U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

April 13, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed additional responses to questions for the record, which were posed to Attorney General Alberto Gonzales following his appearance before the Committee on January 18, 2007. The hearing concerned Department of Justice Oversight. This letter supplements our submissions to the Committee, dated April 5, 2007, and April 12, 2007. The Department is working expeditiously to provide the remaining responses, and we will forward them to the Committee as soon as possible.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, they have no objection to submission of this letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance on other matters.

Sincerely,

Richard A. Hertling

Richard A. Hertling
Acting Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

<u>Department of Justice Responses to</u>
<u>Questions for the Record posed to</u>
<u>Attorney General Alberto Gonzales</u>
<u>Senate Judiciary Committee</u>
<u>Oversight Hearing January 18, 2007</u>
(Part 3)

Leahy 9 **I am particularly interested in the report required by Section 126 of the PATRIOT Act Reauthorization Bill, concerning the Department's data mining activities and the impact that these programs have had on Americans' privacy and civil liberties. This report is due in March. Will the Department timely produce this report?**

<u>ANSWER:</u> The Department of Justice is working diligently to ensure that this report is completed and transmitted to Congress as expeditiously as possible.

Leahy 24 **How many subpoenas has the Department issued to the press in the last six years?**

<u>ANSWER:</u> Since January 1, 2001, the Attorney General, pursuant to 28 C.F.R. § 50.10, has authorized the issuance of subpoenas to members of the media in approximately 65 matters. This includes witness subpoenas and subpoenas for documents, film footage, and other records. It is worth noting, however, that only one of the subpoenas issued sought confidential source information. In addition, a number of the subpoenas were issued in the context of an agreement between the Department and the media organization in question, whereby the organization agrees in advance to provide the material upon the issuance of a subpoena. In addition, over the past six years, the Department has approved three search warrants for materials related to the news-gathering process pursuant to the Privacy Protection Act, 42 U.S.C. § 2000aa, et seq.

Leahy 37 **Press reports say that seven or more United States Attorneys have recently announced their resignations, and these reports suggest that you and the Administration have asked them to step down. These include well-regarded prosecutors like Kevin Ryan in San Francisco, who is leading investigations into corporate backdating of employee stock options, and Carole Lam in San Diego, who led the successful Duke Cunningham corruption investigation. These U.S. Attorneys are being replaced under a new provision inserted by the Republican Congress into the PATRIOT Act reauthorization, which allows you to name interim U.S. Attorneys, without any Congressional input or confirmation, who will serve indefinitely. Why have you asked such a large and unprecedented number of U.S. Attorneys – appointed by this Administration and well-regarded in their communities – to step down?**

ANSWER: The Department of Justice is grateful for the service of these United States Attorneys, each of whom completed their four-year terms. Like all Presidential appointees, however, United States Attorneys serve at the pleasure of the President. The Deputy Attorney General testified before you on February 6, 2007 and provided a private briefing for members of the Committee regarding the reasons that resignations were sought for 8 of 93 U.S. Attorneys on February 14, 2007. On March 6, 2007, Principal Associate Deputy Attorney General William Moschella also testified before the House Judiciary Committee regarding the reasons for these personnel decisions.

In addition, the Justice Department provided Congress with more than 3,000 pages of emails and other documents so that Congress and the American people understand the process behind the decision to replace the 8 U.S. Attorneys. The Department has voluntarily agreed to make Department officials available for "on the record" interviews with the Congress as well as for hearing testimony. And the Attorney General is scheduled to testify on this matter following the Easter recess.

Leahy 38 **Isn't there a threat to the independence of U.S. Attorneys when groups of them are fired en mass and replaced indefinitely by people of your choosing without any Senate input?**

ANSWER: Respectfully, we do not accept the premise of the question. As the Attorney General testified, for every vacancy, the Department will work with the appropriate elected officials from that State to identify individuals for nomination. It is in the Department's and the country's best interests to have a U.S. Attorney in every district who has been appointed by the President and confirmed by the Senate, and the Attorney General is committed to working with the Senate toward that end.

Leahy 39 **Wouldn't a system where interim U.S. Attorneys were appointed by the federal district court – which is how it used to be done – help ensure that qualified and independent prosecutors held the job until a permanent appointee could be confirmed?**

ANSWER: In the vast majority of vacancies, district courts have appointed the person recommended by the Department of Justice because those courts recognized that a U.S. Attorney must have the confidence of the Attorney General in order to function effectively.

Leahy 42 **If the study shows some correlation between funding cuts to the COPS program, or the resulting reduction in the number of police officers on the streets, and increased levels of crime, are you prepared to recommend an increase in funding to the program?**

ANSWER: This study is not looking at the correlation between COPS grants and crime rates. It is reviewing a multitude of factors which contribute to the crime rate. Additionally, the Department has only recently completed its city visits. While the UCR's 2005 violent crime rate is slightly higher than the 2004 rate, it is still lower than any other year since 1977. The Department is aware that certain cities have seen increases in violent crime rates, many others have seen decreases. In the spring, with the benefit of the information received during these meetings, the Attorney General will announce additional steps the Department of Justice will take to assist state and local law enforcement to address the violent crime issues in their respective communities.

Leahy 43 **Last year, the Bush Administration agreed to pay $2 million to settle a case that had been brought by Oregon lawyer Brandon Mayfield. Mr. Mayfield was improperly jailed for two weeks in 2004 as a material witness, in connection with the Madrid train bombing. As part of the settlement, the government made a formal apology to Mr. Mayfield and his family for the suffering caused by his mistaken arrest. After the 9/11 attacks, the Justice Department began using the material witness law not to secure testimony from possible witnesses, but rather to lock up possible suspects in counter-terrorism investigations without charge until there is enough evidence to indict. This appears to be what happened in the Mayfield case. Is that correct?**

ANSWER: No. Allow me respectfully to correct your statement about the Department's use of material witness warrants after the 9/11 attacks. Every person detained as a material witness as part of the 9/11 investigation was found by a federal judge to have information material to the grand jury's investigation. An individual is detained under the material witness statute, 18 U.S.C. § 3144, only when a federal judge concludes that (1) his testimony is "material in a criminal proceeding," (2) it may become impracticable to secure his presence by subpoena, and (3) he meets criteria for detention under the Bail Reform Act, 18 U.S.C. § 3142. Each and every material witness is entitled by statute to counsel. Counsel will be appointed if the material witness cannot afford to pay for a lawyer. *See* 18 U.S.C. § 3006A(a)(1)(G). Once the warrant is issued and the witness is arrested, a *court* employs the standards in the Bail Reform Act, 18 U.S.C. § 3142, to decide whether to detain the witness pending his or her testimony. The material witness is entitled to a speedy detention hearing before the court at which he or she is represented by counsel, can present evidence, and can cross-examine government witnesses, see 18 U.S.C. § 3142(f), and the government must establish that "no condition or combination of conditions will reasonably assure the appearance of the person as required." 18 U.S.C. § 3142(e). Moreover, under Federal Rule of Criminal Procedure 46(h), a court must supervise the detention of material witnesses to eliminate unnecessary detention, and an attorney for the government must report biweekly to the court, listing each material witness held in custody for more than 10 days, and explaining why the witness should not be released. In short, there are numerous judicial safeguards built into the long-established practice of detaining material witnesses pursuant to a warrant. See *United States v. Awadallah*, 349 F.3d 42, 62 (2d Cir. 2003) (the material witness statute and related rules “require close institutional attention to the propriety and duration of detentions”).

You should also be aware that in response to complaints and allegations that the DOJ had abused material witness warrants made in 2005 by the American Civil Liberties Union and Human Rights Watch, the Department's Office of Professional Responsibility (OPR) opened an inquiry concerning 13 separate individuals and one group of 8 individuals allegedly detained pursuant to material witness warrants and detailed in reports by these groups. The Department's Inspector General recently reported that the OPR investigation "concluded that the material witness statue was not misused in any of the cases it reviewed."

The decision to arrest Mr. Mayfield on a material witness warrant on 5/6/04 was made to secure his testimony and was based upon probable cause to believe that Mr. Mayfield had testimony material to the investigation of the 3/11/04 Madrid train bombings (primarily because his fingerprint was matched, albeit erroneously, to evidence found in Madrid and connected to the bombing) and that it might have become impracticable to secure his testimony by subpoena. In the days leading up to the decision to seek the material witness warrant, media reporting on the investigation was believed to be imminent, and there was significant concern about the risk of flight by Mr. Mayfield once the story broke. On Friday, 5/7/04, the day after his arrest, U.S. District Court Judge Robert E. Jones advised Mr. Mayfield that his deposition could begin at 1:30 p.m. that day, Mr. Mayfield could be released for the weekend with electronic monitoring, and the deposition could resume on the morning of 5/10/04. Mr. Mayfield declined to be deposed on that date and, as a result, he remained incarcerated.

Leahy 51 **In December written testimony to this Committee, FBI Director Mueller called public corruption the FBI’s top criminal investigative priority. However, a September 2005 report by the Department of Justice Office of the Inspector General found that, from 2000 to 2004, there was an overall reduction in public corruption matters handled by the FBI. The report also found declines in resources dedicated to investigating public corruption, in corruption cases initiated, and in cases forwarded to U.S. Attorney’s offices. What has the Department of Justice done since the Inspector General’s report came out to ensure that combating corruption gets the resources and attention it needs?**

ANSWER: In May 2002, Director Mueller designated public corruption as the top criminal priority, and overall as the fourth investigative priority of the FBI. Since then, SA resources expended to address the public corruption program have increased markedly, with a 40% increase occurring from Fiscal Year (FY) 2004 to FY 2006. In FY 2004, 434 SAs addressed public corruption; in FY 2005, the number of SAs who worked public corruption increased to 528; and in FY 2006, 606 SAs addressed public corruption. The increase in the public corruption program clearly demonstrates the FBI's commitment to addressing public corruption. The 40% increase in SAs resulted in an increase in statistical accomplishments in the public corruption program, as follows:

Category	FY 2004	FY 2005	FY 2006	% increase from 2004 to 2006
# of Agents	434	528	606	40%
Pending Cases	1854	2118	2233	20%
Informations/Indictments	785	890	954	22%
Convictions	595	759	800	34%

In addition, over $300 million in restitution was obtained as a result of public corruption cases adjudicated in FY 2006.

This significant increase in statistical accomplishments is attributable to the dedication of more public corruption resources in the field to address myriad public corruption crime problems, including judicial, executive, legislative, law enforcement, municipal, regulatory, and prison corruption, that affect every FBI jurisdiction in the United States. They are also attributable to the FBI's focus on specific crime problems, such as the Hurricane Fraud Initiative, International Contract Corruption Initiative (with current emphasis on the Middle East), Southwest Border Corruption Initiative, Campaign Finance and Ballot Fraud Initiative, Capital Cities Initiative (with emphasis on state-level legislative corruption), and the Foreign Corrupt

Leahy 52 **Senator Pryor and I have introduced anti-corruption legislation, S. 118, which would extend the statute of limitations for the most serious corruption offenses to eight years, would allow the important offense of federal program bribery to be used as a predicate for court-authorized wiretapping and RICO charges, and would provide additional resources for corruption investigators and prosecutors. All of these measures would help federal agents and prosecutors to more effectively target corruption. (a) Would you support passage of this legislation which would benefit your corruption agents and prosecutors?**

ANSWER: We support legislation that would enhance our ability to combat public corruption, and S. 118 contains several provisions that would assist investigators and prosecutors in this effort. We welcome the opportunity to work with your Committee on anti-corruption legislation that would provide additional tools for investigators and fill gaps in existing corruption laws.

Leahy 60 **The Department of Justice recently disclosed records pertaining to its efforts to prosecute those Americans outside of military jurisdiction who have committed crimes in abusing military detainees in Iraq and Afghanistan. According to these records, to date, at least 18 cases have been referred to the Department for investigation and prosecution, but apparently, no charges have been**

brought in any case. So far, the Department has declined to prosecute nine of these cases, and nine others remain pending after more than a year of investigation. Do you anticipate charges being returned in any of these cases?

ANSWER: The Department has brought charges and obtained a conviction against David Passaro in the Eastern District of North Carolina. With respect to the referrals pending in the Eastern District of Virginia, we expect that the career prosecutors investigating those allegations will bring charges if the available evidence establishes guilt of a federal crime beyond a reasonable doubt.

Leahy 61 **What is the timeframe for prosecutive decisions to be made on the nine remaining cases?**

ANSWER: There is no time frame. The career prosecutors assigned to the referrals will have as much time as they need to decide whether charges are warranted.

Leahy 62 **Why has the Department so far been unsuccessful in prosecuting these cases?**

ANSWER: The Department has brought charges and obtained a conviction against David Passaro in the Eastern District of North Carolina. The judge in that case sentenced Passaro to more than eight years in prison. The Department considers that a success. Justice is also served, of course, when a prosecutor declines to bring a case because he or she concludes that there is insufficient evidence to bring criminal charges. It would not be appropriate to charge someone with a crime knowing that the evidence is insufficient or, worse, knowing that the suspect is innocent.

The investigation and prosecution of these cases would be difficult under the best of circumstances. Even to the extent that an allegation of abuse is facially credible, most of the alleged conduct occurred outside of the United States, and most if not all of the evidence is overseas. As part of our investigation, we have interviewed scores of civilian and military witnesses in the United States and in countries in the Middle East. One prosecutor traveled to Iraq to assist in the interview of witnesses still being held in military custody outside of Baghdad, several miles outside of the Green Zone.

In many cases, the alleged Iraqi victims could not be identified or located, and in some cases, they were no longer in U.S. custody. In one instance, the alleged victims were citizens of another Middle Eastern country, and despite our repeated requests, that country has denied our requests to interview the victims. Two prosecutors had obtained visas for that country and were prepared to travel there to conduct the interviews before learning they would not be given access to the alleged victims.

There are also delays inherent in pursuing those cases that involve both military and civilian subjects and/or classified information. In many cases, prosecutors had to wait for the military prosecutions to conclude to complete our investigations. Prosecutors had to wait in some instances to determine whether to decline a case in order to gain access to military defendants who might be witnesses in these matters.

Leahy 63 **Is the Department fully committed to prosecuting those responsible for abuse of detainees, and if so, what is the Department doing to demonstrate this commitment?**

ANSWER: Yes. The Department is committed and has demonstrated that commitment by pursuing these matters in the manner described in my answer to question 62, above, and by prosecuting the Passaro case.

Leahy 72 **During the hearing, you also stated that the Department "negotiated" this order with the FISC for two years.**
(a) Please state when the Department first filed any FISA application(s) related to the TSP, and when the Department filed the FISA application(s) that led to the FISC's order(s) on January 10, 2007.

ANSWER: The Attorney General did not use the term "negotiate" to describe the nature of the interaction of the Department of Justice and the FISC, nor did he suggest that the interaction took two years. Further details on this matter, including the dates of filing of applications, have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

Leahy 76 **Please state if the Department submitted any other materials, in documentary or oral form, to the FISC, other than a FISA application and affidavit, either as part of its "negotiations" with the FISC or in seeking approval for the January 10, 2007 orders?**

ANSWER: The Attorney General did not use the term "negotiate" to describe the nature of the interaction of the Department of Justice and the FISC on this matter. These highly classified court submissions have been made available to the Intelligence Committees and to the Chair and Ranking Members of both Judiciary Committees for review in the appropriate setting.

Leahy 90 **As you know, under U.S. law, the FBI is the federal agency charged with investigating U.S. citizens and counter-terrorism activities in this country, and domestic intelligence-gathering by the military and CIA has been heavily restricted by the Congress. Has the FBI been involved in the domestic investigations conducted by the DoD and CIA and if so, please state what role the FBI played in these matters? If not, please explain why the FBI is not involved in these domestic investigations?**

ANSWER: There are authorities that permit CIA and DoD conduct investigations within the United States, including the National Security Act of 1947 (as amended) and Executive Order (E.O.) 12333 (as amended). E.O. 12333 expressly provides that the CIA and DoD shall each have responsibilities concerning "counterintelligence" activities – a term that is defined to encompass "activities conducted to protect against . . . international terrorist activities." It also authorizes these agencies to conduct counterintelligence activities within the United States under certain circumstances in coordination with the FBI. See, e.g., E.O. 12333 section 1.11(d); id. at 1.8(c). We believe the CIA and DoD have properly coordinated their domestic activities with the FBI as required by E.O. 12333.

Leahy 92 **Under Section 118 of the PATRIOT Act reauthorization bill, you are required to report to Congress on the Department's use of national security letters in April of each year. Will you timely submit this important report to Congress?**

ANSWER: We are making every effort to ensure that we are providing information to the Congress consistent with Section 118. As noted in our first report, we have concerns that the statistics that we report contain some inaccuracies. In addition to the explanation for those inaccuracies provided in our initial report (primarily that despite the best efforts of FBI personnel to provide accurate numbers, some totals may reflect circumstances in which one person was counted multiple times), we have subsequently learned that human errors have also occurred, as noted in the recent report issued by the DOJ Inspector General. One of the Inspector General's findings was that several factors concerning the manner in which NSLs are tracked have resulted in inaccuracies in the numbers reported to Congress in recent semiannual reports. As noted in the Department's March 5, 2007 letter to the Committee, in response to the Inspector General's findings and recommendations, the FBI is taking steps to correct the identified deficiencies in its tracking of NSLs, and to develop more accurate information concerning the use of NSLs during periods of past reporting. As soon as possible following the completion of this process, the Department will provide the Committee with corrections to its recent reports, and with a report covering the period July 1 to December 31, 2006.

Leahy 93 **Recently, Deputy Attorney General Paul McNulty announced that the Department is expanding its ONE-DoJ program – a massive data base that**

contains millions of sensitive investigative files belonging to the FBI, DEA and other federal agencies – so that local and state law enforcement officials can access this information. Under this program, local authorities will be able to access sensitive investigative information about Americans who were never even charged with a crime, simply because they may have had some contact with the FBI or DEA. What steps is the Department taking to protect the privacy and constitutional rights of countless innocent Americans who have been caught-up in this data base?

ANSWER: OneDOJ is not a database, it is a concept that envisions a broader exchange of existing criminal investigative data among DOJ components and law enforcement partners. The overarching strategy behind OneDOJ is the Law Enforcement Information Sharing Program (LEISP) published in 2005. Through LEISP, DOJ has identified a number of priority projects, like the Regional Data Exchange System (R-DEx). R-DEx was developed for exchanging existing open and closed case information with federal, state, local and tribal law enforcement partners. LEISP and OneDOJ contribute to the Information Sharing Environment (ISE) as mandated by the Intelligence Reform and Terrorism Prevention Act of 2004.

OneDOJ and its collaborative exchange capabilities via R-DEx do not adversely impact the rights of individuals. Law enforcement agencies have always been able to share information with other law enforcement agencies as appropriate and according to the law. R-DEx as a solution facilitates this sharing and makes it more efficient by consolidating the existing criminal investigative data from five law enforcement components into a repository designed specifically for controlled and audited exchange. The use of data by investigators does not change. If an investigator or analyst determines that the information developed as a result of a query is relevant to an investigation, a request can be made to the respective agency that contributed the information for express permission to use the information to assist with that investigation.

The R-DEx system is maintained for the purpose of ensuring that Department of Justice criminal law enforcement information is available for trusted users at all levels of government so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, and protect the national security. R-DEx furthers this purpose by consolidating certain law enforcement information from other Department of Justice records systems in order that it may more readily be available for sharing with other trusted law enforcement entities. R-DEx provides access to and analysis of unclassified criminal law enforcement information collected and produced by the following DOJ components: Federal Bureau of Investigation (FBI), Federal Bureau of Prisons (BOP), United States Marshals Service (USMS), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Drug Enforcement Administration (DEA). The system serves the analytical needs of Federal and local investigators who are attempting to 'connect the dots' between common crimes in multiple jurisdictions that may indicate a larger criminal enterprise.

In addition, the repository also temporarily includes criminal law enforcement information from certain state and local law enforcement entities in the St. Louis, Missouri region that was previously submitted to the FBI as part of a legacy technological relationship between those entities and the FBI. This information is expected to be part of the R-DEx system for only the next twelve to eighteen months, after which it will be maintained independently by the state and local entities.

The information in R-DEx has already been lawfully collected as part of DOJ law enforcement activities. This is not random intelligence data, but rather investigative data based on cases of suspected criminal activity. Manual processes and reviews that have been in existence for many years will continue to be utilized. The R-DEx solution only assists in disseminating the information among the DOJ components and to other trusted law enforcement agencies for the purpose of improving the enforcement of U.S. laws. R-DEx does not involve the collection or storage of new data.

Each DOJ component that contributes records to R-DEx is responsible for auditing access by other agencies in order to ensure appropriate use of the information. Each participating DOJ component reviews its own use of the R-DEx solution and takes action to address any misuse.

DOJ conducted a Privacy Impact Assessment (PIA) of R-DEx in accordance with Section 208 of the E-Government Act of 2002. This PIA discusses the privacy implications of R-DEx.

Leahy 103 **In December 2006, the University of Michigan released a national survey, called "Monitoring the Future" – the largest and most in-depth survey of youth drug use in the nation measuring drug, alcohol and cigarette use and related attitudes among teenagers. The study revealed, among other things, that there was a 30 percent increase in the use of the prescription drug OxyContin® last year. What actions has the Department taken to address the growing use of prescription drugs like OxyContin® among American teens.**

ANSWER: DOJ is concerned about the abuse of OxyContin® by American teens. In August 2005, DEA launched its teen website www.justthinktwice.com, which provides teens with straightforward and "real-life" information on drugs of abuse, including a special segment on OxyContin®. This segment includes a great deal of information for teens about the dangers of OxyContin® and gives them the opportunity to explore stories of real teens who have become addicted to the drug or died as a result of its use.

The OxyContin® segment includes valuable links to a video produced by young people as part of the Appalachian Media Institute in Winesburg, Kentucky, called "Because of OxyContin®." It also links to the OxyContin® public service announcements produced by the Commonwealth of Massachusetts Department of Public Health. Additionally, there are stories of real people and the impact that OxyContin® has had on their lives. Specifically, the site links to another website called www.oxyabusekills.com and to a story about Ryan Curry which appeared in Scholastic Magazine. The DEA adds information to the teen website regularly and will soon be updating the site to include information on all of the prescription drugs and over-the-counter drugs abused by young people.

The DEA's goal is to reduce the diversion and abuse of OxyContin® while ensuring a sufficient supply exists to meet legitimate medical needs. The DEA continues to aggressively address OxyContin® diversion and abuse specifically through a comprehensive OxyContin® National Action Plan. The OxyContin® National Action Plan focuses enforcement and regulatory investigations on key points of OxyContin® diversion, such as unscrupulous and/or unethical medical professionals, forged and fraudulent prescriptions, pharmacy theft, and "doctor shoppers."

The DEA has also met with the Federation of State Medical Boards to encourage them to develop educational programs concerning the prescribing of controlled substances, especially high-dose opioids.

Since implementing the OxyContin® National Action Plan in April 2001, the DEA has initiated 970 OxyContin® (both brand name and generic) investigations and made 912 OxyContin-related arrests.

Leahy 104 **During the hearing, you pledged to "preserve legitimate access to medications over the Internet while preventing online drug dealers from using cyberspace as a haven for drug trafficking." The Michigan study underscores the critical need for education and awareness about the dangers of prescription drug abuse. What specific steps have you taken to ensure that teenagers are getting the message that legal prescription drugs, while safe when used properly, are life threatening when abused?**

ANSWER: The use of prescription drugs by teens for non-medical purposes is a very significant problem and is a major concern of DOJ and the DEA. The DEA's website www.justthinktwice.com is aimed at teens. It contains a wealth of information about the dangers of prescription drugs in various segments of the site. There are many stories of young people who have suffered the effects of taking prescription drugs for non-medical uses, including stories of young people who have died from these drugs. There are in-depth stories about Ryan Haight and Jason Surks, two young men who ordered pharmaceuticals over the Internet and died as a result.

In addition, through the Justthinktwice website, teens can access stories of young people who died from the abuse of prescription drugs. Another site, www.vigilforlostpromise.com, was created as part of the national candlelight vigil held last June in memory of all those who died because of drugs. Entitled, "A Vigil for Lost Promise: Remembering Those Who Have Died from Drugs," this vigil was held to support the families and friends of those lost to drugs and to educate America's children about the very real consequences of drug abuse.

Eight families who have suffered the loss of a relative to drug use joined the DEA, the National Institute on Drug Abuse (NIDA), the Community Anti-Drug Coalitions of America (CADCA), the Partnership for a Drug Free America, and other drug prevention groups in planning the Vigil for Lost Promise. During the evening's program, brave family members shared their stories as a way to honor their loved ones and to encourage others to make the right decision for their future. This memorial and educational effort continues through this web site. These stories were contributed by parents who had lost children to drugs, including pharmaceuticals.

Leahy 105 **As online pharmacies multiply, counterfeit drugs are becoming an increasingly big problem. According to the World Health Organization, more than 10 percent of the global medicines market is currently counterfeit. Are you in favor of legislation that would require online pharmacies to be certified or accredited so consumers have a means of recognizing which online pharmacies are legitimate?**

ANSWER: The Department of Justice is concerned with the proliferation of websites that offer pharmaceutical controlled substances for sale illicitly; that is, in a manner contrary to the requirements of the Controlled Substances Act (CSA). DOJ is aggressively investigating organizations involved in the illicit sale of pharmaceutical controlled drugs over the Internet using innovative law enforcement techniques to disrupt and dismantle Internet trafficking organizations.

That said, the CSA was passed in 1970, many years before the development and widespread use of the Internet. The evolution of this technology has created a haven for individuals to operate rogue Internet pharmacies under the veil of anonymity provided by cyberspace. Additional clarification relating to the sale of controlled substances over the Internet would not only allow us to more readily identify legitimate online pharmacies and persons operating and promoting them, but it would also assist in gathering information pointing to abuse patterns. Such clarification would also help us investigate drug traffickers hiding behind the facade of an otherwise legitimate practice.

Additionally, there exists no statutory definition of a valid "doctor/patient" relationship. Finally, the penalties associated with the illegal sale of Schedule III-V substances, which are those most commonly sold controlled substances over the Internet, are not as significant as may be warranted.

QUESTIONS FROM SENATOR SPECTER

Specter 107 **Does DOJ have the expertise and the resources necessary to counter this trend? If so, how are these resources being dispatched to help the U.S. Attorney's Office and other law enforcement agencies?**

ANSWER: There are many factors that contribute to the rise of violent crime, , including familial and cultural factors, are Department of Justice.

Federal prosecutors continue to focus resources on the most serious violent offenders, taking them off the streets and putting them behind bars where they cannot re-offend. The Administration created Project Safe Neighborhood (PSN), a cooperative effort between federal, state, and local law enforcement agencies and prosecutors to reduce gun crime. Since its inception in 2001, the Administration has committed more than $1.6 billion to hire more than 200 federal prosecutors to prosecute gun crime, make grants available to hire more than 500 new state and local gun crime prosecutors, and train more than 19,000 law enforcement officers across the nation to develop effective prevention and deterrence efforts to reduce gun violence in our communities.

In FY 2006, the Department prosecuted 10,425 federal firearms cases against 12,479 defendants, over a 65% increase in case filings since the inception of PSN. In 2006, the conviction rate for firearms defendants was 92% – the highest it has ever been. The percentage of those defendants sentenced to prison – nearly 94% – is also a record high. Over 50% of the defendants sentenced to prison received sentences of more than five years and nearly 75% received sentences of more than three years.

In FY 2006, state and local partners received $40 million in PSN grants. For FY 2007, the President requested $58.4 million in PSN state and local grant funding to prosecute criminal misuse of firearms and illegal gang activity.

Specter 112 **Have any of these grant programs designed to address youth violence received PART scores? How do they rank in terms of effectiveness? Are you aware of other measures of effectiveness – cost based or otherwise – that might be useful to Congress in evaluating these grant programs?**

ANSWER: The Weed and Seed program received PART assessments in 2002 and 2004. In 2002, the program received a PART score of 42 and was rated as Results Not Demonstrated. A rating of Results Not Demonstrated indicates a program has not been able to develop acceptable performance goals or collect data to determine whether it is performing. The Community Capacity Development Office (CCDO), which oversees the Weed and Seed program, has taken a number of actions to improve performance of the program. In 2004, the program received a PART score of 62 and was rated as Adequate. CCDO continues to take steps to improve program performance. The most recent assessment is available on the ExpectMore.gov website.

Many programs of the Office of Juvenile Justice and Delinquency Prevention programs received a PART assessment in 2006, however the assessment did not specifically address the Gang Reduction Program.

Performance measures have been established for all of the programs listed in question 111; however, these measures are relatively new and have yet to produce significant data.

Specter 113 **What challenges has the Department of Justice faced in awarding grants under these programs? What might we in Congress do to improve the grant programs?**

ANSWER: The Department works in partnership with the justice community to identify the most pressing challenges confronting the justice system today. We provide state-of-the art knowledge, information sharing, training, coordination, as well as innovative strategies to assist the criminal justice community. To address emerging trends in crime and other justice issues, the Department is challenged with providing state, local and tribal governments with increased flexibility in using grant funds to best meet the unique needs of their communities.

The elimination of earmarks in funding for state and local assistance would greatly improve the Department's ability to effectively operate grant programs. There were 1,300 earmarks totaling over $500 million in the FY 2006 Appropriations Act. Eliminating these would allow us to more effectively target assistance to areas with the greatest need and allow for adjustments in funding priorities in response to changes and emerging trends in crime and justice issues.

While we consistently keep state and local stakeholders apprised of our programs, there is always room for improvement. The Department has placed a high priority on keeping Congress informed about grant programs and other resources. State and local criminal justice professionals can look to their Congressional representatives to learn of relevant federal activity. Members of Congress can play a valuable role in informing their constituents.

Specter 145 **Tell me how important the Federal Prison Industries program is to the Bureau of Prisons. What are the current benefits of the program?**

ANSWER: The Federal Prison Industries (FPI) program is one of the most critical components of the Department's efforts to prepare inmates to successfully reenter society. The goal of the FPI program is to provide inmates with job skills training and work experience, thereby reducing recidivism and undesirable inmate idleness. The Bureau of Prisons (BOP) focuses the FPI program within its higher security institutions -- those that generally have the most serious offenders. In fact, 76 percent of inmates working in the FPI program have been convicted of drug trafficking, weapons offenses, or violent offenses. The FPI program provides a constructive industrial work experience for offenders, rendering sound job skills and positive work habits to inmates.

Research has demonstrated that inmates who work in FPI are 24 percent less likely to commit crimes and 14 percent more likely to be employed for as long as 12 years after release, when compared to similar inmates who did not have FPI experience. Indeed, the FPI program provides the greatest benefit to minorities, who are often at the greatest risk for recidivism. These research findings have been favorably reviewed by nationally respected social scientists and economists.

Research has also shown that, when compared to similar inmates without FPI experience, inmates in the FPI program are substantially less likely to violate prison rules, despite the extensive criminal histories that are common to these individuals. Even before they are released from prison, it is apparent to prison staff that inmates who work in the FPI program have made substantial adjustments in their thinking and their behavior.

The FPI program is unique among inmate programs in that, by statute, it receives no appropriated funding for its operations. Earnings from FPI's industrial program are used for all operating costs, including the purchase of raw materials and equipment, staff salaries and benefits, and compensation to inmates performing the work. In addition, the FPI program pays for equipment and other start-up costs associated with activating new prison factories. The FPI program's purpose is not to be a business that seeks a profit. Rather, it is a correctional program. There are many ways in which the FPI program does not and should not operate as a business: it only sells its products to the Federal government; it does limited advertising and marketing; it spreads its operations across multiple business areas to lessen its impact on each of the industries in which it operates; and, most important, it is deliberately labor intensive in order to train the largest possible number of workers. Although the FPI program produces products and performs services, the most important result of the FPI program is inmates who are more likely to return to society as law-abiding taxpayers because of the job skills training and work experience they received.

Another important benefit of the FPI program is its ability to provide inmates with wages that can be used to make restitution to victims. The FPI program mandates that 50 percent of inmate wages be used to pay fines, restitution, and child support obligations, which helps those outside the prison system who were affected by the inmates' prior criminal conduct. In fiscal year 2006, inmates working in the FPI program paid almost $2.6 million toward these obligations, with the vast majority of the monies going to victim restitution.

The FPI program also contributes significantly to reducing inmate idleness. Inmate idleness is problematic in a number of ways -- it undermines other rehabilitation programs and increases the risk of violence and other disruptive activity. Greater numbers of staff are required to monitor idle inmates, which increases the cost to taxpayers. The rapid increase in the Federal inmate population has led to increased crowding, with the most significant crowding at medium and high-security institutions. BOP data indicates a high correlation between increasing inmate-to-staff ratios and higher rates of assaults. Thus, the FPI program is particularly important at higher security level institutions.

Specter 146 **Do you support the FPI bill the House passed last year? If not, would you be willing to work with this Committee to develop legislation that you would be able to support?**

ANSWER: The Department is committed to working with interested Members of Congress to draft an acceptable FPI reform package for the 110th Congress. We hope to continue to work with all interested Members in developing FPI legislation and achieving a balance between ending mandatory source and securing adequate new authorities to allow FPI to maintain its critical role in reducing recidivism.

Specter 147 **How might Congress prevent potential harm to domestic industry resulting from the source preference for goods and services produced by Federal Prison Industries without jeopardizing the prison safety and rehabilitation benefits of the program?**

ANSWER: The balance between providing rehabilitation opportunities for prisoners and avoiding harm to domestic industry is always challenging. Nonetheless, there may be ways to phase out the source preference that might reduce this tension, while at the same time ensuring that sufficient work opportunities are afforded to the increasing inmate population. The Department would be willing to work with the Committee to develop constructive legislation on this topic.

Specter 148 **What has the Department of Justice done to examine the connection between increased incarceration rates, particularly on the Federal level, and changes in the crime rate?**

ANSWER: Incarceration rates continue to increase, although at a slower pace than in the past. From year to year, some states report drops in their rates. Few states, however, have recorded consistent declines over time. In the aggregate (all states combined) the rate of incarceration has increased every year since the mid-1970s.

The Department of Justice's National Institute of Justice (NIJ) recently funded a study resulting in an article entitled, *Crime-Control Effect of Incarceration: Does Scale Matter?*. The article was published in *Criminology & Public Policy* Volume 5, Issue 2 (May 2006). The study examined the relationship between prison and crime, specifically the crime-control effect based on the scale of imprisonment. The article concluded that the United States prison buildup reduced the crime rate in its initial stage, but the buildup by 2000 reached the point of declining effectiveness.

This study deals with incarceration rates at the state level, not the federal level. NIJ has not looked into this issue from a federal incarceration perspective. However, because federal incarceration is a very small part of total incarceration and because the overwhelming majority of UCR index crimes are prosecuted at the state level, one would not expect to see much of an effect of federal incarceration on UCR crime rates.

Specter 155 **If not, are they willing to go on record as opposing this policy?**

ANSWER: The Department's longstanding policies apply to the FBI as well as other Department of Justice components.

QUESTIONS FROM SENATOR KENNEDY

Kenedy 168 **National Security Letters: Please provide the following information on all National Security Letter-related searches by either the Department of Justice or any other US government department, bureau or agency that the Department of Justice is aware of since September 2001: (a) The total number of any and all National Security Letter-related searches, broken out by: i. department, bureau or agency conducting the search, ii. whether it was an individual or blanket search, iii. in each year, iv. by state or territory.**

ANSWER: As you know, National Security Letters are not searches, but rather are statutorily authorized tools that permit the FBI and other federal agencies to request certain information held by third-party businesses.

Since 1987, the FBI has provided Congress with statistics on the use of certain NSL authorities by the FBI as required by statute. As noted in the response to Question 92 above, we have concerns that the statistics that we report contain some inaccuracies. In addition to the explanation for those inaccuracies provided in our initial report (primarily that despite the best efforts of FBI personnel to provide accurate numbers, some totals may reflect circumstances in which one person was counted multiple times), we have subsequently learned that human errors have also occurred, as noted in the recent report issued by the DOJ Inspector General. One of the Inspector General's findings was that several factors concerning the manner in which NSLs are tracked have resulted in inaccuracies in the numbers reported to Congress in recent semiannual reports. As noted in the Department's March 5, 2007, letter to the Committee, in response to the Inspector General's findings and recommendations, the FBI is taking steps to correct the identified deficiencies in its tracking of NSLs, and to develop more accurate information concerning the use of NSLs during periods of past reporting. As soon as possible following the completion of this process, the Department will provide the Committee with corrections to its recent reports, and with a report covering the period July 1 to December 31, 2006.

With respect to the use of such authorities by other federal agencies, those agencies are likely the best source of data on their use of these authorities as the Department of Justice does not routinely maintain such records.

Kennedy 169 **The total number of any and all records obtained by National Security Letter-related searches that have been shared with other government agencies, private businesses or other outside organizations or individuals broken out by: i. government agency, ii. outside organization or individuals, iii. in each year, iv. by state or territory.**

<u>ANSWER:</u> As indicated in response to Question 168, above, NSLs are statutorily authorized tools that permit the FBI and other federal agencies to request certain information held by third-party businesses. The Department does not maintain specific records regarding the sharing of information obtained through NSLs with other agencies. As you know, however, based on the recommendations of the 9/11 Commission and the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction ("WMD Commission"), the Executive Branch continues to make a renewed effort to actively share information with federal, state, and local government entities. The FBI's sharing of information obtained under NSLs is conducted pursuant to the Attorney General's Guidelines for FBI National Security Investigations and Foreign Collection. Because the FBI uses NSLs to gather information for national security investigations, it seems quite unlikely the results have been shared with private businesses or individuals, or with others outside the government.

Kennedy 170 **A complete list of any and all criminal convictions and indictments for terrorist-related activities which relied upon information obtained by National Security Letter-related searches.**

<u>ANSWER:</u> As indicated in response to Question 168, above, NSLs are not searches, but rather are statutorily authorized tools that permit the FBI and other federal agencies to request certain information held by third-party businesses. We also note that NSLs are not used solely or primarily to develop evidence for criminal prosecutions; instead, they are basic building blocks primarily used in connection with national security investigations. And, as noted recently by the Department's Inspector General, NSLs have "contributed significantly to many counterterrorism and counterintelligence investigations." With that said, NSLs can be and are used in criminal cases. While the FBI does not retain the records requested by the question, because they serve as basic building blocks of national security investigations, it is highly likely that NSLs were used in some manner in many cases in which there have been indictments for terrorist-related activities.

Kennedy 171 **The total number of any and all National Security Letter-related searches in which the subject(s) had no connection to terrorism.**

<u>ANSWER:</u> As indicated in response to Question 168, above, NSLs are not searches, but rather are statutorily authorized tools that permit the FBI and other federal agencies to request certain information held by third-party businesses. Several of the statutes authorizing national security letters, however, allow for the use of national security letters not only in connection with counterterrorism investigations, but also in connection with counterintelligence investigations. Also, NSLs are generally required, by statute, to be *relevant* to an authorized investigation to protect against international terrorism or clandestine intelligence activities and are designed to gather the basic building blocks of such an investigation; as a result, while the focus of the investigation is always international terrorism or clandestine intelligence activities, the subjects of the NSLs themselves may not always be suspected of terrorism or espionage activities. The FBI does not retain records on the number of subjects of NSLs who are directly connected to terrorism.

Kennedy 172 **The total number of the records obtained by National Security Letter-related searches that have since been destroyed.**

ANSWER: As indicated in response to Question 168, above, NSLs are not searches, but rather are statutorily authorized tools that permit the FBI and other federal agencies to request certain information held by third-party businesses. The FBI does not maintain the types of records requested by the question. As a general rule, the FBI's destruction of documents obtained during its investigations is governed by the National Archives and Records Administration Act of 1984. Records obtained pursuant to NSLs will be destroyed consistent with our obligations under that Act. The Department and the Office of the Director of National Intelligence have established the NSL Data Retention and Use Working Group, which is looking at how the Department retains and uses the information it acquires.

Kennedy 173 **The total number of records acquired via National Security Letters that have been or are currently stored in databases, broken out by database, and the criteria used in approving data for storage in the databases.**

ANSWER: The FBI does not maintain the types of records requested by the question. Please see also the response to Question 168, above.

Kennedy 175 **Are you willing to ask the FBI to enhance its guidelines to produce accurate data that will advance the purpose of the Act?**

ANSWER: The FBI's hate crime data collection is part of the Uniform Crime Reporting (UCR) Program, a nationwide, cooperative statistical effort of city, university and college, county, state, tribal, and Federal law enforcement agencies that voluntarily report data on crimes brought to their attention. With the passage of the Hate Crime Statistics Act of 1990, Congress required the AG to collect data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, nonnegligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property." The AG delegated the responsibilities of developing the procedures for implementing, collecting, and managing hate crime data to the Director of the FBI, who in turn assigned these tasks to the UCR Program.

Subsequent legislation in 1994 and 1996 amended the collection to include bias against persons with disabilities, and mandated that the hate crime data collection become a permanent part of the UCR Program. Although the FBI is mandated to collect hate crime data, not all states and law enforcement agencies are required to report hate crime data.

Under the direction of the AG and with the cooperation and assistance of many state and local law enforcement agencies, the UCR Program created a hate crime data collection system to comply with the Congressional mandate. Because hate crimes are not separate, distinct crimes, program developers agreed that hate crime data could be derived by capturing the additional element of bias motivation in those offenses already being reported to the UCR Program without placing an undue additional reporting burden on law enforcement. In addition, program developers established reporting guidelines so law enforcement agencies could uniformly report data to the FBI, despite the existence of varying state and local laws and mandates. However, since there are no specific hate crime mandates for reporting at the national level, what is identified as a hate crime may vary from state to state. For example, though an offense prompted by bias against sexual orientation is a hate crime in a state that has laws addressing crime based on sexual orientation, the same offense is not counted as a hate crime in another state that does not collect offenses based on a bias against sexual orientation.

In addition to the many agencies consulted in developing the hate crime data collection program and its training materials, law enforcement's support and participation have been the most vital factors in moving the hate crime data collection effort from concept to reality. The International Association of Chiefs of Police, the National Sheriffs' Association, the former UCR Data Providers Advisory Policy Board (which is now part of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB)), the International Association of Directors of Law Enforcement Standards and Training, and the Association of State UCR Programs (ASUCRP) all have endorsed the UCR Program's hate crime data collection program.

While the UCR Program relies upon the "good faith" reporting efforts of its voluntary contributors, the FBI provides training materials (in print and online) and, when funding permits, on-site training for the states and agencies that request it. In addition, the Program performs quality control checks on the data it receives and makes every effort to resolve any discrepancies prior to publication. The FBI encourages participation and publishes its data submission deadlines in State Program Bulletins and UCR Newsletters that it sends to all of its data contributors. In 2005, the agencies participating in the hate crime program represented over 245 million inhabitants, or 82.7 percent of the Nation's population, and their jurisdictions covered 49 states and the District of Columbia.

The hate crime data in the annual publication Hate Crime Statistics (available on the FBI's web site at www.fbi.gov/ucr/ucr.htm) comprise a subset of the crime data that law enforcement agencies submit to the UCR Program. As collected for each hate crime incident, the aggregate data in the annual report include the following: offense type, location, bias motivation, victim type, number of offenders, and the apparent race of the offender(s). The UCR Program uses the designations for race and ethnicity established by the Office of Management and Budget (OMB) and published in the Federal Register. The Program can currently collect data regarding any race or ethnicity included in these designations.

The Program recognizes the need to improve the efficiency and effectiveness of the hate crime program and the FBI's administration of it, and assembled an ad hoc hate crime committee within the UCR Program in July 2006. The committee's objectives are to evaluate the current hate crime program, identify any shortcomings, explore various opportunities for program enhancement, and provide recommendations for consideration. The scope of the project encompasses all facets of the program including data collection, training materials, data intake methods, data quality control practices, data processing practices, and data dissemination and publication. Currently, the hate crime committee is consulting various members of the UCR community to gain insight into their unique perspectives with regard to submitting and using hate crime data. Once the team analyzes the input of these various organizations, it will list recommendations for consideration by the CJIS APB.

Because the FBI administers all of its programs under the shared-management concept, the avenues for effecting changes to the UCR Program are through the CJIS APB process or by legislative mandate. The CJIS APB, which is not a part of the FBI's CJIS Division, was established by the FBI Director to obtain the criminal justice community's advice and guidance on the operation of all of the programs administered by the CJIS Division. When a Program change is presented for consideration, whether by the ASUCRP or another source, it must be approved by the CJIS APB, recommended to the FBI Director, then, if approved, implemented by the FBI and state and local agencies. In the alternative, Congress may require the FBI to collect certain data. Once the APB or Congress approves changes to the UCR hate crime program, the time-line from approval to implementation is approximately 18 months, not including the year's advance notice the FBI provides its data contributors before it begins accepting production data. However, because participation in the UCR Program is voluntary, such legislation does not bind law enforcement agencies to report the newly required data. So, while the FBI is committed to enhancing its requirements for reporting hate crimes so that the data published are more meaningful to the UCR Program's data users, the key to obtaining a comprehensive data set is increased participation.

Kennedy 177 **During your confirmation hearings, I asked you if you would be willing to publicly support our efforts to expand hate crime legislation to protect victims of such crimes. You promised, and I quote, to "commit the Department to investigating and prosecuting bias-motivated crimes at the federal level to the fullest extent of the law." But, the Department has consistently declined to state a formal position on pending hate crime legislation. It has been over two years since this question was initially proposed to you; is the Department prepared to finally issue a statement on its position on hate crime legislation?**

ANSWER: Violent crime motivated by prejudice or animus against a particular class or group of citizens should never be tolerated. Not only are they prosecutable as violent crimes under existing laws in every State, but bias-motivated crimes are specifically prohibited by many states. This Administration is committed to investigating and prosecuting bias-motivated crimes at the federal level to the fullest extent of the law.

In FY 2006, the Civil Rights Division ("Division") both charged and convicted more defendants in bias-motivated cases than the previous year. In addition, from FY 2001 through FY 2006, the Division brought 39 cross-burning prosecutions, charging a total of 60 defendants. Prosecuting hate crimes remains a priority of the Department. The Civil Rights Division is committed to the vigorous enforcement of our nation's civil rights laws and, in recent years, has brought a number of high profile hate crime cases. Examples of recent prosecutions include:

- *United States v. Coombs* (M.D. Fla.): In August 2006, a defendant in Florida pleaded guilty to burning a cross in his yard to intimidate an African-American family that was considering buying a house located next door to the defendant's residence.

- *United States v. Saldana, et al.* (C.D. Cal.): In August 2006, four Latino gang members were convicted of threatening and assaulting African Americans in a neighborhood that the defendants and their gang members sought to control. All four defendants, members of the notorious Avenues street gang, were convicted of a conspiracy charge that alleged numerous violent assaults against African Americans, including murders that took place in 1999 and 2000. Specifically, the jury found that the defendants caused the death of Christopher Bowser, an African-American man who was shot while waiting at a bus stop in Highland Park on December 11, 2000. The jury also found that the defendants caused the death of Kenneth Kurry Wilson, an African-American man who was gunned down while looking for a parking place in Highland Park on April 18, 1999. Three of the defendants were also convicted of murdering Wilson because he was African American and because he was using a public street, and using a firearm during the commission of a conspiracy and hate crime. All four defendants received life sentences.

- *United States v. Oakley* (D.D.C.): In April 2006, the defendant entered a guilty plea to emailing a bomb threat to the Council on American Islamic Relations.

- *United States v. Baird* (W.D. Ark.): In April 2006, the defendant entered a guilty plea to burning a cross near the home of a woman whose white daughter's African-American boyfriend was living with her and her daughter. Three additional defendants were charged in May 2006 with participating in the cross burning. The defendant was sentenced in November 2006. Three additional defendants were tried in September 2006, two of whom were convicted on charges of conspiracy and are awaiting sentencing.

- *United States v. Nix* (N.D. Ill.): In March 2006, the defendant entered a guilty plea to igniting an explosive device that damaged a van owned by an Arab-American family and parked near their house in an attempt to interfere with their housing rights.

- *United States v. Baalman, et al.* (D. Utah): From December 2005 through January 2006, in Salt Lake City, three white supremacists pled guilty to assaulting an African-American man, while he was riding his bicycle to work, because of his race and because they wanted to control the public streets for the exclusive use of white persons.

- *United States v. Fredericy and Kuzlik* (N.D. Ohio): In October and November 2006, defendants Joseph Kuzlik and David Fredericy pled guilty to conspiracy, interference with housing rights, and making false statements to federal investigators. In February 2005, these defendants poured mercury on the front porch and driveway of a bi-racial family in an attempt to force them out of their Ohio home.

- *United States v. Hobbs, et al.* (E.D.N.C.): In a case stemming from a series of racially-motivated threats aimed at an African-American family in North Carolina, four adults were convicted and one juvenile was adjudicated delinquent. Two of the adults were convicted at trial for conspiring to interfere with the family's housing rights and, on July 5, 2005, were sentenced to 21 months in prison. A third defendant pleaded guilty to a civil rights conspiracy charge, and the fourth defendant pleaded guilty to obstruction of justice for his role in the offense.

- *United States v. Hildenbrand, et al.* (W.D. Mo.): In April 2004, five white supremacists pleaded guilty to assaulting two African-American men who were dining with two white women in a Denny's restaurant in Springfield, Missouri. One of the victims was stabbed and suffered serious injuries. The defendants were sentenced to terms of incarceration ranging from 24 to 51 months.

- *United States v. May* (W.D.N.C.): On March 4, 2004, in a case personally argued by the then-Assistant Attorney General for the Civil Rights Division, the United States Court of Appeals for the Fourth Circuit agreed with the Division that the district court should have imposed a stiffer sentence on the perpetrator of a cross burning in Gastonia, North Carolina. On March 28, 2005, the defendant was re-sentenced by another district court judge to one year and one day in prison.

An additional bias-motivated murder case is set for trial later this year. In *United States v. Eye and Sandstrom*, attorneys from the Civil Rights Division and the United States Attorney's Office for the Western District of Missouri are prosecuting two men who, according to the indictment, fatally shot an African-American man as he was walking to work in downtown Kansas City.

The Division also has worked in recent years with local prosecutors in an effort to investigate Civil Rights era murders. James Ford Seale was indicted on January 25, 2007, by a federal grand jury for two counts of kidnapping resulting in death, and one count of conspiracy, for his participation in the abductions and murder of two nineteen-year-old African-American men, Henry Dee and Charles Moore, in 1964. According to the allegations in the indictment, the victims in this case were kidnapped by a group of White Knights of the Ku Klux Klan that included James Seale. Dee and Moore were beaten by their captors, then transported and finally forcibly drowned by being thrown into the Old Mississippi River, tied to heavy objects alleged to have included an engine block, iron weights, and railroad ties.

In 2004, the Division announced that federal assistance would be provided to local officials conducting a renewed investigation into the 1955 murder of Emmett Till, a 14-year old African-American boy from Chicago. Till was brutally murdered while visiting relatives in Mississippi after he purportedly whistled at a white woman. Two defendants who subsequently admitted guilt were acquitted in state court four weeks after the murder. Both men are now deceased. Although the investigation showed that there was no federal jurisdiction, on March 16, 2006, the Justice Department reported the results of its investigation to the district attorney for Greenville, Mississippi, for her consideration.

In February 2003, the Division successfully prosecuted Ernest Henry Avants for the 1966 murder of Ben Chester White, an elderly African-American sharecropper in Mississippi who, because of his race and efforts to bring the Reverend Martin Luther King, Jr., to the area, was lured into a national forest and shot multiple times. That conviction was affirmed in April 2004.

Moreover, after September 11, 2001, the Civil Rights Division implemented an initiative to combat "backlash" crimes involving violence and threats aimed at individuals perceived to be Arab, Muslim, Sikh, or South Asian. This initiative has led to numerous prosecutions involving physical assaults, some minor and some involving dangerous weapons and resulting in serious injuries, as well as threats made over the telephone, on the internet, through the mail, and in face-to-face interactions. We have also prosecuted cases involving shootings, bombings, and vandalism directed at homes, businesses, and places of worship. The Department has investigated more than 750 bias-motivated incidents since September 11, 2001. Our efforts have resulted in 32 federal convictions in “backlash” cases. The Department also assisted local law enforcement in bringing more than 160 such criminal prosecutions.

Additionally, the Community Relations Service (CRS) of the U.S. Department of Justice launched proactive information and conflict resolution efforts with Arab American, Muslim, and Sikh communities. CRS created a series of educational law enforcement protocols for federal, state, and local officials addressing racial and cultural conflict issues between law enforcement and Arab American, Muslim American, and Sikh American communities. CRS also created a law enforcement roll-call video titled, "The First Three to Five Seconds," that addresses cultural behaviors and sensitivities, stereotypes, and expectations encountered in interactions and communications with Arab, Muslim, and Sikh communities.

CRS established the Arab, Muslim, Sikh Cultural Awareness Train the Trainer Program, which has created a group of community-based Arab, Muslim, and Sikh trainers capable of delivering law enforcement training across the country. This program has been implemented in numerous cities across the nation. As a result of this training effort, as well as direct training of law enforcement by CRS, federal, state, and local law enforcement and local communities have reported increased cultural knowledge and awareness, a newly developed cooperative spirit within the community, and decreased community anxieties.

CRS instituted a Rapid Response Team, which aims to defuse rumors and prevent escalation of violence when there are allegations of racial profiling or discrimination, or when a hate incident has taken place, by facilitating dialogue between law enforcement and the community and facilitating rapid and accurate dissemination of information.

Kennedy 180 **Will you meet the March 9th deadline and submit the statutory report on the Justice Department's data-mining programs?**

ANSWER: The Department of Justice is working diligently to ensure that this report is completed and transmitted to Congress as expeditiously as possible.

Kennedy 184 **Please describe how the OneDOJ program functions. (a) Where does the information come from?**

ANSWER: OneDOJ is a concept to foster a broader exchange of existing criminal investigative data among DOJ components and law enforcement partners. R-DEx is the database system DOJ currently uses to implement the OneDOJ concept. R-DEx is a data repository that contains criminal law enforcement information from DOJ law enforcement components. The information contained in this system consists of unclassified criminal law enforcement records collected and produced by the following DOJ components: the Federal Bureau of Prisons (BOP); Drug Enforcement Administration (DEA); United States Marshals Service (USMS); and selected field offices of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and of the Federal Bureau of Investigation (FBI) (including the information temporarily included and described in response to question 93.a.). DOJ-wide incident information is pulled from existing systems and then loaded into the R-DEx system for the purpose of sharing the DOJ's criminal law enforcement information with analysts and investigators so that they can more effectively investigate, disrupt, and deter criminal activity, including terrorism, to protect the nation. This system is accessible to all of the components contributing information and to other federal, state and local law enforcement agencies that have entered into partnerships through MOUs with DOJ.

The Department of Justice Office of the Chief Information Officer (OCIO) oversees the OneDOJ effort and the FBI administers and manages the R-DEx system. OCIO sets the policies, controls, and technical standards while encouraging increased information sharing across various systems and components. Each participating DOJ component contributes information to R-DEx, consistent with the guidance provided by the Department. Federal, state and local law enforcement entities connect to R-DEx to make queries of structured and unstructured data regarding individuals under current investigation for criminal activity. Records within R-DEx are copies of the current criminal law enforcement files and source records systems of the participating DOJ components.

Kennedy 189 **The Justice Department recently joined with the Departments of State and Homeland Security to announce that it would seek legislation to broaden the authority of the Secretary of State and Secretary of Homeland Security to provide waivers allowing entry to the United States of aliens excluded as a result of the terrorism-related inadmissibility provisions in Section 212(a)(3)(B) of the INA. What is the status of this proposed legislation? When do you plan to transmit it to Congress? What other steps do you plan to take to ensure that refugees and asylum seekers that do not threaten U.S. national security will not be excluded from finding protection in the United States by terrorism-related bars? Specifically, what plans to you have to address the issue of material support provided under duress to Tier I and Tier II terrorist organizations? Will you commit to work closely with Judiciary Committee members to provide a fair, transparent, durable solution to the material support inadmissibility issue?**

ANSWER: The Department is committed to working closely with the Committee to provide a fair, transparent, and durable solution. Indeed, the Department and the Administration as a whole have already worked to provide such a solution. We have held extensive interagency consultations on this very complex subject, and at appropriate times throughout the process we have—individually and collectively—met with representatives of non-governmental organizations to brief them on our work. Earlier this year, the Secretary of State exercised her authority under the Immigration and Nationality Act to admit refugees who provided material support to six Tier III organizations (in addition to two organizations with respect to whom she exercised the authority last year), and the Secretary of Homeland Security exercised his authority to establish the eligibility for asylum and other benefits of aliens already in the United States who provided material support to any of those eight groups. Furthermore, the Secretary of Homeland Security recently exercised his authority to admit otherwise admissible aliens who have provided material support to Tier III organizations under duress, based on an assessment of the totality of the circumstances surrounding that provision. Finally, the Administration has prepared a legislative proposal to provide for expanded authority to permit admission of refugees who engaged in acts other than material support. The Administration consulted, at multiple times, seriously, substantively, and in good faith with congressional staff and non-governmental organizations in the course of drafting this proposal. With regard to material support provided under duress to Tier I and II organizations, the Administration has not yet finalized its position. We have, however, consulted closely with congressional staff and interested non-governmental organizations to ensure fair consideration of all the equities at stake.

Kennedy 191 **What will you do to assure Congress that the removal of Ms. Lam and others is not an effort to terminate uncomfortable public corruption investigations? Will you consider as a principal factor in each interim appointee the ability and willingness of the appointee to pursue public corruption investigations? What abilities and experience do you consider important in a public corruption prosecutor?**

ANSWER: It would be improper to remove a United States Attorney in an effort to prevent, interfere with, or retaliate for a particular prosecution – such as a public corruption case – for partisan political reasons. That did not happen here.

Because the American public must have confidence that such improper reasons did not factor into the decision to ask for the resignation of these eight federal prosecutors, the Department of Justice has provided, and will continue to provide, the documents and witnesses necessary for the Congress to investigate the motivations that led to those resignations. The Department of Justice has been forthcoming with the Congress in providing more than 3,000 pages of documents. These documents do not suggest that any U.S. Attorney was removed in order to interfere with a pending or future criminal matter, or any other improper or illegal reason. In addition, the Department has offered to make officials available voluntarily for interviews and subsequent hearings. The level of disclosure in this matter is unprecedented.

Interim United States Attorneys are chosen based on a number of factors and with consideration for the unique circumstances of each office. This Administration's record on pursuing public corruption cases is outstanding, and it is one of my priorities for the Department. Any interim United States Attorney will be expected to vigorously pursue prosecutions in priority areas, including public corruption.

Kennedy 200 **Does the Constitution guarantee a right to petition for a writ of habeas corpus?**

ANSWER: Yes. The Constitution presupposes that courts in the United States would have the authority to issue the writ as they historically did at common law. *See, e.g., INS v. St. Cyr*, 533 U.S. 289 (2001); *Felker v. Turpin*, 518 U.S. 651, 664 (1996). The text of the Constitution provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. As commentators have noted, "[t]he text does not explicitly confer a right to habeas relief, but merely sets forth when the Privilege of the

Writ may be suspended." R. Fallon, et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1289 (5th ed. 2003). Nonetheless, the Supreme Court has recognized that the Constitution protects a core right to habeas corpus that may not be suspended except by Congress in time of rebellion or invasion. I would note for present purposes that the Supreme Court has held that this core right does not include the right of alien enemy combatants detained outside the United States to challenge their detention in United States courts. *See Johnson v. Eisentrager*, 339 U.S. 763 (1950).

Kennedy 201 **If Congress repealed the statutory right to petition for habeas corpus, would any right to petition for habeas corpus in any court in the United States remain?**

ANSWER: Yes. As noted, the Constitution protects the right to habeas corpus as it existed under common law. *See St. Cyr*, 533 U.S. at 301; *Felker*, 518 U.S. at 664. The federal district courts have had the statutory authority to grant the writ since they were established by the Judiciary Act of 1789. *See Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 95 (1807). While Congress may narrow the statutory right of habeas corpus, we do not believe that Congress could—absent rebellion or invasion—constitutionally repeal the federal district courts' authority to grant the writ of habeas corpus, as it existed at common law, unless the writ remained available in other federal courts or unless Congress provided an adequate substitute or authorized state courts to issue the writ against the federal government (a power they have not had since *Tarble's Case*, 80 U.S. (13 Wall.) 397 (1872)).

With respect to the issues raised by the Military Commissions Act of 2006, the Supreme Court has held that enemy combatants detained outside the United States have no *constitutional* right to a writ of habeas corpus. *See Johnson v. Eisentrager*, 339 U.S. 763 (1950). In *Rasul v. Bush*, 542 U.S. 466 (2004), the Supreme Court addressed "whether the *habeas statute* confers a right to judicial review of the legality of executive detention of aliens" detained at Guantanamo Bay, Cuba. *Id.* at 475 (internal quotation marks omitted). The Court held that the detainees did have a *statutory* right but emphasized that its decision did not overturn *Eisentrager*'s prior conclusion that no *constitutional* right existed. *See id.* at 475-76. Congress therefore had the constitutional power to restrict the ability of alien enemy combatants to invoke the statutory right to habeas corpus, as it subsequently did in the MCA.

Although enemy combatants detained at Guantanamo Bay do not enjoy a constitutional or a statutory right to habeas corpus, the MCA's restrictions on review do not leave these detainees without a judicial remedy. To the contrary, the Detainee Treatment Act of 2005 ("DTA") provides these detainees with far greater judicial process than we have provided in past conflicts. Every detainee at Guantanamo Bay receives a hearing before a Combatant Status Review Tribunal ("CSRT"), an impartial military tribunal modeled after the process that *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), held to be constitutionally owed to an American citizen detained as an enemy combatant within the United States. *Id.* at 524 (plurality op.). Detainees further may appeal that determination to the United States Court of Appeals for the District of Columbia Circuit. These procedures provide an adequate alternative to habeas corpus that would fully satisfy the constitutional right to habeas corpus, even if that right were to apply to these detainees.

Kennedy 202 **In your written answers of January 18, you failed to respond to the request in question 101 for employment applications of persons hired in the Civil Rights Division. Please provide the requested employment applications for all persons hired in the position of trial attorney or senior trial attorney in the Civil Rights Division since 2001, whether as a lateral hire or through the Honors program. With respect to each application, please indicate the Section of the Division in which the applicant was hired.**

ANSWER: Information responsive to this question was provided to the Committee on April 11, 2007, in Questions for the Record posed to Civil Rights Division Assistant Attorney General Wan Kim.

Kennedy 211 **Decades ago, the Department decided to involve career attorneys in hiring lawyers, so that the process would not become tainted by politics and nepotism. Will you return to the former practice of involving experienced career attorneys in every stage of the Department's recruitment and hiring of career lawyers?**

ANSWER: Veteran career attorneys continue to make hiring recommendations throughout the Department. Career attorneys play a central role in the hiring of attorneys through both the Honors Program and lateral hiring process, including active participation in interviewing both lateral and Honors Program applicants. The Department takes very seriously the recommendations of career attorneys in all personnel matters.

Kennedy 224 **How many gun dealers has the Justice Department brought criminal charges against for violating Federal gun laws each year since 2000? Please give the statutory citation for the specific laws that each of these dealers was charged with violating.**

ANSWER: A review of the most current data in our case management systems indicates the following:

FY 2000:	14
FY 2001	17
FY 2002	20
FY 2003	33
FY 2004	42
FY 2005	31
FY 2006	32

Citations: 18 U.S.C. 1001; 18 U.S.C. (2); 18 U.S.C. 47; 18 U.S.C. 111; 18 U.S.C. 371; 18 U.S.C. 844(h)(1); 18 U.S.C. 844(i); 18 U.S.C. 922(a)(1)(A); 18 U.S.C. 922(a)(2); 18 U.S.C. 922(a)(5); 18 U.S.C. 922(a)(6); 18 U.S.C. 922(b)(2); 18 U.S.C. 922(b)(3); 18 U.S.C. 922(d)(1); 18 U.S.C. 922(d)(3); 18 U.S.C. 922(d)(5)(B); 18 U.S.C. 922(d)(9); 18 U.S.C. 922(g)(1); 18 U.S.C. 922(g)(3); 18 U.S.C. 922(g)(8); 18 U.S.C. 922(j); 18 U.S.C. 922(k); 18 U.S.C. 922(l); 18 U.S.C. 922(m); 18 U.S.C. 922(o); 18 U.S.C. 922(s); 18 U.S.C. 922(v)(1); 18 U.S.C. 922(w)(1); 18 U.S.C. 924 (a)(1)(A); 18 U.S.C. 924(c); 18 U.S.C. 1341; 18 U.S.C. 1343; 18 U.S.C. 1503; 18 U.S.C. 1956(a)(1); 21 U.S.C. 841(a)(1); 26 U.S.C. 5861(d); 26 U.S.C. 5861(e); 26 U.S.C. 5861(f); 26 U.S.C. 5861(g); 26 U.S.C. 7206;

Kennedy 230 **Since dealers who are inspected are often found to have multiple violations, do you believe it is important to increase the frequency of ATF inspections?**

ANSWER: Pursuant to the Gun Control Act of 1968 (GCA), ATF may conduct a warrantless inspection of a licensee without reasonable cause not more than once during a twelve month period, or at anytime with respect to records relating to a firearm involved in a criminal investigation where a firearm is traced to the licensee, or in determining the disposition of a firearm during the course of a criminal investigation. If ATF has reasonable cause to believe a licensee is in violation of the GCA, ATF may search at anytime pursuant to a warrant obtained from a federal magistrate. During a field inspection, ATF may discover no violations, or may discover one or more violations. ATF's goal is to ensure compliance with recordkeeping and conduct of business requirements, thus furthering public safety. As a result, ATF utilizes available resources and all legal means in pursuing this goal.

Kennedy 231 **What do you plan to do to increase the frequency and effectiveness of ATF dealer inspections? Does the Bureau need additional resources to inspect dealers? Has ATF increased the number of inspectors who are inspecting gun dealers in recent years, and if so, by how many? Does ATF plan to increase the number of gun dealer inspectors, keep this number constant, or reduce the number of gun dealer inspectors in the next few years?**

ANSWER: After the implementation of the Safe Explosives Act in 2002, ATF increased its total number of field Industry Operations Investigators (IOIs) from 420 to 650 (FY 2004-2005), and currently, ATF has 620 IOIs. This significant increase in the IOI population has helped ATF comply with the Safe Explosives Act requirement that ATF inspect each explosives industry member at least once every three years. Although this requirement places an increased demand on ATF's inspection force, ATF, nevertheless, regularly reviews its programs and results in order to assess our effectiveness and efficiency. This process includes the evaluation of inspection procedures to evaluate all aspects of our inspection regimen. In this way, ineffective procedures can be identified, and ATF's inspection efficiency is maximized.

In 2004, ATF's firearms compliance inspection program was reviewed by DOJ's Office of the Inspector General. In its report, OIG recommended ATF revise its staffing requirement so that it could conduct triennial inspections of the firearms license population to effectively regulate the industry. Currently, there are approximately 62,800 firearms retailers in the U.S. (this figure excludes collectors).

Kennedy 232 **Does ATF's failure to revoke the licenses of dealers who have multiple violations of gun laws indicate that the Bureau needs greater statutory power to enforce the law against corrupt or reckless gun dealers? If so, do you plan to seek such additional power from the Congress?**

ANSWER: The Gun Control Act of 1968 (GCA) gives ATF the authority to revoke the license of any firearms dealer who willfully violates the GCA. ATF is further charged with the responsibility to conduct inspections of Federal firearms licensees to ensure compliance with the laws and the implementing regulations. One of ATF's primary goals is to obtain voluntary compliance from firearms industry members. Therefore, when violations are disclosed during an inspection, ATF determines whether the licensee willfully violated the provisions of the GCA. If the violations were not willful, ATF then evaluates whether the licensee can be brought into compliance while not posing a threat to the public. ATF has sufficient authority to revoke Federal firearms licenses when necessary to protect the public and exercises that authority when appropriate.

Kennedy 233 **What conceivable justification can there be for Congress to bar ATF from implementing a requirement that gun dealers conduct annual inventories? Guns that are lost, missing or stolen from gun dealers may end up in the hands of criminals. Isn't it important for gun dealers to be able to account for the disposition of every gun they stock? Isn't this a matter of public safety?**

ANSWER: ATF works every day with the regulated community to assist them with their legal obligations under Federal law. ATF publishes newsletters, operates a website, conducts seminars and outreach, attends firearms industry conventions, and is ready to answer questions from firearms dealers to assist them in their duties as a licensee. ATF encourages licensees to use the best business practices, including maintaining inventories, and in operating their businesses. In pursuit of the protection of the public's safety, ATF certainly enforces the federal firearms laws passed by Congress and regulates licensee conduct pursuant to the authorization provided by law.

Kennedy 235 **If so, are you concerned about the findings of the Department's own Inspector General that the 24-hour record destruction requirement will enable corrupt gun dealers to sell guns to criminals without detection?**

ANSWER: Section 617 of Pub. L. No. 108-199, the Consolidated Appropriations Act of 2004 (or "Omnibus"), requires the NICS to destroy "any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or state law." The NICS regulation was revised in July 2004 to conform to the 24-hour record retention period provision in the Omnibus bill. In publishing the revised rule, the Department explained how the NICS would operate under the Omnibus provision to continue to enforce relevant Federal laws effectively. It was acknowledged that, under the 24-hour destruction requirement, ATF inspectors can no longer compare the information on the Firearms Transaction Record (ATF Form 4473) on proceeded firearm transactions with the information sent to the NICS to determine if an FFL sent the system different information to avoid the background check on the actual buyer. ATF and the FBI have, however, developed the ability to do NICS rechecks on samples of proceeded transactions that go back a year or more to help detect if an FFL has sent the NICS identifying information that differs from that which appears on the Form 4473. Rechecks are new checks performed during an ATF inspection of an FFL on a sample of transactions that are reflected in the dealer's records as having received a "proceed" response. With rechecks, the ATF compares the result of the recheck based on the records that existed at the time of the original transaction with the result of the original NICS check recorded on the Form 4473 and can undertake further investigation if there are any discrepancies. This serves as a deterrent to dealers who might consider submitting false information to the NICS, because sanctions for such misuse include suspension of NICS privileges and criminal prosecutions. In addition, under the new rule, the FBI continues to be able to identify cases in which FFLs, after receiving a denial on a particular purchaser's identifying information, initiate one or more subsequent checks with slight variations of a name, date of birth, or social security number. These cases usually occur shortly after the initial denial or delay and are verified by referring back to the initial denied or open transactions. Finally, traditional law enforcement methods, such as undercover investigations finding cases of dealers submitting false information to the NICS, can lead to prosecutions or license revocations that will deter dealers from engaging in such illegal conduct.

While it is conceivable that keeping records on approved purchasers longer, even indefinitely, could allow the system to discover some additional cases of persons who should not have obtained a gun, we have made every effort to detect and deter such unlawful conduct consistent with the retention period allowed by law.

Kennedy 238 **Will you support legislation to change the current 24-hour Brady record destruction requirement to allow the NICS system to operate more effectively to keep guns out of the hands of criminals?**

ANSWER: As explained in the answers to questions 235 and 236, the NICS operates under the 24-hour destruction requirement in a manner that allows the Department to continue to enforce relevant Federal firearms effectively.

QUESTIONS FROM SENATOR BIDEN

Biden 256 **On August 8, 2006, the National Association of Counties adopted a resolution urging you to appoint a national commission to study and make recommendations on the jailing of the non-violent mentally ill in county jails and state prisons. Have you appointed such a commission? b) If not, will you? c) If you have no intention to appoint such a commission, why not?**

ANSWER: We share NACo's goal of providing appropriate adjudication of mentally ill, non-violent offenders, and administer programs designed to respond to the special needs of this population. In response to NACo's request to establish a national commission, the Department recently sent a letter to NACo outlining our various initiatives that are already focused on this issue, such as:

- The Mental Health Courts Program, administered by Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA) in conjunction with the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), provides resources to mental health, substance abuse, and community services practitioners.
- DOJ and other federal, state, and local agencies, as well as nonprofit organizations, participate in the President's New Freedom Commission on Mental Health, which was created in 2001. The commission is working on an aggressive, coordinated response to accomplish six goals to tackle crime and provide services to mentally ill offenders. BJA was tasked with building on these justice and mental health collaborations. BJA and SAMHSA also were asked to coordinate and continue to support a range of successful criminal justice diversion programs.
- In addition, BJA has offered leadership to the field in developing and supporting strategies, or "blueprints," to help identify, assess, and offer proven strategies to respond to the needs of those with mental illness in the criminal justice system. To further this effort, BJA is a federal partner to the "Mental Health Consensus Project". This initiative, coordinated by the Council of State Governments Justice Center, is a national effort to help local, state, and federal policymakers and criminal justice and mental health professionals improve the response to people with mental illnesses who come into contact with the criminal justice system.
- In January 2006, the Department established an interagency task force to address issues regarding the confinement and treatment of adult and juvenile offenders diagnosed with or manifesting signs of a mental illness as required by the Mentally Ill Offender Treatment and Crime Reduction Act of 2004. The first responsibility of the task force was to review and to begin coordinating implementation of the Mentally Ill Offender Treatment and Crime Reduction Act, with initial emphasis on

developing a solicitation for FY 2006 funds and partnering with other organizations to provide training and technical assistance where these services are needed.

- Most recently, BJA has worked on the Justice and Mental Health Collaboration Program, partnering with other federal agencies such as the SAMHSA and the National Institute of Corrections to develop a coordinated criminal justice response to the needs of mentally ill offenders. BJA has also expanded training to include collaborations with law enforcement, corrections, and public health partners and in 2006, initiated a solicitation for funding to support planning, implementation, and enhancement strategies. This program is funded through the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.
- Finally, BJA continues to collaborate with partners, including NACo, which is currently developing a publication highlighting discharge planning strategies for those with co-occurring disorders from local jails.

Biden 257 **Please provide me with a full accounting of all of the activities that the Federal Bureau of Prisons is currently undertaking to prepare prisoners for reentry into our nation's communities.**

ANSWER: The vast majority of the Bureau of Prisons' (BOP's) inmate programs and services are geared toward helping offenders prepare for their eventual reentry into the community. The BOP provides many self-improvement programs, including work in prison industries and other institution jobs, vocational training, education, substance abuse treatment, religious observance, parenting, anger management, counseling, and other programs that impart essential life skills. The BOP also provides other structured activities designed to teach inmates productive ways to use their time. The Department believes that Federal inmates should take responsibility for their life circumstances, behavior, needs, and future, and should actively participate in self-improvement programs that will provide them with the skills they need to be productive, law-abiding citizens upon release. As will become apparent from the description of inmate programs that follows, preparation for reentry begins in the first days of an inmate's incarceration.

Inmate Work Programs

The BOP provides work programs that teach inmates occupational skills and instill sound and lasting work habits and a work ethic in offenders. All sentenced inmates in Federal correctional institutions are required to work (with the exception of those who for security, educational, or medical reasons are unable to do so). Most inmates are assigned to an institution job such as food service worker, orderly, plumber, painter, warehouse worker, or groundskeeper. Approximately 18 percent of the BOP's eligible sentenced inmates work in Federal Prison Industries (FPI) factories -- arguably the BOP's most important correctional program.

The goal of the FPI program is to provide inmates with job skills training and work experience, thereby reducing recidivism. Through the day-to-day experience of working in a real-life factory setting, the FPI program provides the opportunity for inmates to gain specific work skills and a general work ethic -- both of which can lead to viable, sustained employment upon release.

Education, Vocational Training, and Occupational Training

The BOP offers a variety of programs for inmates to achieve at least a high school level education and to acquire marketable skills to help them obtain employment after release. All institutions offer literacy classes, English as a Second Language, adult continuing education, post-secondary education, and library services.

With a few exceptions, inmates who do not have a high school diploma or a General Educational Development (GED) certificate must participate in the BOP's literacy program for a minimum of 240 hours or until they obtain the GED. The English as a Second Language program enables inmates with limited proficiency in English an opportunity to improve their English language skills. The BOP also facilitates vocational training for inmates and provides occupationally-oriented higher education programs. Occupational and vocational training programs are based on the needs of a specific institution's inmate population, general labor market conditions, and institution labor force needs. A limited number of traditional college courses are also available to inmates. On-the-job training is afforded to inmates through formal apprenticeship programs, institution job assignments, and work in the FPI program.

Substance Abuse Treatment

The BOP provides a comprehensive substance abuse treatment program that includes drug abuse education, non-residential drug abuse treatment, residential drug abuse treatment, and community transition treatment. Inmates must participate in a drug abuse education course if: (1) there is evidence in their presentence investigation report that alcohol or drug use contributed to the commission of their offense; (2) they violated supervised release, parole, conditions of placement in a residential reentry center, or conditions of home confinement as a result of alcohol or drug use; or (3) the sentencing judge recommended that they participate in a drug abuse treatment program during incarceration. Participants in the drug abuse education course learn the connection between drugs and crime; are taught to distinguish drug use, abuse, and addiction; and acquire the information they need to help them avoid criminal thinking errors. Inmates who need further treatment are encouraged to participate in non-residential or residential drug abuse treatment, as appropriate.

Non-residential drug abuse treatment is available in every BOP institution. Specific populations targeted for non-residential treatment services include: (1) inmates with a relatively minor or low-level substance abuse impairment; (2) inmates with a more serious drug use disorder whose sentence does not allow sufficient time to complete the residential drug abuse treatment program; (3) inmates with longer sentences who are in need of treatment and are awaiting placement in the residential drug abuse treatment program; (4) inmates identified with a drug use history who did not participate in residential drug abuse treatment and are preparing for community transition; and (5) inmates who completed the unit-based component of the residential drug abuse treatment program and are required to continue treatment until placement in a residential reentry center, where they will receive transitional drug abuse treatment.

The residential drug abuse treatment program is available in 57 BOP institutions, offering treatment to approximately 18,000 inmates each year. The program provides intensive treatment 5 to 6 hours a day, 5 days per week, to inmates diagnosed with a drug use disorder. The programs are managed by a doctoral-level psychologist who supervises the treatment staff and the overall provision of treatment services to inmates. Inmates in the residential program are housed together in a unit that is reserved for drug abuse treatment. Treatment is provided for a minimum of 500 hours over 9 months.

Residential drug abuse treatment targets major criminal/drug-using risk factors, especially anti-social and pro-criminal attitudes, values, beliefs, and behaviors. The BOP targets these anti-social and pro-criminal behaviors by reducing anti-social peer associations; promoting positive relationships; increasing self-control, self-management, and problem solving skills; ending drug use; and replacing lying and aggression with pro-social alternatives.

The BOP provides residential drug abuse treatment to all inmates with a need and who volunteer for treatment. The treatment is provided toward the end of an inmate's sentence -- approximately 36 months before release.

The fourth component of the BOP's drug abuse treatment program is community transition treatment. Community transition treatment is offered as a service to all inmates in a residential reentry center (halfway house) and is a required component of the residential drug abuse treatment program. As part of community transition treatment and to help ensure a seamless transition from the institution to the community, the BOP provides a treatment summary to the residential reentry center where the inmate will reside, to the community-based treatment provider who will treat the inmate, and to the U.S. Probation Office before the inmate's arrival at the residential reentry center. Participants in community transition drug abuse treatment typically continue treatment during their period of supervised release after they leave BOP custody.

Pro-Social Values Programs

Based on the proven success of the residential substance abuse treatment program, the BOP has implemented a number of other programs to address a variety of needs among certain segments of the inmate population (such as younger offenders and high-security inmates). These programs use the cognitive-behavioral therapy treatment model that is the underpinning of the residential drug abuse treatment program. The programs focus on inmates' emotional and behavioral responses to difficult situations and emphasize life skills and the development of pro-social values, respect for self and others, responsibility for personal actions, and tolerance. Many of these programs have already been found to significantly reduce inmates' involvement in institution misconduct. The positive relationship between institution conduct and post-release success offers encouragement about the ability of these programs to reduce recidivism.

Religious Programs

BOP institutions accommodate religious services and programs for inmates of the approximately 30 faiths represented within the population. Religious programs are led or supervised by staff chaplains, contract spiritual leaders, and community volunteers. Chaplains oversee worship services and self-improvement programs, such as the study of sacred writings, spiritual development, and religious workshops. BOP chaplains also provide pastoral care, spiritual guidance, and counseling to inmates. Upon request and approval, inmates may receive visits and spiritual counseling from community representatives.

Life Connections Program

The Life Connections Program is a residential multi-faith-based program that provides the opportunity for inmates to deepen their spiritual life and integrate their faith with other dimensions of their life in order to assist them with their personal growth and their reintegration into the community. The program strives to contribute to an inmate's personal transformation; to bring reconciliation to the inmate, his or her victims, and the community; and to reduce recidivism. Life Connections programs are currently underway at five BOP facilities. BOP research has found a reduction in serious institution misconduct among Life Connections program participants. Further research is planned to assess the effect of the program on recidivism, after a sufficient number of graduates have been released.

Medical Care, Mental Health Treatment, and Counseling

The BOP provides a full range of medical and mental health treatment services through staff health care providers, psychologists, and psychiatrists, enhanced by contract services from community medical and mental health professionals. Psychologists are available for professional counseling and treatment on an individual or group basis. In addition, staff in an inmate's living unit are available for informal counseling. The BOP also offers a variety of self-help programs to improve inmates' ability to succeed after release, such as anger management, parenting skills, health education, and health promotion programs.

Inmate Skills Development Initiative

The Inmate Skills Development initiative is a comprehensive strategy the BOP is undertaking to identify inmates' reentry needs and to track inmates' progress toward meeting those needs. The three principles of the Inmate Skills Development strategy are: (1) inmate participation in programs must be linked to the development of relevant inmate reentry skills; (2) the focus is on acquiring or improving a skill identified through a comprehensive assessment, rather than simply completing a program; and (3) resources are allocated to target inmates with a high risk for reentry failure. Under this initiative, the BOP will continually assess inmates' progress in reentry skills development in most of the program areas described above, as well as in other areas where inmates need skills for successful reentry.

Maintaining Family and Community Ties

The Department recognizes how important it is for inmates to maintain contact with their family and friends while in prison -- research has shown that maintaining ties with family contributes to an offender's avoidance of crime following release from prison. Visiting, telephone privileges, and correspondence are three activities the BOP provides that help inmates maintain family and community ties while incarcerated. Inmates may have contact visits with their family, friends, attorney, and other special visitors except in the BOP's administrative maximum security prison, where all visiting is non-contact. Inmates also maintain contact with the community through telephone calls and by writing and receiving letters.

Specific Release Preparation Efforts

In addition to the wide array of inmate programs described above, the BOP provides a Release Preparation Program in which inmates become involved toward the end of their sentence. The program includes classes in resume writing, job seeking, and job retention skills. The program also includes presentations by officials from community-based organizations that help ex-inmates find employment and training opportunities after release from prison.

General preparation for reentry includes other inmate pre-release services provided at BOP institutions, such as mock job fairs where inmates learn job interview techniques and community recruiters learn of the skills available among inmates. As part of this activity, inmates prepare release portfolios, which include a resume, education and training certificates, diplomas, education transcripts, and other significant documents needed for a successful job interview.

In addition, the BOP has established employment resource centers in more than 60 institutions. Employment resource centers assist inmates with creating release folders to use in job searches; soliciting job leads from companies that have participated in mock job fairs; identifying additional potential job openings; and identifying points of contact for information on employment references, job training, and educational programs.

Residential Reentry Centers

The BOP uses residential reentry centers (also known as community corrections centers or halfway houses) to place inmates in the community prior to their release from custody in order to help them adjust to life in the community and find suitable post-release employment. Residential reentry centers provide a structured, supervised environment and support in job placement, counseling, and other services. These centers allow inmates to gradually rebuild their ties to the community and allow correctional staff to supervise offenders' activities during this important readjustment phase. Some inmates are placed in home confinement for a brief period at the end of their prison terms -- the inmates serve this portion of their sentences at home under strict schedules, curfew requirements, telephonic monitoring, and sometimes electronic monitoring.

The BOP recently enhanced its use of residential reentry centers by piloting a transitional skills program in five facilities across the United States. The 9-week transitional skills program includes counseling in areas such as dealing with authority figures, managing peer pressure, developing realistic expectations, developing a support network, and time management. All future residential reentry center contracts are now required to provide the transitional skills program.

Biden 258 **Please provide me with a full accounting of your Department's other activities related to prisoners' reentry into society after incarceration in federal, state, and local prisons and jails.**

ANSWER: The Bureau of Justice Assistance (BJA) works on several reentry initiatives. For example, in coordination with a U.S. Department of Labor (DOL) grant program, BJA awarded 30 grants of nearly $13 million to 20 states in September 2006 under the Prisoner Reentry Initiative (PRI). The PRI grants fund prerelease services for non-violent inmates including assessment, employment assistance, educational assistance, substance abuse treatment, cognitive restructuring, motivational interviewing, mental health and health services, and mentoring. In February, 2007, BJA hosted a kick off meeting for the grantees, in partnership with DOL and faith and community based partners.

The Serious and Violent Offender Reentry Initiative (SVORI) is another program in which BJA awarded grants of up to $2 million to help states provide services to violent offenders returning to targeted communities. SVORI built sound partnerships among federal agencies (U.S. Departments of Justice, Health and Human Services, Housing, Labor, and Veteran Affairs), and its positive impact on offender reentry and public safety are currently being evaluated.

In addition, BJA is participating in the Attorney General's Six Site Gang Initiative for high-impact, violent gang offenders. The initiative focuses on enforcement, prevention, and reentry efforts for gang members in Cleveland, Los Angeles, Tampa, Dallas/Ft. Worth, the Route 222 Corridor of eastern Pennsylvania, and Milwaukee. BJA is involved in the overall grant administration, enforcement, and reentry efforts of the Six Site Initiative.

BJA supported the Department of Justice's recent visit to 18 cities experiencing crime increases or decreases under the Attorney General's Initiative for Safer Communities. Priorities identified by the field included issues related to violent offenders, including the need for adequate pretrial supervision and strong reentry strategies for offenders who pose high risk for recidivism and re-victimization of the community.

BJA was instrumental in the publication of the Report of the Reentry Policy Council, developed by the Council of State Governments, often used as the framework for developing local and state reentry programs.

Finally, BJA also administers funds to several other prison and jail reentry initiatives and programs including:

- The Urban Institute, John Jay College of Criminal Justice (The City University of New York), and Montgomery County (Maryland) Department of Correction and Rehabilitation partnership, which addresses jail reentry.

- The Center for Effective Public Policy, which provides reentry-related training and technical assistance to SVORI sites, as well as selected states who applied for more intense reentry training on collaboration and partnerships.

- The American Probation and Parole Association (APPA), which aims to determine the supervision and service needs of methamphetamine-addicted releasees.

- The Institute of Intergovernmental Research, APPA, and Association for State Correctional Administrators partnership, which addresses gang member reentry and focuses on information sharing between corrections and law enforcement agencies.

The National Institute of Justice (NIJ) has conducted several research projects concerning reentry issues. Through grants to the Research Triangle Institute, NIJ is evaluating the Serious and Violent Offender Reentry Initiative to determine whether the programs funded have met their goals, are cost-effective, and most important, have reduced recidivism. This evaluation has two phases. First is an implementation assessment, a measurement of how the programs have been established, how they are working, and who is being served. We have collected information from all 69 grantees and used this information to create the initial edition of *A National Portrait of the Serious and Violent Offender Reentry Initiative*.

The second phase is a four-year impact evaluation, which examines whether SVORI has resulted in reduced recidivism, whether it is cost-effective, and whether it has helped provide ex-offenders what they need to become productive members of their communities. This phase focuses on 19 SVORI sites in 15 states, including Kansas, Ohio and Pennsylvania. These evaluation states are geographically distributed so that every region of the country is included in the study.

Other NIJ reentry research projects currently underway include, a study of the role of family in reentry, developing a model reentry mapping network, an examination of the ex-offenders' employment prospects. In addition, NIJ is funding evaluations of an employment-based reentry program in Tennessee, a day reporting centers program in New Jersey, and a graduated sanctions program in Ohio.

The Weed and Seed Program is a comprehensive strategy to assist communities in bringing people and resources together to prevent and control crime and improve the overall quality of life. The high-crime/high-risk areas that become Weed and Seed sites have large numbers of returning offenders who will become re-involved in crime unless there is a focused effort to control reentry through judicial, correctional, and law enforcement supervision. Successful reentry initiatives provide support through existing service systems, such as those involving mental health, employment, substance abuse prevention, housing, welfare, faith-based, and transportation services. Funding from the Weed and Seed program to support reentry efforts can be used to manage and supervise the returning offender populations (through law enforcement, corrections, and judicial systems) and to develop support services as well.

In addition, the Community Capacity Development Office (CCDO) is partnering with the Corporation for National and Community Service (CNCS) to develop joint national service projects to support reentry using VISTA volunteers. CCDO also works on reentry issues with the Local Initiatives Support Corporation (LISC), which helps resident-led, community-based development organizations. LISC's Community Safety Initiative is developing and testing models for addressing the challenges of prisoner reentry, particularly as it relates to the housing environment facing the returning population and public safety issues, and has developed a CD-ROM that contains a prisoner reentry housing training curriculum. The initiative is focusing DOJ resources on site grants as well as on the development of a reentry training curriculum for landlords and property managers.

The Bureau of Justice Statistics (BJS) maintains numerous data collections designed to track the number and changing characteristics of inmates returning to the community. These collections include special questions related to substance abuse and treatment, mental health problems, and their medical needs. The collections also track success and failure while under post-custody supervision.

Collections include:

Jail inmates - 2002 Survey of Inmates in Local Jails; 2005 Census of Local Jail Inmates; and 2006 Census of Jail Facilities. From these collections BJS has issued reports on substance use and dependence and mental health problems of inmates (of whom nearly all are released within 1 year). In addition, BJS is developing statistics on jail reentry (including numbers returned each year, length of stay in jail and their characteristics) and anticipates a report on jail reentry during 2007.

Prison inmates - National Prisoner Statistics (annual); National Corrections Reporting Program (annual); 2004 Survey of Inmates in State and Federal Correctional Facilities; and 2005 Census of State and Federal Correctional Facilities. These collections monitor the changing size and composition of inmates entering and leaving the nation's prisons. The surveys provide in-depth measures of criminal histories, family background, drug use and dependence, mental health, medical problems, etc., of inmate in prison and those soon to leave. Based on these collections, BJS is developing updated statistics on prisoner reentry (available on the BJS website www.ojp.usdoj.gov/bjs). BJS anticipates issuing a new report on prisoner reentry during 2007.

Parolees – Annual Parole Survey; National Prisoner Statistics (annual); and National Corrections Reporting Program (annual). These collections track the size and changing characteristics of adults under post-custody supervision. Specifically, the collections have data on numbers of offenders entering parole, the number on parole at yearend, criminal justice factors related to the current offense, type of supervision, and outcomes.

Biden 265 **Do you believe that more local law enforcement officers on the streets help combat crime and support counter-terrorism efforts?**

ANSWER: Increasing the quantity of local law enforcement officers may result in a temporary decrease in crime, assuming that those officers are used efficiently. Many jurisdictions have successfully reduced crime in targeted areas by temporarily increasing the number of officers assigned to those particular areas, or "hot spots." However, increasing the number of local law enforcement officers by itself is not a viable long-term solution to significantly cutting crime rates or combating terrorism.

To better understand the situation, officials from the Department of Justice visited several communities during late 2006 and met with local law enforcement officials. These officials indicated that guns, local gangs, juvenile offenders, and a youthful culture of violence are key contributors to violent crime in their communities. The recent rise in violent crime was related to groups of juvenile and young adults and their willingness to use lethal force to settle disputes over drugs and perceived acts of disrespect.

In some of these cities, the strategic use of police resources has been effective in combating violent crime. Effective strategies have included elements of both COMPSTAT and community-oriented approaches to policing, as well as increased collaboration of law enforcement efforts across local, state, and federal jurisdictions.

Biden 266 **Do you believe that local law enforcement agencies effectively utilize federal grants, such as the Justice Assistance Grant and COPS grants, to prevent, investigate, and prosecute local crime?**

ANSWER: Many local law enforcement agencies use federal funds to effectively prevent, investigate, and prosecute local crime. From the Byrne Justice Assistance Grant (JAG) to Project Safe Neighborhoods (PSN) awards, the agencies most successful in utilizing federal funds have designed a clear strategy that allows them to implement their enforcement, prosecution, and prevention plans based on reliable data; strong partnerships with federal, state, local, and community organizations; and a wide range of resources available to tackle their identified crime problems. This intelligence-led approach to policing maximizes the use of not only federal but state and local law enforcement funding as well.

Biden 267 **Do you believe that the Administration's substantial cuts to these programs – killing the COPS hiring program entirely – are responsible for, or contribute to, rising crime rates?**

<u>ANSWER:</u> There are many factors that contribute to the rise of violent crime. Many of these factors, including familial and cultural factors, simply cannot be effectively addressed by the Department of Justice.

Changes in the rate of violent crime do not appear related to the level of federal spending for state and local law enforcement. Additionally, crime declined even as federal funding for hiring state and local law enforcement officers was phased out. Department of Justice spending on state and local law enforcement has never accounted for more that 4.5% of state and local law enforcement spending, which has increased every year regardless of the size of the federal contribution. And ongoing partnerships among federal, state, and local law enforcement, such as the Project Safe Neighborhoods (PSN) gun-crime reduction initiative, continue to be highly effective at combating serious and specific crime problems.

Biden 271 **During recent testimony before this Committee, FBI Director Mueller testified that "the FBI has made difficult choices on how to most effectively use the available agents." The Director's testimony indicates, as I strongly believe, that the FBI needs additional resources to fulfill its obligation to protect the public, enforce federal law, and combat both crime and terrorism. Do you believe that 1,000 additional agents would help the FBI meet its post September 11th mission of combating crime and terrorism?**

<u>ANSWER:</u> The FBI's post-9/11 reallocation of SAs previously assigned to its criminal program did not diminish the FBI's commitment to criminal matters but it did reduce the number of FBI SAs available to prevent and respond to crime, and the addition of SAs would significantly enhance the FBI's ability to combat crime. However, for a substantial increase in SAs to be fully effective, such an increase should also address the corresponding need for additional equipment and other infrastructure, as well as support employees. If these needs are not addressed, the additional SAs will not be able to function at their full potential.

QUESTIONS FROM SENATOR FEINSTEIN

Feinstein 278 **Will the Administration recommend full funding for the COPS and Byrne/JAG programs for FY2008, given recent violent crime trends?**

ANSWER: The Department has recently completed its city visits. The crime trends observed show localized and regional increases in violent crime, driven by multiple local and regional factors. To address specific crime problems, the President's fiscal year 2008 budget request seeks $200 million for the Violent Crime Reduction Partnership Initiative. The initiative will assist State, local, and tribal governments in responding to violent crime, including gang, drug, and gun violence, through support for multi-jurisdictional violent crime task forces. Built on the lessons learned from some of the nation's most effective crime task forces, the primary goals of the initiative are to: (1) address spikes or areas of increased violent crime in local communities; (2) disrupt criminal gang, gun, and drug activities, particularly those with multi-jurisdictional characteristics; and (3) prevent violent crime by improving criminal intelligence and information sharing. The initiative will make grants available on a competitive basis to law enforcement agencies with sound strategic plans for addressing the specific violent crime problems in their region.

The President's budget does not request funding for COPS or the Byrne/JAG programs. As of the end of FY 2005, through the various COPS hiring programs, over 118,000 officers have been funded by grants to more than 13,000 of the nation's law enforcement agencies. With that goal achieved, and given that the COPS hiring programs were never intended to indefinitely supplant State and local law enforcement personnel expenditures, the Administration has redirected funding from COPS to support other mission critical initiatives. Fiscal Year 2005 was also the last year for which Congress provided funding for COPS hiring programs. The Byrne/JAG program disburses funds by formula. Given the regional character of the recent increases in violent crime, the Violent Crime Reduction Partnership Initiative is viewed as the best approach to targeting resources to areas of greatest need.

Feinstein 290 **Please answer the following questions about the FISA court's orders. To the extent that your answers require the disclosure of classified information, please provide them in the appropriate setting. (a) You told the Senate Judiciary Committee that the President is still "doing what he can do under the law to protect America." What circumstances caused you to conclude that the NSA wiretapping program could be conducted under FISA without undermining American security interests?**

ANSWER: As stated in our letter of January 17, 2007, any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protected the Nation from al Qaeda—the very speed and agility that was offered by the

TSP. The orders issued by the FISC on January 10 will allow the necessary speed and agility while providing substantial advantages. Further details on this matter have been provided in briefings to the Intelligence Committees and have been made available to the Chairmen and Ranking Members of both Judiciary Committees.

QUESTIONS FROM SENATOR FEINGOLD

Feingold 311 **Some argue that overall crime is still relatively low and that these statistics may not be the start of an overall trend. From your vantage point, does it look like these numbers are indicative of a longer term problem?**

ANSWER: Overall, the current data do not reveal nationwide trends. Rather, they show increases locally in a number of communities. Observed increases in violent crime are sharpest in medium-size cities. No change is observed among the largest cities. The data also do not identify any single reason for the observed increases in cities experiencing an upward trend.

To better understand the situation, officials from the Department of Justice visited several of these communities during late 2006 and met with local law enforcement officials. These officials indicated that guns, local gangs, juvenile offenders, and a youthful culture of violence are key contributors to violent crime in their communities.

In some of these cities, the strategic use of police resources has been effective in combating violent crime. Effective strategies have included elements of both COMPSTAT (Computerized Statistics) and community-oriented approaches to policing, as well as increased collaboration of law enforcement efforts across local, state, and federal jurisdictions. Law enforcement officials consistently cited problems of officer recruitment and retention, as well as heightened competition among agencies and jurisdictions for qualified staff.

It is premature to conclude that after years of declining violent crime rates that an upturn has begun. A long term trend cannot be inferred from available data. The FBI's Uniform Crime Reports (UCR), which counts crimes reported to the police, revealed an increase nationally of 1.3% during 2005 in the violent crime rate. While increases in the UCR are observed, it is important to emphasize that crime remains at historically low levels, with 2005 being the second-best year recorded by the UCR in the past 30 years.

According to the UCR, murder and robbery rates rose in all regions during 2005. Overall, the United States experienced a 2.4% increase in the murder rate in 2005 (which was the second-lowest rate ever recorded, and was identical to the murder rates in 2002 and 2003). However, murder rates varied by city size. Cities between 100,000 and 249,999 experienced a 12.4% increase while cities between 50,000 and 99,999 experienced an 11% increase. Very large cities with populations over 1,000,000 experienced a 0.6% increase while small cities with a population between 10,000 and 24,999 experienced a decline of 0.9%. In addition, robbery rates varied by region. While the nation experienced a 2.9% increase in the robbery rate, the Northeast and Midwest both experienced a 7.3% increase. The West experienced a 1.0% increase and the South a 1.9% increase in the robbery rate.

Feingold 315 **You referenced in your testimony several ways the federal government can provide crucial support to our state and local law enforcement partners in anti-crime efforts. The federal government should be a leader in the development and dissemination of research on cutting edge law enforcement strategies. The National Institute of Justice is the branch of the Department of Justice that handles this, but it has not had a permanent Director to oversee and guide these efforts since August 2005. Time and again I hear that there is a leadership void at DOJ with regard to coordinating federal support for state and local law enforcement, and not having a permanent Director for the NIJ is just the sort of thing that leads to these complaints. (a) What are you doing to ensure that this crucial position is permanently filled?**

ANSWER: The Department is working with the White House to identify a qualified candidate for Presidential nomination as Director of the National Institute of Justice (NIJ).

Even without a permanent Director, NIJ has continued to support innovative law enforcement and criminal justice research. As part of the President's DNA Initiative, NIJ manages a comprehensive Web site: *www.dna.gov*. In September 2006, the site was one of 11 finalists and one of six in its category to win the Federal Web Managers Best Practice Awards.

NIJ continues to support research to advance the tools for examining DNA evidence, especially when the DNA is degraded, damaged, or limited in quantity. Additionally, DNA research funded in prior years was successfully implemented in operational forensic laboratories. NIJ also greatly expanded Research in other forensic disciplines (such as impression evidence, toxicology, crime scene, and other non-DNA areas) in Fiscal Year 2006.

Research in other forensic disciplines (such as impression evidence, toxicology, crime scene, and other non-DNA areas) was also greatly expanded in FY 2006.

As noted in the response to question #258, NIJ is currently evaluating the Serious and Violent Offender Reentry Initiative. Also, as part of the Prison Rape Elimination Act, NIJ is evaluating programs designed to eliminate incidents of prison sexual assault.

NIJ has also provided cutting-edge training and technical assistance for law enforcement. In Fiscal Year 06, NIJ delivered four cold case and missing persons training events and produced an interactive resource tool entitled *Principles of DNA for Officers of the Court.* By the end of 2006, NIJ's missing persons training reached professionals from all 50 states.

Feingold 316 **When do you expect that a permanent director might be appointed?**

ANSWER: Please see our answer to 315, above.

QUESTIONS FROM SENATOR SCHUMER

Schumer 352 **Some have recently expressed concern about the possible politicization of the hiring and firing of United States Attorneys.**
a. How many United States Attorneys have been asked to resign prior to the ends of their terms? For each, please provide the name, the district, the date of confirmation, the date of resignation or termination, and the name of the proposed replacement.

ANSWER: All of the U.S. Attorneys asked to resign last December had completed their four-year terms.

Schumer 353 **Do you believe that there is any constitutional infirmity in allowing (as was done prior to the PATRIOT Act change), in certain circumstances, federal judges to make interim appointments of United States Attorneys? If so, please provide a detailed explanation of your constitutional concerns. Are you aware of any legal challenges, prior to 2006, to the method of interim U.S. Attorney appointments. If so, please provide the details of those legal challenges and the resolution of the litigation.**

ANSWER: As far as we are aware, this is the only situation in which the Judicial Branch has the authority to appoint officials in the executive Branch, and that certainly raises constitutional issues. For example, if the court appoints someone who is unacceptable to the Department – as the District Court in South Dakota purported to do in late 2005 – it is clear that the President has the constitutional authority to remove that person. That is why, in the vast majority of cases, courts have appointed the person proposed by the Department. When that does not happen, challenges and problems arise. In South Dakota, for example, there was a period of time when it appeared that two different people may have been appointed – one by the Attorney General and one by the court. These situations distract prosecutors from the important job they do and result in a waste of resources. That said, we do not believe there is any constitutional infirmity in placing the appointment power for interim U.S. Attorneys in the hands of federal district judges.

Schumer 364 **Currently, it is not a crime to lie to voters about information including the time, place and manner of an election; the qualifications for or restrictions on voter eligibility in a jurisdiction; or the political party affiliation of a candidate. Do you think it should be a crime to disseminate false information of these types?**

ANSWER: This question encompasses two types of false information. The first involves what we call "voter suppression" schemes, the object of which is to prevent qualified voters from participating in elections by disseminating fraudulent information concerning the place, time, and prerequisites for voting. The second involves what we call "false campaign rhetoric" schemes, the objective of which is to mislead voters concerning the positions or party affiliations of candidates. Each is addressed separately below.

Voter Suppression: Voter suppression activities have no place in a democratic system and we believe that enactment of a specific law to address such conduct could aid in our enforcement efforts and deter such conduct in the future. We welcome the opportunity to work with Congress in drafting such a statute.

Misleading Campaign Literature and Rhetoric: This type of activity differs from "voter suppression" in that its objective is to provide inaccurate information about candidates as part of the political campaign process rather than to prevent voters from voting. We believe that any attempt to reach beyond current law in an effort to criminalize what amounts to the political dialogue between opposing candidates risks running afoul of the First Amendment, and would be unsuccessful.

Existing federal criminal law covers certain types of misinformation involving federal candidates. Specifically, 2 U.S.C. § 441d(a) requires that federal electioneering communications accurately identify the person or entity authorizing and paying for the communication, and 2 U.S.C. § 441h(a) prohibits agents of one federal candidate or political party from fraudulently misrepresenting authorization to speak or act on behalf of a rival federal candidate or party.

In all other respects, federal criminal laws are not applicable to the tactics and rhetoric of candidates. For example, the mail fraud statute, 18 U.S.C. § 1341, has never been held to apply to allegedly false campaign statements, as the statute is limited to schemes to obtain money or property or to deprive another of someone's "honest services," and campaign statements involve neither. *McNally v. United States, 483 U.S. 350 (1987); United States v. Turner,* 459 F.3d 775 (6th Cir. 2006). Moreover, statements by political candidates during election contests do not necessarily have the reliance potential of statements made in a fiduciary or commercial setting. Similarly, the federal statutes criminalizing conspiracies against rights and deprivation of constitutional rights, 18 U.S.C. §§ 241 and 242, have never been asserted to criminalize incidents not directly bearing on the balloting process itself, and the criminal statute addressing certain federal activities relating to voting and campaigning, 18 U.S.C. § 245(b)(1)(A), is limited to conduct entailing threats or use of force.

Schumer 369 **Do the search restrictions contained in warrants, and the estimated time required to obtain a warrant, affect the Administration's determination in a given situation about whether exigent circumstances exist to justify a warrantless search of first class U.S. mail? If so, how?**

ANSWER: We understand that any "search restrictions contained in warrants" do not affect the Postal Service's determination in a given situation about whether exigent circumstances justify a warrantless search of first-class U.S. mail. The "estimated time required to obtain a warrant" affects such a determination only insofar as a postal inspector suspects that a package "pos[es] an immediate danger to life or limb or an immediate and substantial danger to property," 39 C.F.R. § 233.11(b), in which case the postal inspector may search the package without a warrant because the danger posed by the package appears to be "immediate."

Schumer 371 **Has the mail of any elected official been opened without a warrant during the Bush Administration?**

ANSWER: Shortly after the attacks of September 11, 2001, anthrax spores were mailed to some Members of Congress. Under those exigent circumstances, some mail addressed to Members of Congress was opened without a warrant, for the protection of Members of Congress, congressional staff, and the public at large. Shortly thereafter, a screening facility was established so that mail bound for Members could be X-rayed and screened without opening. We are not aware of any program since that time to subject the mail of Members of Congress to nonconsensual warrantless opening.

We understand that the United States Secret Service routinely screens the mail sent to the President and the Vice President, with their consent, for security reasons. We understand that the United States Capitol Police, which is an entity created and overseen by Congress, or private contractors working under Congress's supervision, may perform a similar function for Members of Congress.

Schumer 373 **Without any judicial review, what assurance can you offer this Committee that the Administration intends to keep its warrantless mail searches to a minimum and to limit this practice only to the most urgent instances?**

ANSWER: The United States Postal Service indicates that it makes reasonable efforts to keep its warrantless mail searches based on exigent circumstances to a minimum and limits this practice to only the most urgent instances. Since October 2003, the U.S. Postal Service has handled approximately *700 billion* pieces of mail. During that time, postal inspectors have opened domestic mail without a warrant because of exigent circumstances approximately *150* times. As you can see, warrantless searches of domestic mail based on exigent circumstances are statistically quite rare—the number of packages searched on that basis makes up a miniscule portion of the total number of packages the Postal Service handles.

The Postal Service informs us that, where it is possible, a postal inspector makes every effort to contact either the sender or the addressee in order to obtain consent before opening a suspicious package on the ground of exigent circumstances. Consent searches are a valid exception to the warrant provisions of the Fourth Amendment to the Constitution. *See Scheckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). As the Service's regulations indicate, if those efforts do not allow the Postal Service to dispel suspicion, a warrantless search is conducted "only to the extent necessary to determine and eliminate the danger and only if a complete written and sworn statement of the detention, opening, removal, or treatment, and the circumstances that prompted it, signed by the person purporting to act under this section, is promptly forwarded to the Chief Postal Inspector." 39 C.F.R. § 233.11(b). Even before such searches can be done, the mail must first be screened, and the regulations specify that "[s]creening of mail . . . must be limited to the least quantity of mail necessary to respond to the threat." *Id.* § 233.11(a).

Schumer 394 **If you do have to divert other funds to pay for Sentinel, how will that affect the FBI's ability to accomplish its mission?**

ANSWER: Resources appropriated in P.L. 110-5 for FY 2007 will fund Operations and Maintenance (O&M) for Phase 1 and most of the system development, training, and program management costs for Phase 2. A reprogramming notification, transmitted February 7, 2007, is pending with Congress to use up to $57 million in available funds from prior-year appropriations to meet FY 2007 SENTINEL requirements. Use of these funds will not affect the FBI's ability to accomplish its mission. The FBI anticipates funding development, program management, and independent verification and validation (IV&V) for Phases 3 and 4, and the remaining O&M for all phases, with the recurral of the FY 2007 appropriation. As noted in the response to the OIG, the FBI evaluates the operational impact of any proposed reprogramming and takes that impact into consideration in all reprogramming decisions. The FBI routinely provides this impact assessment and other relevant information to DOJ, OMB, and Congress as part of the reprogramming process.

QUESTIONS FROM SENATOR GRASSLEY

Grassley 411 **Are there other ways Congress could help your efforts, aside from appropriations which we all know are necessary, to prevent crimes against children and ensure that those who commit such crimes don't have the opportunity to do it again?**

ANSWER: The Department of Justice appreciates your soliciting our input on additional measures to protect children and to hold those who hurt them accountable for their actions. We currently are examining several proposals originally developed by the Criminal Division's Child Exploitation and Obscenity Section that would address several issues faced by child exploitation prosecutors. We look forward to working with the Congress on this important issue.

We also have comments on various bills pending in Congress, which will be separately transmitted in appropriate formal views letters.

Grassley 412 **When do you expect the White House to nominate a permanent ATF Director?**

ANSWER: On March 22, 2007, the President nominated Michael J. Sullivan, of Massachusetts, to be Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Mr. Sullivan is currently the Acting Director of ATF.

QUESTIONS FROM SENATOR CORNYN

Cornyn 427 **"The REAL ID Act of 2005, Pub. L. 109-13, amended section 242(a)(2)(B) of the Immigration and Nationality Act (INA) and clarified the limitations on judicial review of certain agency determinations. Motivated in part by concerns raised by the U.S. Supreme Court in INS v. St. Cyr, 533 U.S. 289 (2001) – namely that an alien might face removal from the U.S. without having the opportunity to obtain any judicial review, especially of questions of law or constitutional claims – Congress passed the REAL ID Act to ensure that the alien could raise such claims in the appropriate forum, the Circuit Courts of Appeal. The REAL ID Act also was designed to reduce the piecemeal district court and Circuit Court litigation, which permitted criminal aliens to take advantage of multiple opportunities for judicial review and for the purpose of ultimately delay their removal from the United States. The REAL ID Act corrected this anomaly and required that all statutory and constitutional challenges to agency determinations raised by criminal aliens had to be funneled into a single forum – the Circuit Courts of Appeal.A survey of recent litigation addressing the jurisdiction stripping provisions of section 242(a)(2)(B) of the INA reveals confusion on the extent to which the REAL ID Act amendments affected district court jurisdiction to review agency determinations. Certain district courts have found that, in the context of the enumerated provisions in section 242(a)(2)(B)(i) of the INA (e.g., adjustment of status, cancellation of removal, voluntary departure and request for waivers of inadmissibility), they lack any jurisdiction to review agency determinations, whether or not the decisions were based on discretionary or statutory grounds. Other district courts have found that they retain jurisdiction over statutory or constitutional claims, even if the agency decision involves an exercise of discretion. As a result of the confusion on this issue, it appears that the anomaly the REAL ID Act was designed to correct has returned. Aliens, especially those who DHS may not be able to place in removal proceedings due to ongoing investigations or national security interests, have another opportunity to continue litigating their cases in multiple forums and ultimately delay their departure from the United States.**
Are additional amendments needed to section 242(a)(2)(B) of the INA to address this problem?

ANSWER: Yes. Section 242(a)(2)(B) should be amended to read as follows:

"(B) Discretionary determinations and certain factual determinations. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the individual determination, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

> "(i) any individual determination regarding the granting of status or relief under section 212(h), 212(i), 240A, 240B, or 245 of this Act; or

> "(ii) any discretionary decision or action of the Attorney General or the Secretary of Homeland Security under this Act or the regulations promulgated hereunder, other than the granting of relief under section 208(a) of this Act, irrespective of whether such decision or action is guided or informed by standards or guidelines, regulatory, statutory, or otherwise."

This would ensure that constitutional claims and questions of law would be reviewable in the court of appeals when DHS denies an alien adjustment of status, removal proceedings are commenced, and adjustment of status is denied before the Executive Office for Immigration Review. Discretionary decisions and factual findings would not be reviewable either in the district court or the court of appeals.

Cornyn 428 **If yes to # 1, what specific language should be amended and what impact would such changes have on DOJ attorney resources and workload?**

ANSWER: Please see the response question 427, above. There is likely to be some reduction in the workload if this provision is enacted.

Cornyn 429 **Are there additional agency determinations, whether made by DOJ or DHS, that Congress should specifically enumerate in the statute to eliminate judicial review at the district court level and limit judicial review at the Circuit Courts of Appeals?**

ANSWER: Yes. Section 242(a)(2)(C) should be amended as follows:

"Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal (irrespective of whether relief or protection was denied on the basis of the alien's having committed a criminal offense) against an alien who is removable by reason of having committed a criminal offense covered in section 212(a)(2) or 237(a)(2)(A)(iii), (B), (C), or (D) of this Act, or any offense covered by section 237(a)(2)(A)(ii) of this Act for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 237(a)(2)(A)(i) of this Act."

This would ensure that judicial review for criminal aliens is limited to constitutional claims and questions of law in the court of appeals irrespective of whether the alien was denied relief or protection based on having committed a criminal offense. Such criminal aliens also would not be able to seek judicial review in district court.