The Department currently plays a central role in coordinating information-sharing and cooperation with the private sector and other federal law enforcement agencies, on organized retail theft. The FBI, through its Organized Retail Theft program, specifically focuses on the most significant retail theft cases involving the interstate transportation of stolen property, working closely with major retailers across the country to promote the sharing of intelligence.

The Department of Justice, through the United States Attorney's Offices, vigorously pursues appropriate cases of organized retail theft. For example, in October 2010, the United States Attorney's Office for the Northern District of California announced the guilty pleas of 15 defendants in two criminal organizations for their roles in a large scale fencing operation to buy and sell over-the-counter health and beauty products and to launder the proceeds through complex financial transactions. According to plea agreements, the defendants involved in one of the two criminal organizations agreed to surrender all assets they obtained as the result of their illegal conduct. The lead defendants in that case also agreed to the entry of a money judgment against them in the amount of $14,257,302 (which represents the gross proceeds the organization received from distributors who purchased stolen property during the period covered by the indictment) and the forfeiture of real property; five vehicles; approximately $165,000 in cash; nine diamonds, twelve gold bars, and other assorted watches and jewelry seized on the day the defendants were arrested; and the funds in ten bank accounts, totaling $81,502.93. The defendants admitted that one defendant and his family used a local San Jose business as a front for their illegal enterprise. The defendants in the latter case also agreed to forfeit a money judgment of $5,682,626; two pieces of real property; one vehicle; approximately $24,000 in cash; and the funds in five bank accounts, totaling $84,077.81, seized pursuant to seizure warrants issued on June 2, 2008. More recently, in January 2011 six individuals were arrested in the Middle District of North Carolina for their alleged roles in a conspiracy to steal baby formula from retail stores in several southern states. According to the federal criminal complaint, from November 2009 to December 2010, the defendants stole baby formula from retail stores in North Carolina, South Carolina, Kentucky, Georgia, Tennessee and Virginia. The stolen product was collected in rented storage units in the High Point/Thomasville, North Carolina area and then transported in bulk to a grocery store in Union City, New Jersey.

Protecting citizens from identity theft is a priority for the Department of Justice. There is no question that this problem is a global one. Consequently, the Department cannot focus its efforts solely within U.S. borders. As the President outlined in the FY 2012 budget, the Department has requested resources to hire DOJ Attachés to be cross-designated as regional International Computer Hacking and Intellectual Property coordinators (ICHIPs). Should Congress appropriate the funding for these positions, these DOJ Attachés would be well-positioned to combat the increasing threat of transnational crime, including the kind of cybercrime that leads directly to identity theft.

47. Is it true that pursuant to the June 29, 2007 Office of Legal Counsel Memorandum faith based organizations can accept federal funds to run a federally funded program and can practice an articulated policy of discrimination in employment based on religion with those federal funds even when there is a specific statutory prohibition against discrimination in the statute governing that federal program?

Response:

The Office of Legal Counsel (OLC) was asked by the General Counsel of the Office of Justice Programs (OJP) whether the Religious Freedom Restoration Act (RFRA), which prohibits the government from "substantially burden[ing]" religious exercise unless that burden

"is the least restrictive means of furthering [a] compelling governmental interest," 42 U.S.C. § 2000bb-1(b) (2000), required OJP to exempt an organization named World Vision from a religious nondiscrimination provision in the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA). In an opinion dated June 29, 2007, OLC concluded that "RFRA is reasonably construed to require that such an accommodation be made for World Vision, and that OJP would be within its legal discretion, under the JJDPA and under RFRA, to exempt World Vision from the religious nondiscrimination requirement" of the JJDPA. Memorandum for the General Counsel, Office of Justice Programs, from John P. Elwood, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act* (June 29, 2007), *available at* http://www.justice.gov/olc/opinions.htm.)

A. Why is the OLC Memorandum and the policy resulting from it not currently under review? Is the Department considering reviewing either the OLC Memorandum and/or the resulting policy? If so, what is the timetable for such review? If not, why not?

Response:

As a general matter, the Department of Justice does not disclose or opine on pending legal questions that it may be considering. The Department is fully committed, however, to ensuring that the United States complies fully with all relevant constitutional and statutory requirements, including applicable antidiscrimination laws, when providing grants and contracts for criminal justice related services.

B. What does the Administration mean exactly when it says that cases will be reviewed for discrimination on a "case-by-case" basis?

Response:

In the Department of Justice, case-by-case review means the following. After issuance of the OLC opinion described above, OJP developed a policy that allows for a case-by-case review of applications seeking an exemption similar to the one World Vision sought. Under the policy, a religious organization that applies for funding and requests an exemption under the Religious Freedom Restoration Act to enable it to prefer coreligionists in employment is required to submit documentation to either OJP or the Department's Office on Violence Against Women (OVW) certifying to each of the following statements:

a) The Applicant will offer all federally-funded services to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals, consistent with the requirements of 28 C.F.R. Part 38, Equal Treatment for Faith-Based Organizations.

b) Any activities of the Applicant that contain inherently religious content will be kept separate in time or location from any services supported by direct federal funding, and, if

provided under such conditions, will be offered only on a voluntary basis, consistent with the requirements of 28 C.F.R. Part 38; and,

c) The Applicant is a religious organization that sincerely believes that providing the services in question is an expression of its religious beliefs; that employing individuals of a particular religion is important to its religious exercise; and that having to abandon its religious hiring practice in order to receive the federal funding would substantially burden its religious exercise.

QUESTIONS POSED BY REPRESENTATIVE JACKSON-LEE

Access to Counsel in Immigration Cases

48. Although immigrants in removal proceedings have the right to counsel, they do not have the right to appointed counsel paid for by the government. Nearly 64% of all respondents appeared before the immigration court without a lawyer, including 83% of detained respondents. Many persons in removal proceedings are long-term residents of the U.S. or are individuals who would face persecution in their home country upon their removal. Some are mentally ill and others are minor children. Without lawyers, noncitizens face the daunting and often insurmountable task of navigating a complicated set of procedural rules and an even more complicated set of immigration statutes, regulations, and court decisions. Until a system is established to ensure counsel, the immigration court system will not be able to dispense justice in a fair and meaningful way for all who appear before it.

A. Given the obvious due process and efficiency gains of being represented in removal proceedings, what is DOJ doing to ensure that more individuals in removal proceedings have access to counsel?

Response:

The Department of Justice has long supported policies, as well as specific programs and initiatives, to expand and improve access to legal services for immigrants. The Executive Office for Immigration Review (EOIR) continues to enhance its policies, programs and initiatives to increase access to counsel for individuals in removal proceedings.

An important part of the Department's efforts is the Recognition and Accreditation Program, which increases access to legal representation for indigent and low-income immigrants by enabling nongovernmental organizations to accredit experienced non-attorneys to represent individuals before the immigration courts and Board of Immigration Appeals. EOIR recently announced as part of an inter-agency initiative to combat immigration services scams that it is working to increase the number of EOIR-recognized organizations and accredited representatives, particularly in underserved areas.

In addition, EOIR plans to update and improve access to the List of Free Legal Services Providers, which informs individuals appearing before the immigration court of the availability of pro bono representation.

EOIR is also expanding and enhancing the Legal Orientation Program (LOP). Through the LOP, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals. LOP services are now provided to roughly half of all detained aliens in immigration court removal hearings, and improves aliens' access to legal information and pro bono representation. In addition, Congress recently provided funding for the Legal Orientation

Program for Custodians of Unaccompanied Alien Children, which EOIR recently implemented at 13 sites across the country to improve the appearance rate of unaccompanied children in immigration court proceedings and increase access to legal information and pro bono counsel.

In 2008, EOIR drafted and implemented guidance to immigration judges and other court staff on facilitating pro bono representation at the local level, and designated a *pro bono* liaison judge for every immigration court. The pro bono liaison judge meets regularly and as needed with local pro bono service providers to discuss how the level and quality of pro bono services might be facilitated and improved. They also develop and refine local procedures to encourage pro bono representation, and communicate with EOIR management and the EOIR Legal Orientation and Pro Bono Program to strengthen public outreach and better coordinate the agency's support of pro bono representation.

This year, EOIR celebrated the tenth anniversary of the Board of Immigration Appeals (BIA) Pro Bono Project, which assists in coordinating pro bono representation for primarily detained aliens with cases on appeal.

B. Would the DOJ support a government-sponsored appointed counsel for certain indigent respondents in removal proceedings?

Response:

While DOJ works to expand the LOP program and its network of pro bono attorneys, and to increase the number of accredited representatives who may appear in EOIR proceedings, various components of the agency, including the Access to Justice Initiative, are also studying whether there are certain populations of detained immigrants who are unable or unlikely to benefit from existing DOJ programs. To the extent that such populations may be identified, DOJ is committed to finding ways to address the needs of those populations in ways that are consistent with the Department's mission to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the nation's immigration laws.

We also note that, on June 29, 2009, the National Immigrant Justice Center and other organizations submitted a petition to the Department requesting that regulations be promulgated providing for the appointment of counsel to indigent individuals in immigration court proceedings in certain situations. The Department is currently reviewing this petition and will provide the petitioners with a detailed response.

Communications Management Units (CMUs)

49. As you may know, CMUs were secretly created, and of the 60 to 70 prisoners detained in CMUs, over two-thirds are Muslim. It is my understanding that none of the prisoners residing at CMUs receive any meaningful explanation of why they are designated to the CMU, or what evidence is used in making the placement decision. Furthermore, there is no hearing or review process challenging prisoners' CMU

designation, which appears to be a lack of due process, one of the fundamental principles of our Constitution. Because there are no oversight procedures for CMUs in place, it appears as though the purpose for prisoners being sent to CMUs could often be retaliatory and discriminatory.

Because the circumstances surrounding the use of CMU's appears to raise questions of due process, I respectfully request a formal inquiry into the establishment of CMUs, and for the policies and procedures surrounding CMU's be reviewed to determine their constitutionality and addressed accordingly.

Response:

The Bureau of Prisons' Communications Management Units (CMU) were established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communications between the inmate and persons in the community, in order to protect the safety, security and orderly operation of Bureau facilities, and to protect the public, in accordance with regulations found at 28 C.F.R. Part 540. Discrimination based on race or religion is unacceptable. Neither race nor religion is used in the decision to designate an inmate to a CMU.

An inmate may be designated to the CMU if:

- The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;
- The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;
- The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;
- The inmate committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or
- There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

Designation to a CMU does not violate the Due Process Clause. CMU inmates have no liberty interest in being free from enhanced monitoring. Despite the lack of a protected liberty interest, inmates designated to CMUs receive detailed written notice from the warden that

explains the reason for the designation and includes information on how to appeal the designation decision.

The BOP uses a multi-tiered approach to proposed CMU designations, which includes in-depth reviews of initial referrals by technical analysts specially trained to evaluate relevant material, a legal review to ensure legal sufficiency of the reasons for the designation, and final approval authority by the Regional Director. Thus, there is close oversight of this process every step of the way.

Further, all enhanced monitoring measures in the CMU are authorized by currently existing regulations. Even if a liberty interest were recognized to exist, inmates designated to a CMU receive procedural due process in the form of a detailed written notice from the warden that explains the reasons for the designation, its lack of impact on the length of confinement, and information on how to appeal the designation decision using the Administrative Remedy Program for inmates.

Further, inmates in the CMU are regularly reviewed for the propriety of their placement and to date over 50 inmates have been released from the CMU, with over 30 of them having been transferred to other BOP institutions or units. Approximately 20 or so inmates were transferred to/placed in Residential Reentry Centers as a condition of prerelease custody.

Rubashkin Case

50. The prosecution of Sholom Rubashkin appears to riddled with unreasonableness and unfairness. Mr. Rubashkin, who was a first-time offender is alleged to have committed a non-violent crime, has been sentenced to 27 years in prison, and is being held without bail. The sentence handed down to Mr. Rubashkin is disproportionate to the crime for which he was convicted. Moreover, there are reports of ex parte communication between the trial judge and federal prosecutors, further tainting the handling of Mr. Rubashkin's prosecution.

I respectfully request that the DOJ review the case of Sholom Rubashkin, and the decision is deny him the opportunity for bail despite an evidentiary showing that he is unlikely to be a flight risk.

Response:

See response to No. 38, above.

Harris County Jail Investigation

51. In 2008, DOJ's Civil Rights Division initiated an investigation into the conditions at the Harris County Jail pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). In 2009, DOJ released the results of that investigation, citing that

"certain conditions at the Jail violate the constitutional rights of detainees," and that "a number of inmates' deaths were related to inadequate medical care." The investigation revealed alarming inadequacies in medical care, mental health care, protection from harm, and sanitation and life safety. These were the results of one investigation into one jail facility, and I would not be surprised if similar conditions existed at other facilities in other parts of the country.

DOJ gave a number of recommendations of ways to improve the conditions at the Harris County Jail. Has there been any additional follow up by DOJ investigators on the situation at the Harris County Jail?

Response:

Following the issuance of our findings letter in June 2009, the Department has engaged in settlement negotiations with Harris County to resolve the concerns set forth in our letter. During negotiations, the County has provided us with documents and status updates on our recommendations, and it appears that some progress has been made to address our concerns. We hope to reach an agreement with the County to resolve our investigation, and in the interim we will continue to monitor the County's progress toward compliance with federal law.

Chad Holley Police Brutality Case

52. Just this past February, Chad Holley, a 15 year old burglary suspect, was rammed by a police car, kicked, and severely beaten by police when he tried to make a run for it. The beating was captured on film by a nearby security camera. There were eight officers determined to be involved in the beating, all of whom have been suspended.

A. I respectfully request that the Department of Justice initiate an investigation into this heinous act to ensure that justice is rightfully served, and that similar abuses of power at the hands of police officers do not reoccur.

Response:

The Harris County District Attorney's Office is prosecuting this matter. We have been and will continue to closely monitor the state prosecution. Furthermore, attorneys in the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Southern District of Texas will review all investigative information regarding the assault of Mr. Holley to determine whether federal action is appropriate. The Civil Rights Division is committed to the investigation and prosecution of incidents involving law enforcement misconduct. In fact, the Criminal Section, in conjunction with the United States Attorneys' Offices, prosecuted a record number of cases during the last fiscal year, including the most law enforcement misconduct cases in history.

Continental United Merger

53. As you are aware from my previous two letters to the Department of Justice requesting a thorough investigation of the Continental-United Airline merger, I continue to have very serious concerns about the negative impact this merger is having on my congressional district as well as others around the country. Again, I respectfully request that DOJ exercise its authority to ensure that healthy competition within the ever consolidating airline industry is preserved.

Response:

The Department is strongly committed to maintaining a competitive airline industry. The Attorney General can assure you that the Department's Antitrust Division thoroughly reviews all proposed airline mergers and allegations of anticompetitive conduct, and takes action pursuant to the antitrust laws where necessary to protect consumers of scheduled airline services. For example, Continental divested a number of scarce slots at Newark Liberty Airport as a result of our review of the United/Continental merger, which addressed all of the Department's competition concerns with the transaction and created new competition on routes served by the merging airlines. The Department very much appreciated having the benefit of your perspective regarding this merger.

Congressional Redistricting

54. What involvement and oversight will the Department of Justice have in the 2011 state redistricting effort to ensure enforcement of the Voting Rights Act?

Response:

Section 5 of the Voting Rights Act requires that jurisdictions subject to its requirements submit changes affecting voting to the Attorney General (or to the U.S. District Court for the District of Columbia) for a determination that the voting change "neither has the purpose nor will have the effect of denying or abridging the right to vote" on account of race, color or language minority status, prior to the change being implemented. This determination is commonly known as "preclearance." Redistricting plans constitute one of the types of voting changes covered by Section 5.

Nine states are covered in full by Section 5, and seven states are covered in part. (A complete list of covered jurisdictions is available at www.justice.gov/crt/about/vot/sec_5/covered.php.) The Department of Justice's role is therefore to conduct a Section 5 review of any redistricting plan submitted for administrative preclearance by a covered jurisdiction, or to appear as the defendant in any request for judicial preclearance filed in the U.S. District Court for the District of Columbia. In either case, the Department's obligation is to ensure that the submitting jurisdiction has met its burden of demonstrating that the redistricting plan does not have a discriminatory purpose or effect.

The Department expects to review approximately 2700 redistricting plans from covered jurisdictions in the 18 months after the release of the 2010 census data.

Long Guns

55. Last week, the Obama Administration issued a second information collection notice that would require licensed gun dealers along the border to report when an individual buys more than one powerful rifle, like an AK-47 or AR-15, within five business days – just as they currently report when someone buys more than one handgun. This proposal was based on the increased gun violence in Mexico and independent research that shows long guns as the drug cartels' weapons of choice.

What role is the Department of Justice playing to ensure that these new reporting requirements are implemented and adhered to?

Response:

On July 26, 2011, following approval by the Office of Management and Budget, ATF began notifying, by letter, each affected licensee in the four southwest border states of the requirement to report multiple sales of certain rifles (i.e., rifles that are semiautomatic, larger than .22 caliber, and able to accept a detachable magazine) to unlicensed individuals who purchase two or more of the specified rifles within a 5-day period. These federal firearms licensees (FFLs) will report their multiple sales by selecting from among three options: (1) electronically via e-mail, (2) electronically via fax, or (3) mail via postal service. ATF provided an example of the required form in each letter, and FFLs can secure additional copies through the distribution center or by downloading the form from the ATF.gov website. The website also hosts a form-fillable version of the form.

During ATF inspections and through information posted on the ATF.gov site, ATF is educating affected licensees to help comply with the requirement. ATF will also be reviewing FFL compliance with the information collection during regular compliance inspections.

Additionally, the Department is vigorously defending the new reporting requirement in three civil actions filed in three jurisdictions. To date, one of the courts has rejected a request for a preliminary injunction and has set an expedited briefing schedule.

IRS Criminal Division

56. I would like to request a fact finding meeting with a member of the IRS Criminal Division in order to gain a better understanding of the process used to prosecute small business who are behind on their taxes, and how punitive fees are assessed.

Response:

The Department's Office of Legislative Affairs is currently working with your staff to set up a date and time for the briefing you have requested.

Possible Constitutional Violations by the Office of Texas Governor Rick Perry

57. As you are likely aware, in 2009, allegations arose that the office of Texas Governor Rick Perry (R) may have caused the wrongful execution of Cameron Todd Willingham, and later obstructed a state commission examining this case.

I would like to follow up on a previous request for the Department of Justice to launch an investigation to determine if the State of Texas may have violated Mr. Willingham's constitutional rights.

Response:

In December 1991, Cameron Todd Willingham's house burned down, causing the death of his three young daughters. In October 1992, Mr. Willingham was sentenced to death for murdering the children. Willingham appealed his conviction in both state and federal courts, but he was denied appellate relief. After he exhausted his appellate remedies, he filed a clemency petition with the Texas Board of Pardons and Paroles (TBPP), but that petition was denied in February 2004. He was executed shortly thereafter.

You request that the Department of Justice launch an investigation to determine whether the State of Texas violated Mr. Willingham's constitutional rights. To prove a criminal violation of the civil rights statutes, the government must prove that a defendant, acting willfully and under color of law, violated a recognized federal or constitutional right. *See United States v. Lanier*, 520 U.S. 259, 264 (1997). Our review of publicly available information indicates that further investigation would be very unlikely to uncover sufficient evidence to prove that anyone willfully violated Mr. Willingham's constitutional right to due process of law in connection with his trial.

According to publicly available information, while Mr. Willingham was on death row, review of the forensic materials by a more experienced arson investigator uncovered scientific flaws in the arson investigators' analysis. His counsel provided the new scientific findings to the Governor and to the TBPP, requesting that Mr. Willingham be given clemency. The request for clemency was denied, and Mr. Willingham was executed in February 2004.

The courts have noted that clemency procedures rest within the ultimate discretion of executive power. *Faulder v. Texas Bd. of Pardons & Paroles*, 178 F.3d 343, 344 (5th Cir. 1999) (interpreting *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 284-85 (1998)). Thus, only "*minimal* procedural safeguards apply to clemency proceedings." *Id.* (emphasis in original). Based on the information available, the Department cannot prove that the clemency decision amounted to a denial of due process, much less that any denial of due process was undertaken willfully.

After Mr. Willingham's execution, the Texas Forensic Science Commission embarked on an examination of the case to assess whether Texas defendants were being sentenced to death based upon flawed forensics. Because Mr. Willingham had already been executed by the time of this examination, any allegations regarding obstruction of the Commission's investigation could not have deprived Mr. Willingham of any constitutional or federal rights.

QUESTIONS POSED BY REPRESENTATIVE QUIGLEY

Assault Weapons Ban

58. Mr. Attorney General, when the assault weapons ban was allowed to expire in 2004, the number of deaths among children and teens from firearms increased for the first time since it was enacted in 1994.

While I respect the 2nd amendment right of hunters, sportsmen and enthusiasts to exercise that right and own a gun, no one can make a reasonable argument that high capacity magazines, designed only to inflict mass casualties, is needed to do so.

Last year, I asked you here if the administration would pursue a reauthorization of the Assault weapon ban and return some sensibility to our shared effort to reduce violence and the loss of innocent life in our society. A year later, the question may be more relevant than ever.

So I would like to ask you again, is this administration willing to support restoring the ban on assault weapons or recently authored legislation to ban high capacity magazines?

Response:

The Department is focused on enforcing the laws that already prohibit criminals and other dangerous persons from acquiring or possessing firearms, and detecting, investigating and prosecuting persons who use firearms to commit crimes. We believe that this is the most effective approach to take in meeting our obligation to protect the public from gun-related violence.

No ATF Director

59. For over four and half years, ATF has been without a permanent director. During this time, thousands of Americans have been murdered with guns because criminals, domestic violence abusers, the mentally ill and drug abusers have taken advantage of insufficient enforcement of existing gun laws.

Furthermore, in the wake of the allegations surrounding Project Gunrunner along the U.S.-Mexico border, ATF's need for the leadership and accountability is more urgent than ever.

Do you support Special Agent Andrew Traver to head up the ATF? And wouldn't Traver's confirmation as Director of ATF enhance accountability department-wide and help ensure that gun trafficking along the Mexico border is monitored and reduced effectively?

Response:

The Department urges prompt Senate consideration of all Justice Department nominations, including the nomination of Andrew Traver to be Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. In the five years since Congress enacted legislation designating the ATF Director as subject to confirmation, the Senate has never confirmed a nominee to serve in this position. The confirmation of a Director would strengthen the agency's ability to carry out the tasks Congress has assigned to it.

Recent Police Officer Shootings

60. Attorney General Holder, the rapid escalation of lethal violence against law enforcement officers is of great concern to my constituents. Since January, 29 police officers have been gunned down. As you know, this is an increase in fatal police shootings of more than 50 percent over last year. Last month, you convened police chiefs from across the country to discuss potential solutions to this problem and launch a new Officer Safety Initiative that will include a focus on identifying repeat violent offenders and requiring officers to use bullet-proof vests. This response is a positive step but the initiative does not address a significant cause of these officers' deaths: the gaps in federal laws that make it easy for criminals to access guns. Of the 29 officers fatally shot this year, at least 20 were killed by individuals who were actually barred by federal law from possessing guns.

Shouldn't your department focus the attention of the Office Safety Initiative on the gaps in the background check system which make it so easy for dangerous criminals to get guns? Do you support broader use of the federal background check system? What else can we do and can the Department do to keep our law enforcement officers safe from gun violence?

Response:

The Attorney General is alarmed by the increase in on-duty shooting deaths of law enforcement officers and launched the Officer Safety Initiative to demonstrate the Department's continued commitment to working with State and local governments to stop these tragic events. The Attorney General supports and shares the President's commitment to exploring common sense ideas for keeping firearms out of the hands of criminals and those who are prohibited by law from having them. The federal background check system plays a key role in achieving that goal, and over the last 13 years it has been integral to quickly facilitating legitimate transfers, while at the same time denying firearm access to prohibited persons on more than 1 million occasions. Nevertheless, the effectiveness of the background check system depends upon having ready access to complete and accurate information about persons who are prohibited by state or federal law from receiving or possessing firearms. Accordingly, as a reflection of our commitment to both officer safety and public safety, the Department is focusing its efforts on improving the quantity and quality of the records available to the federal background check system.

Improving the information available to the background check system is an important first step, but the system cannot impact those firearms transfers taking place without system query. The fact that under certain circumstances purchasers can avoid the system altogether restricts our ability to keep guns out of the hands of dangerous persons.

Need for Background Checks for All

61. After the terrorist attacks of September 11, 2001, you wrote to the *Washington Post* about the need to close the loopholes in our gun background check system. You noted that "millions of firearms change hands every year through this back-door yet perfectly legal method, giving criminals and terrorists remarkably easy and undetectable access to weapons." You also wrote that "we can no longer allow the purchase of firearms through the Internet or a newspaper ad, at a gun show or a flea market, or in any other type of sale from an unlicensed seller, without any background check or other record of purchase. The stakes are too high." I strongly agree with these statements. As you know, private sellers can sell guns without a background check and private sales account for an estimated 40% of all U.S. gun sales.

Have your views changed on this matter or do you still support broad background checks? How are the department's public safety responsibilities impacted by the loophole in law that allows a person to buy a gun from a private seller with no background check?

Response:

The Attorney General's views have not changed. Moreover, whenever criminals or other persons prohibited by law from possessing firearms are able to acquire guns – from whatever source – it has an adverse effect on public safety.

The fact that under certain circumstances purchasers can avoid the system altogether restricts our ability to keep guns out of the hands of dangerous persons. The fact that prohibited purchasers can completely avoid the background check system altogether is a significant gap in our ability to keep guns out of the hands of dangerous persons. Any serious legislative attempt to improve the way the system works should also examine whether to extend the background check requirement to more firearms transfers.

Immigration

62. Under the Bush Administration, an Office of Legal Counsel ("OLC") memorandum concluding that "federal law did not preempt state police from arresting aliens on the basis of civil deportability." This conclusion reversed the Department's position

in several previous memoranda, including a 1996 OLC memorandum concluding that "state and local police lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability."

A. <u>Local Police</u>: The Arizona law aside, I am troubled by the trend of state and local police inserting themselves into the area of civil enforcement of immigration because it has the capacity to breed distrust between Hispanic residents and the police and send legal residents of Hispanic origin into the shadows, for fear of drawing attention to those friends and families who may be undocumented, and in doing so, lead to an increase in unreported crimes that detract from, rather than strengthen the quality of life in our communities.

Do you believe that making local policing agencies immigration enforcement deputies so to speak will impede law enforcement investigations and or decrease puhlic safety?

<u>Response:</u>

While setting immigration policy and enforcing immigration laws is a national responsibility, the federal government has long depended on state and local law enforcement agencies' cooperation in the enforcement of the federal immigration laws. That cooperation, however, must be consistent with and responsive to the policies and priorities set by federal officials who are charged with implementing and enforcing the immigration laws.

In addition to the concerns related to potential state or local interference with the immigration priorities and policies established by the federal government, the Department also believes that state or local law enforcement efforts that result in the violation of individuals' civil rights, breed fear and distrust in communities, impede law enforcement investigations, or decrease public safety also raise serious concerns for and may in specific cases require close examination or legal action by the Department, especially where there is evidence of unlawful discrimination or other civil rights abuses based on race or national origin. It should moreover be noted that the Department strongly values the use of community-oriented policing strategies as tools for promoting effective, respectful, and constitutional policing.

B. <u>More immigration judges needed</u>: While we've devoted increasing resources to immigration enforcement, appropriations for the immigration court system have not kept pace with the resources needed to handle the increasing caseload. I worry about the quality of decisions made by overburdened immigration judges.

I am also concerned by the long delays caused by lack of resources, especially for individuals in detention. As detention costs on average $100 per day per detainee and ICE currently detains more than 30,000 individuals per day, each week of detention costs taxpayers.

i. **I recognize that this problem long predates your tenure as Attorney General, but what can we do to help resolve this problem?**

Response:

The Department also recognizes the need for additional resources that will assist EOIR in its mission to adjudicate immigration cases fairly and expeditiously. As such, the President's FY 2012 budget request includes $329.8 million and 1,707 positions for EOIR, representing an increase of 125 positions, including 21 immigration judges, 10 Board of Immigration Appeals attorney positions, and the necessary support staff. This additional funding will allow EOIR to hire additional immigration judges, BIA attorneys, and other staff, to provide them with sufficient training and tools and to continue pursuing other improvement measures that will benefit the immigration court system and the parties who appear before EOIR.

ii. **Specifically, the American Bar Association has recommended that the DOJ's Executive Office for Immigration Review (EOIR) hire approximately 100 additional immigration judges and enough law clerks to provide one law clerk per judge. Do you agree with that recommendation?**

Response:

The Attorney General believes the President's FY 2012 budget will provide EOIR with the resources it needs to recruit, train, and equip an appropriate number of top-quality immigration judges and court staff in order to meet its mission goals. The President's FY 2012 budget would provide the funding to hire an additional 21 immigration judges and 21 judicial law clerks. Through EOIR's ongoing hiring efforts, the ratio of immigration judges to judicial law clerks has decreased from approximately one judicial law clerk for every 4 judges in past years, to approximately one judicial law clerk for every 2.3 judges anticipated in the fall of 2011.

C. **Granting immigration judges to review the custody of arriving asylum seekers: Currently noncitizens arriving in the United States who seek protection from persecution are held in jails until their applications for asylum have been adjudicated. This detention is often very traumatic for vulnerable individuals who have experienced torture, persecution, or rape in their home countries.**

Many have recommended that the department adopt a rule granting immigration judges the authority to review the custody of "arriving aliens" who enter the United States at a port of entry and seek asylum based upon a credible fear of persecution or torture in their home countries. This rule would promote due process and equal protection under the laws and would prevent the unnecessary detention of those seeking freedom from persecution and torture.

Has the Department commenced drafting rules that would allow immigration judges to review the custody of arriving asylum seekers?

If not, why does the Department believe that asylum seekers should not receive an individual review of detention by an immigration judge?

Response:

Currently, the Department is carefully reviewing this issue in response to a petition for rulemaking it received from the public.

On March 15, 2010, the National Immigrant Justice Center and other immigrant rights organizations submitted a petition to the Department. This petition requests amendment of EOIR's regulations to allow immigration judges to review DHS' custody of arriving alien asylum seekers.

Various Departmental components, including EOIR, the Office of Legal Policy and the Civil Division's Office of Immigration Litigation, have reviewed the petition and are collaborating to formulate a response. As DHS and the Department have overlapping but distinct responsibilities regarding the custody of aliens, the Department will coordinate with DHS before a final response is issued.

Following careful consideration, the Department will respond to the petitioners and provide a detailed explanation of the reasons for the response.

Finally, we note that DHS refers all arriving noncitizens who are subject to expedited removal and who indicate an intention to apply for asylum, express a fear of persecution or torture, or a fear of return to their countries for interviews by asylum officers in accordance with 8 C.F.R. 208.30 to determine whether the noncitizens have a credible fear of persecution or torture. Those determined not to have a credible fear can request a hearing with the Executive Office for Immigration Review. In addition, DHS can release on parole noncitizens arriving in the United States who establish a credible fear of persecution. DHS has issued guidelines, which took effect January 4, 2010, entitled *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*, covering these parole determinations.

Transparency/Accountability

63. **SELPA: Can you provide some insight into the protocol employed by DOJ in issuing an administrative clarifying opinion? More specifically, how long does the Department typically need to issue such an opinion?**

Response:

We assume that, by "administrative clarifying opinion," you are referring to a formal opinion by the Office of Legal Counsel (OLC). OLC has described its process for preparing a formal opinion in its "Best Practices" Memorandum (available at http://www.justice.gov/olc/pdf/olc-legal-advice-opinions.pdf). That process entails careful and

extensive legal research and analysis, and opinion drafting and review. OLC also typically solicits views from affected departments and agencies. While the process generally takes a considerable period of time, it is not possible to be more precise as to how long the process takes due to the substantial variation in opinion requests that OLC receives.

A. **I am aware that Department of Transportation has sought an opinion from your office regarding states anti pay to pay laws and highway contracting, an issue that affects my home state, in October of last year. As far as I am aware, no response has been issued by the Justice Department. Is it attributable to a lack of resources, non-priority status, or something else?**

Response:

As a general matter, the Department of Justice does not disclose pending legal questions the Office of Legal Counsel has been asked to consider, nor otherwise disclose ongoing OLC matters or analysis—a practice that ensures that Executive branch officers will not be deterred from asking OLC difficult or sensitive questions, and that encourages the candid and comprehensive submission to OLC of agency and component views on such questions. When OLC receives a request for advice, it follows a thorough process to ensure that it has all relevant input before providing the advice.

Environmental

64. **Prosecuting Spills: In 2007, the Justice Department settled with BP for $8 million in restitution and compensatory payments after BP allowed oil to spread through one of its pipelines into Prudhoe Bay. DOJ never pursued any felony charges.**

Is the Justice Department under your leadership committed to pursuing more serious fines under the Alternative Fines Act for "less serious spills" like the Prudhoe Bay spill?

Response:

In *United States v. BP Exploration (Alaska), Inc.*, the United States entered into a plea agreement in 2007 with BPXA, which the United States District Court for the District of Alaska accepted. The plea agreement required that BPXA pay a fine, authorized by the Alternative Fines Act, 18 U.S. 3571(d), of $12 million, $4 million in restitution to the State of Alaska, and $4 million in community service to the National Fish and Wildlife Foundation, for a total penalty package of $20 million. The federal government, with the State of Alaska, investigated the case for more than one-and-a-half years and ultimately concluded that a misdemeanor Clean Water Act charge was most appropriate. Although the oil did not reach Prudhoe Bay, the Department viewed the BP oil spill on the North Slope of Alaska as a significant spill. The size of the criminal fine, as well as the restitution and community service amounts, reflect our view of the seriousness of the spill. The U.S. Department of Justice is fully committed to pursuing fines

under the Alternative Fines Act that are appropriate given the facts and circumstances of each case.

65. Environmental Justice: You mention in your remarks that environmental justice is a key priority of this Administration, the concept that low-income and minority communities have the opportunity to enjoy the health and economic benefits of a clean environment. Can you elaborate on some of the outcomes the Justice Department has achieved to make that goal a reality?

Response:

Environmental justice is an important priority of this Administration. The federal commitment to this issue was highlighted at a September 2010 cabinet-level meeting of the Inter-Agency Working Group on Environmental Justice, attended by Attorney General Eric Holder, EPA Administrator Lisa Jackson, Council on Environmental Quality Chair Nancy Sutley, Interior Secretary Ken Salazar, Housing and Urban Development Secretary Shaun Donovan, and Transportation Secretary Ray LaHood, among others. It was the first time this group had met at this level in a decade.

Additionally, last December, the White House convened a forum on environmental justice attended by numerous cabinet officials, including Attorney General Eric Holder, environmental justice activists, and community representatives, among others. The Interagency Working Group on Environmental Justice has held several regional listening sessions as a follow up to the September Principals' meeting and the December White House forum, and plans to hold additional regional listening sessions over the course of 2011. The Department has actively participated in these interagency efforts, and will continue to do so.

Importantly, on August 4, 2011, the Department, the Environmental Protection Agency, and the White House Council on Environmental Quality announced an agreement and signed a "Memorandum of Understanding on Environmental Justice and Executive Order 12898." As part of this agreement, the Department and other federal agencies will maintain environmental justice strategies and provide the public with annual progress reports on their efforts. These efforts will help protect the health of those living in communities overburdened by pollution so they can thrive.

The Department of Justice seeks to apply environmental justice principles to its work, and is guided by the 1994 Executive Order on Environmental Justice (E.O. 12898) and the 1995 *Department of Justice Guidance Concerning Environmental Justice*. The Environment and Natural Resources Division (ENRD), in particular, has been exploring ways to integrate environmental justice considerations into the full range of work that it does. These efforts have included both elements of increased engagement and outreach, and efforts to achieve outcomes that more directly address the impacts that affect and concern communities.

To help enhance our understanding of community concerns, ENRD has met with community and environmental justice leaders, participated in public events, and visited

communities affected by pollution. The Department's outreach has also included engagement with representatives of business and industry.

The following recent cases illustrate how the Department has successfully incorporated environmental justice principles into our case work.

Last year, the Department and the Environmental Protection Agency (EPA), announced a Clean Water Act settlement with the City of Kansas City, Missouri. Under the settlement, Kansas City will make $2.5 billion in improvements over 25 years to its outdated and dilapidated sewer system. The settlement will improve public health and the environment throughout the city. It also includes three aspects of relief that are tailored to address the impacts of the violations on disproportionately affected communities. First, the settlement prioritizes sewer rehabilitation projects in the urban core. Second, the settlement requires the city to take early action to reduce overflows of untreated sewage into the Blue River, which runs through the urban core. Third, the settlement requires the city to spend $1.6 million to implement a voluntary sewer connection and septic tank closure program for income-qualified residents. All three aspects of the settlement were the product of community outreach. Representatives from the city and EPA met with community groups, organizers, and individuals to learn about local problems and needs. These meetings helped us shape the settlement to most effectively address the impacts on affected communities consistent with our commitment to environmental justice.

The Department and EPA also concluded a company-wide settlement in early 2010 with Saint-Gobain Containers, Inc., which seeks to specifically address impacts on communities downwind of the addressed facilities. Under the consent decree, the company, the nation's second-largest container glass manufacturer, agreed to install pollution control equipment at an estimated cost of $112 million to reduce emissions of nitrogen oxide (NOx), sulfur dioxide (SO2), and particulate matter (PM) by approximately 6,000 tons each year. NOx, SO2, and PM can trigger respiratory difficulties and asthma, and cause environmental harms such as acid rain, visibility impairments, and water quality impacts. The settlement covers fifteen plants. As part of the settlement, Saint-Gobain agreed to pay a $2.25 million civil penalty to resolve its alleged violations of the Clean Air Act's new source review regulations. Of the $2.25 million civil penalty, the company paid $1.15 million to the United States and $1.1 million to the ten states and two local regulatory agencies that joined the case. Saint-Gobain agreed to implement further pollution controls, including the installation of the first-ever selective catalytic reduction system at a container glass plant in the United States. Saint-Gobain will also install continuous emission monitoring systems at all of its glass plants.

In handling defensive cases, ENRD also has opportunities to seek input from interested communities, and use that input to ensure better outcomes. For example, *Barrio De Colores v. U.S. Customs and Border Protection* is an action brought under the National Environmental Policy Act by Barrio De Colores, an association of Hispanic residents in the City of Laredo, Texas. The association challenged the U.S. Customs and Border Protection's (CBP's) environmental assessment for removal and control of Carrizo cane within a 16.1 mile corridor along the Rio Grande River using herbicides, including aerial spraying by helicopter. The dense cane is an invasive species that obstructs the ability of CBP officers to patrol the river. Among other claims, Barrio De Colores alleged that CBP failed to adequately notify the public in both

English and Spanish of their right to participate in the environmental review process. As part of the settlement agreement disposing of the case, CBP agreed to discontinue aerial spraying in the 16.1 mile corridor and to limit a burn and herbicide method of removal to designated sites only, with public notice in local newspapers in English and Spanish. In addition, for any additional cane control and removal outside of the 16.1-mile corridor within CBP's Laredo Sector for the next five years, CBP agreed to hold a scoping meeting, provide a 45-day comment period on draft environmental analyses, and provide a Spanish version of the executive summary of any draft analysis. The agency also agreed to hold a meeting with Barrio De Colores to provide information about the project in English and Spanish. This meeting was held on July 7, 2010 in the Barrio De Colores neighborhood and was considered to be a success by both Barrio De Colores and CBP.

The Department is also committed to enforcement of Title VI of the Civil Rights Act and is working closely with the various agencies and particularly with EPA to ensure consistent enforcement of the law and meaningful investigations of Title VI complaints filed by communities. In furtherance of this work, the Civil Rights Division is leading the Environmental Justice Interagency Working Group committee on Title VI. The goal of the working group is to assist agencies in addressing environmental justice issues that arise in programs that receive federal financial assistance and to be a resource to connect federal agencies' civil rights enforcement responsibilities with their efforts to achieve environmental justice. The Civil Rights Division is utilizing its resources and authority to coordinate Title VI enforcement and provide technical assistance to the various federal agencies to ensure discriminatory health and environmental impacts are effectively addressed.

Additionally, the Department monitored disaster response efforts in the Gulf of Mexico after the Deepwater Horizon-oil spill to ensure that non-discrimination obligations were being met. The Title VI non-discrimination mandate requires equal language access for limited English proficient individuals. We worked with the government's response team to make sure critical information was transmitted to limited English proficient communities affected by the oil spill. We are also collaborating more generally with the Department of Homeland Security and other agencies to make sure their non-discrimination obligations, including language access, are met both in disaster planning and in disaster response.

Mortgage Fraud & Wall Street Prosecution

66. After the economic collapse, there have been some financial fraud prosecutions but no major Wall Street firm or senior leader of such a company has been prosecuted. Why is this?

Response:

The Department has devoted, and continues to devote, significant resources to the investigation of conduct at financial institutions across the country that may have contributed to the financial crisis. These investigations are complex and resource intensive, and involve numerous witnesses, including overseas witnesses, voluminous amounts of documents, and

complex accounting issues. Notwithstanding these challenges, the Department is committed to prosecuting wrongdoing by financial service firm executives where there is clear evidence of wrongdoing. For example, the recent successful conviction of Lee Bentley Farkas, the former Chairman of Taylor, Bean & Whitaker (one of the largest privately held mortgage lending companies in the United States in 2009), who was convicted for a $2.9 billion fraud scheme that contributed to the failure of Colonial Bank (one of the 25 largest U.S. banks in 2009), is indicative of the Department's efforts. Also, in June, Raj Rajaratnam was convicted of conspiracy and securities fraud crimes stemming from his involvement in the largest hedge fund insider trading scheme in history. Rajaratnam was the managing member of Galleon Management LLC, the general partner of Galleon Management L.P. and a portfolio manager for Galleon Technology Offshore Ltd. and certain accounts of Galleon Diversified Fund Ltd.

67. You mention in your remarks that last month the DOJ completed a nationwide mortgage fraud enforcement sweep involving more than 1,500 defendants. Can you elaborate on what the DOJ is doing to identify and prosecute mortgage fraud; and in your opinion, what is type of attempted mortgage fraud are low-income homeowners at the greatest risk of encountering?

Response:

Members of the Financial Fraud Enforcement Task Force, including the Justice Department, the Department of Housing and Urban Development, the Department of the Treasury, the Federal Trade Commission, federal regulators, state attorneys general, and others, are working together to examine mortgage fraud, mortgage servicing and other mortgage-related problems and to ensure that the full resources of the federal and state regulatory and enforcement authorities are brought to bear in addressing these issues with a coordinated response. To that end, the Task Force has established a Mortgage Fraud Working Group co-chaired by the Department's Civil Division and the United States Attorney for the Eastern District of California, and comprising of representatives from HUD, Treasury, the FDIC and other agencies. The primary purpose of the working group is to increase enforcement in the area of mortgage fraud through greater coordination among law enforcement agencies, to develop and share effective enforcement strategies and regulatory actions, and to engage in community outreach and training.

The United States Attorneys' Offices throughout the country continue to be successful in obtaining mortgage fraud convictions in cases impacting local communities. While many types of mortgage fraud impact low-income citizens, we are concerned that "mortgage rescue schemes" are targeting financially vulnerable homeowners with false promises of assistance.

Material Support Statute

68. Mr. Attorney General, some of my constituents have expressed to me their deep concern regarding FBI investigation and raids of several individuals and organizations associated with anti-war activism. It is my understanding that these

investigations have concerned alleged material support for groups listed as terrorist organizations. Although I am not in a position to judge whether these concerns are warranted, and I know it is the policy of the Justice Department not to comment on ongoing investigations, answers to the following questions may help shape understanding as to the background, purpose and methodology of these investigations.

A. What criteria does DOJ use to distinguish protected speech and association from coordinated speech with a listed terrorist organization?

Response:

The Department of Justice adheres to the principle that no one may lawfully be prosecuted for his or her political views, nor is anyone immune from prosecution because of his or her political views. The mere exercise of rights guaranteed under the First Amendment of the Constitution of the United States does not constitute material support, nor can investigative activity occur solely on the basis of First Amendment activities. As the Supreme Court has recognized, however, not all speech is protected under the First Amendment. In *Holder v. Humanitarian Law Project*, the Supreme Court determined that when that speech is "to, under the direction of, or in coordination with" a foreign terrorist organization it is not protected by the First Amendment and can be penalized under the material support statutes. The Court agreed with the Department that the government need only prove that the defendant knows of a foreign terrorist organization's connection to terrorism as part of a material support prosecution; it need not prove that the defendant has a specific intent to further a foreign terrorist organization's terrorist activities. The goal of a material support investigation is to ascertain whether the target is providing support and whether he or she has the requisite knowledge of the foreign terrorist organization's connection to terrorism.

B. How does the DOJ define "coordination" with terrorist organizations?

Response:

Pursuant to the Supreme Court's analysis in *Holder v. Humanitarian Law Project*, the Department of Justice distinguishes speech coordinated with a foreign terrorist organization with speech that is mere independent advocacy. Congress has determined that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." Accordingly, during the course of an investigation, the Department of Justice and the FBI would seek relevant facts necessary to ascertain whether the target's speech is coordinated or independent.

C. What procedural safeguards has the DOJ implemented to ensure the FBI does not use AEDPA for the purpose of conducting surveillance of lawful First Amendment activities?

Response:

The Department of Justice is committed to ensuring that all investigations, including investigations designed to protect the national security, are operationally effective and respectful of privacy and civil liberties interests. To that end, the Attorney General has issued investigative guidelines that govern the activities of the FBI. Those guidelines provide:

> All activities under these Guidelines must have a valid purpose consistent with these Guidelines, and must be carried out in conformity with the Constitution and all applicable statutes, executive orders, Department of Justice regulations and policies, and Attorney General Guidelines. These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. These Guidelines also do not authorize any conduct prohibited by the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

The Attorney General's Guidelines for Domestic FBI Operations at 13 (September 29, 2008).

The FBI has in turn issued its Domestic Investigations and Operations Guide, which states clearly that no investigative activity can be based solely on the exercise of First Amendment rights or on the race, ethnicity, national origin or religion of the subject, or on a combination of only those factors.

If electronic surveillance is to be used during an investigation of unlawful material support to terrorism, the government must demonstrate to the Foreign Intelligence Surveillance Court (FISC) or other Article III court that the requisites for such surveillance have been met. In order to authorize electronic surveillance pursuant to Title III, an Article III judge must find, *inter alia*, that the government has demonstrated probable cause to believe the material support statute has been, is being or is about to be violated. 18 U.S.C. §§ 2516(I)(q), 2518(3)(a). Similarly, the FISC (which is also comprised of Article III judges) must find that the government has demonstrated, *inter alia*, probable cause to believe the target is an agent of a foreign power. As to that determination, no United States person "may be considered . . . an agent of a foreign power solely on the basis of activities protected by the first amendment to the Constitution of the United States." 50 U.S.C. § 1805(a)(2)(A).

In addition to those specific safeguards that Congress has created for electronic surveillance, both the Department and the FBI have internal and external oversight to ensure that investigations – whether of material support for terrorism or otherwise – comply with the law. The National Security Division of the Department and the National Security Law Branch of the FBI's Office of General Counsel conduct regular reviews of national security investigations to ensure compliance with the law and with internal guidelines. The Department of Justice has an active Inspector General who conducts many reviews of various aspects of the FBI's national security program, and Congress conducts oversight through the Intelligence and Judiciary Committees in both the House of Representatives and the Senate. Finally, Executive Order 13462 requires the FBI to report to the President's Intelligence Oversight Board, with copies to the Director of National Intelligence and the Department, activities that may have been unlawful or contrary to executive order or presidential directive.

D. What factors determine when the DOJ will freeze the accounts of individuals who are subject to an investigation but who have not been indicted?

Response:

DOJ is not responsible for freezing the accounts of targeted individuals.

E. What are the DOJ's priorities for use of its investigative and prosecutorial resources for material support cases?

Response:

The Department is responsible for detecting and preventing terrorist attacks. The FBI conducts investigations to detect, obtain information about, prevent, and protect against federal crimes and threats to the national security. Investigative and prosecutorial resources with respect to material support cases – as with all terrorism cases – are prioritized based upon a number of factors, including the level of support to a particular group and the threat of harm that the group or individual poses to the United States.

QUESTIONS POSED BY REPRESENTATIVE DEUTCH

69. The Department of Transportation in a recent rulemaking noted the need for vigorous antitrust enforcement in the ongoing commercial and legal battles between several airlines and the legacy Global Distribution Systems such as Sabre and Travelport.

Response:

The Attorney General agrees that vigilant and appropriate antitrust enforcement is important to protect consumers and competition in the global distribution systems industry.

70. What is the appropriate role for the DOJ to play here in the form of an investigation or enforcement action challenging unlawful monopolies under the Sherman Act? Can you tell me whether the DOJ is actively monitoring this issue? Without revealing any nonpublic matters, can you tell us whether you are considering any enforcement actions under Section 2 of the Sherman Act to address potential monopolization conduct in the market?

Response:

The Department of Justice is committed to protecting competition in the global distribution system industry. The Department is vigilantly evaluating on a case-by-case basis dominant firm unilateral conduct when it believes there may be a potential violation of the Sherman Act, and the Department is prepared to bring a Section 2 case if warranted by the facts. While the Attorney General cannot comment on an active investigation, the Antitrust Division is investigating the possibility of anticompetitive practices in the global distribution systems industry and will take appropriate enforcement action it is determined that the antitrust laws have been violated.