U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

June 27, 2008

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

Dear Mr. Chairman:

Please find enclosed responses to questions for the record, which were posed to Attorney General Michael B. Mukasey following his appearance before the Committee on January 30, 2008. The hearing concerned Department of Justice Oversight. This submission provides responses to a large number of questions posed by the Committee. 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 the submission of this letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

Keith B. Nelson
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Questions for the Record Posed to
U.S. Attorney General Michael B. Mukasey
Senate Committee on the Judiciary
DOJ Oversight Hearing on January 30, 2008
Part One

QUESTIONS FROM CHAIRMAN LEAHY

Leahy 8 According to the New York Times, officials from the Justice Department and the State Department told the House Judiciary Committee at a December briefing that there were legal obstacles to the prosecution of Blackwater security guards for killing 17 Iraqis in Nisoor Square last September. These obstacles are said to include a limited form of immunity purportedly given by the State Department to Blackwater employees in the course of its inquiry into the killings and problems asserting jurisdiction over private security contractors who are not held accountable under U.S. law. Human Rights First disagrees that these obstacles would prevent prosecution of the contractors, instead describing it as a choice not to prosecute. What is your view of whether State Department immunity is an obstacle to prosecution?

ANSWER: Because the Department is actively investigating the September 16, 2007 shootings at Nisoor Square, we cannot comment on the progress of that case. As a general matter, the Department does not view limited use immunity that may be granted in a particular case as an absolute bar to prosecution. Such limited use immunity, however, can prove to be a serious constraint on prosecution, and it is one of many factors government prosecutors must consider before charging a defendant with a Federal crime.

Leahy 9 What about the limits of U.S. jurisdiction over private security contractors, is that an obstacle as well?

ANSWER: Existing federal jurisdiction over private security contractors is governed by several federal statutes, including 18 U.S.C. 3261(a) (the Military Extraterritorial Jurisdiction Act). Whether a particular private security contractor falls within the jurisdictional provisions of such a statute is governed by the facts of the particular case. Under long-standing Departmental policy, we cannot comment on whether Federal jurisdiction would exist without knowing the specifics of a particular case. The Department cannot comment on a matter under investigation.

Leahy 10 Do you favor expanding the scope of the Military Extraterritorial Jurisdiction Act (MEJA) to cover all government security contractors worldwide, as well as any contractors working in a country where the United States is conducting military operations?

ANSWER: The Department supports legislative efforts to hold U.S. contractors accountable for serious misconduct they may commit abroad. We have concerns, however, about the proposed amendments to MEJA the House adopted in H.R. 2740. We look forward to working with the Congress to ensure that we have the laws we need to hold U.S. contractors properly accountable.

Leahy 11 While the Nisoor Square killings have drawn the most publicity, those shootings were not an isolated event. Blackwater forces have a documented history of shootings in Iraq where civilians have been seriously injured and killed. There were two other shooting incidents in the same month as the Nisoor square killings, where five civilians were killed and fifteen more were wounded. Since 2005, there have been nearly 200 other shootings by Blackwater guards in Iraq, and in more than 160 of those incidents, the Blackwater guards fired first. Is the Justice Department's investigation limited to the Blackwater killings in September, or will the Justice Department also investigate the other shooting incidents by Blackwater and other private security contractors in Iraq? If not, why not?

ANSWER: As a general matter, the Department does not comment on referrals made to it by other Departments, including State and DOD. In addition to being law enforcement information that we generally don't disclose publicly, referral numbers paint an incomplete picture and raise law enforcement sensitive questions that we are unable to answer.

Leahy 12 How many full time prosecutors and agents at the Justice Department are assigned to investigate criminal allegations against private security contractors overseas? What steps have you taken to make sure that shooting incidents by private security contractors in Iraq and Afghanistan are aggressively investigated and prosecuted?

ANSWER: Most MEJA cases involving private security contractors are initially investigated by the Department of Defense or the Department of State. Department of Justice agents and prosecutors do not typically become involved until those Departments refer a given case to the Department of Justice for criminal prosecution. When MEJA cases are referred to the Department for prosecution, the Department assigns agents and prosecutors as needed from the FBI, the offices of the United States Attorneys, and the Criminal Division.

The Department is committed to investigating and prosecuting criminal acts committed by private security contractors overseas. To that end, we continue to work with the Departments of Defense and State to ensure that there are clear procedures for those Departments to identify and, where appropriate, to refer for prosecution allegations of criminal misconduct involving private security contractors. We are also working with the Congress to explore legislative amendments that would increase the USG's ability to hold private security contractors accountable under federal law.

Leahy 13 According to press accounts, on January 24, 2008, a federal grand jury in Alexandria issued a subpoena to New York Times reporter Jim Risen reportedly seeking information about his confidential sources for a chapter in his 2006 book, "State of War" focusing on the CIA's alleged efforts to inflitrate and destabilize Iran's nuclear program. Mr. Risen's book also expanded on his reporting about the Administration's warrantless wiretapping for which he and another New York Times reporter won the 2006 Pulitzer Prize. Under the Department's guidelines, a subpoena to the media must be approved by the Attorney General. Did you approve this subpoena? What process was followed by the Department in considering whether to subpoena Mr. Risen?

ANSWER: Because Federal Rule of Criminal Procedure 6(e) imposes a secrecy requirement on all pending Grand Jury investigations, we cannot answer any questions pertaining to a specific Grand Jury subpoena or specific Grand Jury proceedings. We can say, however, that the Department's internal guidelines concerning media subpoenas, reprinted at 28 CFR 50.10, set out the specific factors to be considered before issuing a subpoena to a member of the media and require Attorney General approval before any such subpoena is issued.

Leahy 14 As we head into a critical national election, I hope that you will be supportive of our efforts to prevent the Administration's political appointees from influencing the outcomes of any election. In a recent book, one of the Republican operatives convicted in a scheme to jam the phone lines of the Democratic Party on election day in 2002, describes the complicity of the Bush Justice Department and how the Department intervened to delay a civil suit so that the Republican scheme would not come to light on the eve of the 2004 election. Is the conduct of the political appointees involved in the New Hampshire phone jamming case within the scope of the on-going joint internal Justice Department investigation into the inappropriate partisan influence this Administration's political appointees have had on the law enforcement responsibilities of the Justice Department?

ANSWER: At the outset, we assure you that the Department of Justice places a high priority on investigating and prosecuting federal crimes affecting voting rights and the integrity of the federal election process. All credible allegations are investigated and, where appropriate, prosecuted to the full extent of federal law.

The Department of Justice and the FBI conducted an investigation into a scheme to jam telephone lines that were used for get-out-the-vote and ride-to-the-polls programs on Election Day in New Hampshire in November, 2002. The investigation was conducted aggressively by career prosecutors in the Department's Criminal Division and FBI agents. On July 28, 2004, Charles McGee, the former Executive Director of the New Hampshire Republican State Committee, pled guilty to conspiracy to commit telephone harassment. McGee was sentenced to seven months incarceration. On June 30, 2004, Allen Raymond, a private consultant and former Regional Director of the Republican National Committee, pled guilty to conspiracy to commit telephone harassment. Raymond was sentenced to three months incarceration. On December 15, 2005, James Tobin, a former Regional Director of the Republican National Committee and of the National Republican Senatorial Committee, was convicted at trial of conspiracy to commit telephone harassment and of aiding and abetting telephone harassment. Tobin was sentenced to 10 months incarceration. On March 30, 2007, a federal appeals court reversed Tobin's conviction, and the case was remanded to the United States District Court for the District of New Hampshire for further proceedings. On February 21, 2008, the trial judge issued an order granting Tobin's motion for a judgment of acquittal, and the Department of Justice is considering an appeal. Finally, Shaun Hansen, formerly a telemarketing vendor from Sand Point, Idaho, is under indictment for his role in the phone-jamming scheme. The Hansen case is pending.

These cases were handled by the Criminal Division's Computer Crime and Intellectual Property Section and the Public Integrity Section, in addition to the FBI. We are not in a position to provide additional non-public information about the Tobin and Hansen cases based upon our long-standing policy on pending matters and Rule 6(e) of the Federal Rules of Criminal Procedure. We can advise you, however, that we have no information indicating that the FBI was ever asked or directed to refrain from gathering evidence regarding any person or from any geographical location.

Prior to trial in the Tobin case, the Department intervened in a state civil lawsuit between the New Hampshire State Democratic Party and the New Hampshire State Republican Party. The Department asked the New Hampshire state court to stay civil discovery until the conclusion of the Tobin trial. The state court agreed, and discovery in the civil matter was held in abeyance until after Tobin's jury verdict. After Tobin's jury conviction, the Department withdrew its request for a stay, and civil discovery proceeded in the state litigation.

Leahy 16 I await an answer to my letter to you from last month asking for information related to lucrative no-bid contracts companies awarded to former political office-holders and appointees at the direction of Department of Justice officials for monitoring compliance with settlements and deferred prosecution agreements in criminal cases. According to a story in The New York Times, New Jersey U.S. Attorney Christopher Christie directed companies to award monitoring contracts to Republicans such as former Attorney General John Ashcroft, whose consulting firm was awarded an18-month contract awarded without public notice or

bidding worth between $28 million and $52 million. Other stories make clear that the practice of funneling these contracts to former political office-holders and appointees has become widespread with the proliferation of these type of settlement agreements since 2001, with U.S. Attorneys in Alabama, New York, and Virginia hiring former prosecutors and SEC officials with ties to President Bush, former President Bush, and other prominent Republicans. What is the current policy at the Department governing the award of these contracts? What oversight is there?

ANSWER: On May 15, 2008, the Department submitted a letter to Senator Leahy in response to his letters of January 10 and February 26, 2008. The May 15 letter addresses the issues raised in Question 16, including the process by which monitors are selected. In particular, as noted in the May 15 letter, the current policy governing the selection and use of corporate monitors is set forth in a memorandum dated March 7, 2008, from Acting Deputy Attorney General Craig S. Morford, entitled "Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations" (the "Monitor Principles"). Section II of that memorandum describes key aspects of monitor selection, including oversight. Among other things, monitor candidates must be considered by a committee, and the Office of the Deputy Attorney General must approve the monitor.

Leahy 17 How does the Department avoid political or personal favoritism in decisions regarding these contracts?

ANSWER: The Monitor Principles are designed to ensure that the monitor selection process produces a high-quality and conflict-free monitor. Political and personal favoritism have no place in this process. Toward that end, the Monitor Principles require, among other things, that (a) Government attorneys must be mindful of their obligation to comply with existing conflict-of-interest guidelines; (b) the Government must create a committee in the Department component or office at issue to consider monitor candidates; (c) United States Attorneys and Assistant Attorneys General may not make, accept, or veto the selection of monitor candidates unilaterally, and (d) the Office of the Deputy Attorney General must approve the monitor.

Leahy 24 In 2004, Congress passed and the President signed the Justice for All Act. That bipartisan bill included the Innocence Protection Act, a piece of legislation I worked on for years providing important reforms to help reduce the risk of error in capital cases. A key component of that Act was a grant program for post-conviction DNA testing. The program is named in honor of Kirk Bloodsworth, the first death row inmate exonerated as a result of DNA testing. To ensure that other innocent people avoid the ordeal Mr. Bloodsworth went through and that the guilty are caught and convicted, it is crucial that states receive the funding authorized and appropriated for the Bloodsworth program. Instead, the Department of Justice has interpreted the very reasonable evidence preservation requirements that Congress included for this program so stringently, and contrary to Congress's intent, that all applications to the program have been rejected and not

a dime has been awarded. This Committee held a hearing last month on this issue, and the Department's representative assured us that he would work to award the grant money that has been sitting unused these past three years. Will you make sure that the Department does everything it can this year to get the money appropriated to the Bloodsworth program out to the states that can use it for good?

ANSWER: Yes. In the FY 2007 postconviction DNA solicitation, in accordance with section 413 of the Justice for All Act and the Fiscal Year (FY) 2006 and FY 2007 appropriations, applicants were required to demonstrate compliance with certain stringent eligibility requirements set by section 413. Language in this year's (FY 2008) appropriation has the effect of allowing the Department of Justice's National Institute of Justice (NIJ) to ease the section 413 requirements with respect to funds appropriated for FY 2006 - FY 2008. The FY 2008 solicitation – which was posted on January 22, 2008, and updated in response to concerns expressed in connection with a Senate hearing – accordingly eases the requirements of section 413, in a manner that we believe remains consonant with the policy objectives of section 413.

Leahy 25 Congress gave the Department an out in this year's appropriations bill that allows the Department to loosen the requirements for the Bloodsworth program. Will you nonetheless make sure that the Department does not ignore Congress's clear intent that states be held to reasonable standards of evidence preservation since money for DNA testing does no good if the evidence is not there to test?

ANSWER: The FY 2008 solicitation eases the requirements in a manner that we believe remains consonant with the policy objectives of the statute. Under the FY 2008 solicitation to establish eligibility, the chief legal officer of the State must certify that the State "[p]reserves biological evidence secured in relation to the investigation or prosecution of a State offense of forcible rape, murder, or nonnegligent manslaughter under a State statute, local ordinances, or State or local rules, regulations, or practices, in a manner intended to ensure that reasonable measures are taken by all jurisdictions within the State to preserve such evidence." We believe that this requirement, which includes language derived generally from section 413 of the Justice for All Act itself, calls for a meaningful certification. We will rely on the chief legal officer of each State to accurately assess whether the certification properly can be made based on the State's particular circumstances. We note that the certification template explicitly states that "I am aware that a false statement in this certification may be subject to criminal prosecution, including under 18 U.S.C. § 1001."

Moreover, the FY 2008 solicitation for these funds puts States on notice that funding in future fiscal years may be contingent on the more stringent requirements regarding evidence retention established by section 413 of the Justice for All Act. In addition, through the DNA and Coverdell programs, NIJ provides significant assistance to States and units of local government to purchase equipment and other resources to provide for retention of biological evidence. Finally, NIJ is studying the extent of

evidence preservation in DNA laboratories generally to identify ways to improve evidence storage practices.

Leahy 27 Do you agree with me that the Justice Department must encourage the reporting of serious allegations of lab misconduct for investigation in order to ensure that any federally-funded forensic labs have the highest level of integrity?

ANSWER: Yes, the Justice Department believes that allegations of serious negligence or misconduct should be appropriately investigated. Beginning with the upcoming FY 2008 solicitation, Coverdell program solicitations will strongly encourage the reporting of this misconduct.

Leahy 28 Prior to 2005, in order for states to "opt in" to a system giving death penalty defendants less time for habeas corpus appeals, a federal court had to find that the states ensured defendants access to adequate and competent lawyers. The courts were an effective check on the executive, setting high but appropriate standards that states had to meet. In the PATRIOT Act reauthorization in 2005, Congress transferred this check to the Attorney General, who is required to similarly ensure that states adequately safeguard defendants' right to effective counsel before certifying states for the streamlined process. This summer, the Department of Justice issued draft regulations to go with this change in the law, regulations which make a mockery of the notion that the Attorney General would be an effective check. These regulations would allow the Attorney General to certify states to reduce key rights of defendants, on little or no real showing that the states are providing defendants with effective counsel. The proposed regulations ignore the intent of Congress because they fail to flesh out how the Attorney General would adequately ensure effective capital defense systems in the States. Senator Specter joined me in asking for more time for comments on these regulations, and Senators Feingold and Kennedy joined me in submitting comments pointing out the inadequacy of the regulations.I understand the regulations will likely go into effect this spring without any significant change from the wholly inadequate draft version. Why does the Department remain unwilling to add substance to the proposed regulations in order to require effective counsel for capital defendants as Congress intended?

ANSWER: The requirements for chapter 154 certification are expressly stated in chapter 154 itself and the Attorney General has no authority to add to these requirements. *See* 28 U.S.C. 2265(a)(3) ("There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter."). Beyond the 60-day comment period originally provided in the proposed rule, an additional 45 days was provided for public comment in response to requests for additional time. *See* 72 FR 44816 (Aug. 9, 2007). The Department of Justice has carefully considered all public comments received on the proposed rule and will make any changes in the final rule that are warranted on the basis of the comments.

Leahy 30 When he resigned Attorney General Ashcroft famously declared that "The objective of securing the safety of Americans from crime and terror has been achieved." Of course those threats continued and under your immediate predecessor as Attorney General crime-- including violent crime-- was on the rise for the first time in years, particularly in rural areas and smaller cities. Many of us think it is in part the consequence of this Administration's failure to provide financial assistance to our state and local law enforcement partners. Despite our repeated warnings, the Bush Administration has systematically tried to dismantle federal support for local and state law enforcement through our successful Community-Oriented Policing Services (COPS) program, Byrne grants and others. Indeed, during the Bush Presidency billions have been cut from our State and local law enforcement efforts while we continue writing blank checks for law enforcement efforts in Iraq. Recently, you announced with great fanfare at the conference of mayors that you would propose new federal assistance to state and local law enforcement to help them fight violent crime. Of course $200 million does not begin to make up for the billions that have been cut. Moreover, I did not hear the President mention crime or your initiative at all in his State of the Union address. In these days in which we are challenged to pay for new programs, how do you propose to pay for this program, what cuts are you proposing to offset it?

ANSWER: The President's Budget for FY 2009 seeks $200 million for the Violent Crime Reduction Partnership Initiative to support law enforcement task forces in those communities that face violent crime challenges. This program builds on a proven crime fighting model that has developed under the Byrne Justice Assistance Grant (Byrne/JAG) program—multijurisdictional task forces. As you know, the Byrne/JAG program disburses money to states and localities by formula based on population. These funds can be used for virtually any justice assistance purpose. Many states on their own initiative, however, have invested Byrne/JAG funds in multijurisdictional task forces. In FY 2007, $103 million of the $510 million appropriated by Byrne/JAG were spent on task forces. The President seeks $200 million to support task forces to be awarded to jurisdictions—big and small—on the basis of need.

Leahy 31 What prevention component are you proposing?

ANSWER: In addition to the Violent Crime Reduction Partnership Initiative, the President's Grant consolidation proposal seeks funding for three programs (for a total of four programs), each of which contemplates prevention as an allowable purpose area.

1. **Byrne Public Safety and Protection Program -** includes $200 million that can be used to fund prevention activities such as *Weed and Seed*, *Drug Court*, and the *Faith-Based Prisoner Re-entry Initiative* (to prevent criminal recidivism among recently-released offenders).
2. **Child Safety and Juvenile Justice Programs -** includes $185 million that can be used to fund prevention activities such as *Juvenile Justice Grant Pr*ograms, *ICAC,*

AMBER Alert and the *Missing and Exploited Children Program*, *Project Childsafe*, and *Boys and Girls Clubs of America* projects.

3. **Violence Against Women Grants -** includes $280 million that can fund prevention activities such as *Safe Havens/Supervised Visitation, Rural Domestic Violence and Child Abuse Enforcement Assistance*, and *Child Witness*.

Leahy 32 What are you proposing for rural areas and the smaller cities where crime has risen the most?

ANSWER: DOJ is committed to providing the technical assistance necessary to ensure that applicants need not employ professional grant writers to successfully compete for funding. But more, objective criteria such as crime rates allow communities and grantees to compete on equal footing.

This has been borne out in practice. A total of 18 sheriffs offices were funded in the FY 2007 Targeting Violent Crime Initiative Program - all that applied were successful. While several large sheriffs' offices applied and were funded, many small agencies also applied and received funding (some with as few as 20 or 30 sworn staff). Awards to larger agencies often included support for smaller agencies in the surrounding areas, including sheriffs' offices (showing multi-jurisdictional character was an important factor in this program).

- Tulsa, Oklahoma – the Tulsa Police Department will partner with the Tulsa County Sheriffs Office, the local community services council, the FBI and ATF to address gang- and drug-related gun crime in the greater Tulsa area.
- Wilmington, North Carolina – this town will use TVCI funds to address a violent drug gang problem using long and short term investigative strategies and relying on a partnership with the local FBI task force.
- Moss Point, Mississippi - this Gulf Coast community (population 15,512) will use TVCI funds in addition to building on existing DEA and FBI taskforces to address local violence, which appears to be drug- and gang-related.
- Redding, California – this Shasta area community will address local gang problems using TVCI funds in collaboration with federal agency support.
- Lowell, Massachusetts – this suburban community will use TVCI funds to support an analytical, intelligence-driven "Ceasefire" approach to address gun, gang, and drug violence in the community.
- Akron, Ohio – this Midwest community will broaden an anti-gang initiative with Summit County Sheriff's Office and the Greater Akron High Intensity Drug Trafficking Area project. Funds will also be used to support prevention and prosecution of crimes in that area.
- Leech Lake Tribe in Minnesota.

The Bureau of Justice Assistance within OJP also has a program of training and technical assistance designed exclusively for small law enforcement agencies (those with less than 50 sworn staff). This program provides assistance to small departments in

developing anti-crime strategies, managing departments, and accessing resources such as grants. This program is administered by the International Association of Chiefs of Police).

Leahy 33 Will you commit to working with me during the regular FY09 appropriations cycle and on the upcoming emergency supplemental appropriations bill to restore the hundreds of millions in funding cuts to the COPS Program, the Byrne grant program, and other programs that have proven effective in cutting crime?

ANSWER: We appreciate the support shown for the Department by the Senate Appropriations Subcommittee on Commerce, Justice and Science and pledge, consistent with the President's budget request, the Department's assistance to the subcommittee in getting the information it needs to formulate its FY2009 appropriations bill. If Congress were to pass a supplemental appropriations bill in 2008, the Department would be glad to consider supporting the request so long as it was consistent with Administration priorities.

Leahy 34 Sixteen years after Congress authorized the National Motor Vehicle Title Information System (NMVTIS), there are still major loopholes in the system that allow crooked mechanics and sellers to "wash" data from car titles that would alert prospective buyers if a car has been totaled in an accident or stolen. Consumers face dangers when they unknowingly buy improperly repaired vehicles with a history of serious damage. An article about airbag scams published last month in Reader's Digest documents several deaths due to nonfunctioning airbags in vehicles whose titles had been "washed" and whose repairs were fraudulent. Due to gaps in NMVTIS reporting, the owners did not know that their cars had been previously totaled, much less improperly repaired. They delay in full implementation of NMVTIS is the result of the Justice Department's failure to issue long-overdue rules requiring insurers and junkyards to provide data about totaled vehicles. Why, when consumer safety is at stake, has the Department failed for over a decade to issue these rules? When will the rules be issued?

ANSWER: The key to an effective vehicle titling system is the cooperation and participation of all of the states. Since responsibility for the National Motor Vehicle Title Information System (NMVTIS) was transferred from the Department of Transportation (DOT) to the Department of Justice, the Department of Justice has been working with the American Association of Motor Vehicle Administrators (AAMVA) to implement NMVTIS. AAMVA is a nonprofit, tax exempt, educational association representing U.S. and Canadian officials who are responsible for the administration and enforcement of motor vehicle laws. AAMVA has been acting in the capacity of NMVTIS operator since 1992, when DOT was responsible for the system. The focus of the efforts of the Department of Justice and AAMVA has been to set up a working system and to get all of

the states to participate in NMVTIS. Unfortunately, many states have been slow to participate because of competing demands on their resources.

Currently, 35 states are actively involved with NMVTIS. Thirteen states are participating fully in NMVTIS, 12 states are regularly providing data to the system, and an additional 10 states are actively taking steps to provide data or to participate fully. The 13 states participating fully in NMVTIS are Arizona, Florida, Indiana, Iowa, Kentucky, Massachusetts, New Hampshire, Nevada, Ohio, South Dakota, Virginia, Washington, and Wisconsin. The 12 states providing regular data updates to NMVTIS are Alabama, Georgia, Idaho, Louisiana, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, and Wyoming. The 10 states actively taking steps to provide data or participate fully are Arkansas, California, Delaware, Missouri, Montana, New Mexico, Oklahoma, South Carolina, Vermont, and West Virginia. States that participate fully in the system provide data regularly and make NMVTIS inquiries before issuing a new title. These states also send updates to the system when necessary. States that regularly provide data to the system do so through a batch upload process but do no**t** check NMVTIS before issuing a new title. Currently, more than 60% of the U.S. vehicle population is represented in the system. The Department of Justice's goal is to have more than 75% of the U.S. vehicle population represented in the system by the end of 2008.

The Department of Justice has recently submitted a proposed rule to implement NMVTIS to the Office of Management and Budget. That rule is currently under review.

Leahy 36 As of May last year, the Justice Department reported to the Judiciary Committee that it had approximately 100 criminal investigations open into contracting fraud in Iraq and Afghanistan, and of those, about 25 had been either closed or were the subject of pending prosecutions. Can you provide the Committee an update on the approximately 75 unresolved cases, as well as any new ones? Please identify how many new cases have been referred to the Justice Department for investigation, how many have been closed, and how many cases now remain pending. Also, please identify any new prosecutions that have been brought publicly against individuals or companies alleging contracting fraud in Iraq or Afghanistan, and briefly describe the facts of these cases and any dispositions and/or sentences imposed in the cases.

ANSWER: The Department of Justice has established a unified and coordinated approach to combat procurement fraud, including fraud relating to the wars in Iraq and Afghanistan and reconstruction efforts in those countries. The Department has devoted a panoply of resources and expertise to this important mission. The Criminal Division's Fraud Section, Public Integrity Section, Asset Forfeiture and Money Laundering Section, and Office of International Affairs, along with the Antitrust Division and the Fraud Section of the Civil Division, are all involved in the fight against procurement fraud and each contributes its resources and unique expertise. The Criminal Division's Fraud Section, which has well-established relationships with many IGs and has prosecuted numerous procurement fraud cases in the past, leads the effort to combat fraud. The

Public Integrity Section also has longstanding relationships with the IG community and participates in investigations that involve corruption by government or military officials, as many procurement fraud cases do. The Asset Forfeiture and Money Laundering Section leads the effort to recover taxpayer dollars stolen through procurement fraud by assisting in the swift and comprehensive use of seizure warrants and forfeiture remedies.

In addition, U.S. Attorneys' Offices such as the Central District of Illinois, through its LOGCAP Working Group, have brought numerous criminal and civil procurement fraud cases and are drawing upon their extensive experience to prosecute high profile and sophisticated procurement fraud schemes.

Moreover, in coordination with the Department, a number of law enforcement agencies, including FBI, Army CID Major Procurement Fraud Unit, DOD IG, DCIS, Department of State-OIG, USAID-OIG, and SIGIR, have established the International Contract Corruption Task Force (ICCTF). The mission of the ICCTF is that of a joint agency task force that deploys criminal investigative and intelligence assets worldwide to detect and investigate corruption and contract fraud resulting primarily from the Global War on Terror (GWOT). The ICCTF member agencies currently have special agents deployed throughout Europe and the Middle East. This task force is led by a Board of Governors derived from senior agency representatives who handle all major GWOT cases to defend the interests of the United States overseas.

Procurement fraud cases, especially those involving the wars in Iraq and Afghanistan, are usually very complex and resource intensive. The cases often involve extraterritorial conduct as well as domestic conduct, requiring coordination between appropriate law enforcement agencies. In order to improve coordination and information sharing, the ICCTF has established a Joint Operations Center (JOC) based in Washington, D.C. The JOC currently serves as the nerve center for the collection and sharing of intelligence regarding corruption and fraud relating to funding for GWOT. The JOC coordinates intelligence-gathering and provides analytic and logistical support for the ICCTF agencies. As a result of this concentration of efforts, the Department has significantly increased the number of prosecutions relating to contract fraud associated with GWOT.

You indicate in your question that "as of May last year, the Justice Department reported that it had approximately 100 criminal investigations open into contracting fraud in Iraq and Afghanistan, and of those, about 25 had been either closed or were the subject of pending prosecutions." To clarify, in May 2007, the Department reported that those 100 matters, which involved anywhere between one and 20 individuals and/or corporate subjects, included 25 individuals who had been charged criminally. Since then, the Department has charged an additional 21 individuals and companies (for a total of 46) for contract fraud relating to the efforts in Afghanistan and Iraq (which includes additional related cases in Kuwait). The Department continues to aggressively pursue procurement fraud and corruption associated with the government's war efforts. The Department is in the process of gathering data to determine how many new fraud and corruption cases have been opened and closed by the Department (including individual U.S. Attorney's

Offices, nationwide) since May 2007. Descriptions of the cases associated with these 21 individuals who have been charged since May 2007 are provided below:

On January 24, 2008, in the United States District Court for the Eastern District of Kentucky, a former government contractor, Ali N. Jabak, and his wife, Liberty A. Jabak, were indicted for conspiracy, wire fraud, money laundering, and forfeiture, stemming from the theft of $595,000 from the 15th Finance Battalion of the United States Army, based in Baghdad, Iraq, in connection with a contract to build concrete barriers to protect American troops.

On January 25, 2008, Wallace Ward, a fuel technician employed by KBR, pled guilty in the Eastern District of Virginia to conspiracy to defraud and accept bribes in connection with a scheme to divert fuel intended for Bagram Airfield to the black market in Afghanistan. On February 7, 2008, James Sellman, another KBR fuel technician participating in the conspiracy, pled guilty to the same offense. According to the indictment, the scheme involved the diversion in 2006 of over $2 million in lost fuel. The investigation is continuing.

On January 23, 2008, Elie Samir Chidiac (Chidiac) and Raman International Inc. (Raman) were indicted on conspiracy charges in connection with bribes paid between May 2006 and March 2007 to a contracting officer at Camp Victory in Iraq. Chidiac is the former Iraq site manager for Raman, a military contractor based near Houston, Texas. Raman and Chidiac allegedly paid bribes to induce a Department of Defense (DOD) contracting officer to steer contracts to Raman. Chidiac is also charged with participating in a second scheme whereby the same contracting officer altered contracting documents to allow him to fraudulently obtain payment – which he split with the contracting officer – for work that neither he nor Raman performed. A preliminary audit indicates the contracting officer received over $400,000 from Chidiac.

On December 5, 2007, a grand jury in the District of Maryland returned a three-count indictment charging two DOD contractors, Christopher Cartwright and Paul Wilkinson, and their affiliated companies, Czech Republic-based Far East Russia Aircraft Services Inc. (FERAS) and the Isle of Man-based Aerocontrol LTD, with conspiring to defraud the United States, commit wire fraud and steal trade secrets. On January 7, 2008, a separate charge was filed in the District of Maryland against a third individual, Matthew Bittenbender, alleging the same criminal conduct. Cartwright, Wilkinson, FERAS, Aerocontrol and Bittenbender are charged with conspiring to steal information relating to fuel supply contracts for DOD aircraft worldwide, including to Bagram Air Force Base in Afghanistan. Bittenbender was a former senior contract fuel manager at Maryland-based Avcard, a company which provides fuel and fuel services to commercial and government aircraft. Bittenbender is charged with taking confidential bid data and other proprietary information related to DOD fuel supply contracts from Avcard, and selling that information to competitors Cartwright, Wilkinson, FERAS and Aerocontrol. In return, Bittenbender is alleged to have received cash payments and a percentage of the profit earned on the resulting DOD fuel supply contracts. Cartwright, Wilkinson, FERAS and Aerocontrol are alleged to have subsequently used that illegally obtained information

to bid against Avcard at every location where the companies were bidding head-to-head, thereby subverting DOD's competitive bidding procedures for fuel supply contracts.

In November 2007, United States Army Chief Warrant Officer Joseph Crenshaw (Crenshaw) was charged in a criminal complaint with participating in a scheme to steal fuel from Camp Liberty in Baghdad, Iraq. The arrest was made after law enforcement authorities learned Crenshaw accepted cash to assist another individual in obtaining fuel from a military depot even though the person was not entitled to the fuel. Crenshaw subsequently was indicted for bribery. A trial date has not been set.

On November 20, 2007, Terry Hall, a civilian contractor from Georgia was indicted by a federal grand jury in the District of Columbia for allegedly soliciting bribes while working at Camp Arifjan, an Army base in Kuwait. Hall operated companies that had contracts with the U.S. military in Kuwait, including Freedom Consulting and Catering Co., U.S. Eagles Services Corp., and Total Government Allegiance. The indictment charges that Hall's companies received more than $20 million worth of military contracts for providing, among other things, bottled water to the U.S. military in Kuwait.

On August 22, 2007, U.S. Army Major John Cockerham, his wife Melissa Cockerham, and Cockerham's sister, Carolyn Blake, were indicted in federal court in San Antonio, Texas, on charges of conspiracy to defraud the United States and to commit bribery, conspiracy to obstruct justice, and for a money laundering conspiracy. Major Cockerham was also charged with three counts of bribery. The scheme ran from late June 2004 through late December 2005, while Major Cockerham was deployed to Camp Arifjan, Kuwait, serving as a contracting officer responsible for soliciting and reviewing bids for DOD contracts in support of operations in the Middle East, including Operation Iraqi Freedom. The contracts were for various goods and services to DOD, including bottled water destined for soldiers serving in Kuwait and Iraq. All three defendants accepted millions of dollars in bribe payments on Major Cockerham's behalf, in return for his awarding contracts to corrupt contractors. Cash bribes paid to the defendants totaled approximately $9.6 million.

In August 2007, United States Army Captain Austin Key (Key) was charged in a criminal complaint for accepting a $50,000 bribe to steer military contracts in Iraq. The arrest was made after law enforcement authorities recorded conversations and witnessed a money exchange between Key and a confidential informant. Key pleaded guilty to several counts of bribery.

In July 2007, John Allen Rivard, a former major in the U.S. Army Reserve, pleaded guilty to conspiracy, bribery, and money laundering in connection with his accepting bribes for his fraudulent awarding and administration of U.S. Government contracts in Balad, Iraq. Rivard admitted to receiving over $220,000 in bribe payments, as well as to laundering illegal proceeds. On October 19, 2007, Rivard was sentenced in federal court in Austin, Texas, to 120 months in prison and three years of supervised

release. A $1 million preliminary order of forfeiture and order to pay a $5,000 fine was also issued.

On July 24, 2007, in the United States District Court for the Southern District of Texas, the owner of American Grocers LLC, Samir M. Itani, a subcontractor to DOD, was indicted for conspiracy and false claims stemming from the submission of millions of dollars in fabricated trucking fees associated with the company's contract to provide food product to military personnel in Iraq.

On July 20, 2007, Kevin Smoot, who worked for Eagle Global Logistics ("EGL") as Managing Director of EGL Houston's Freight Forwarding Station, pled guilty to making a false statement and providing a kickback. On December 18, 2007, Smoot was sentenced to 14 months' imprisonment and ordered to pay restitution in the amount of $17,964.00.

On July 13, 2007, Anthony Martin pleaded guilty to accepting a kickback. Martin worked for KBR as a subcontracts administrator and, later, as a subcontracts manager. Martin agreed to accept kickbacks related to a trucking sub-contract. The initial payment to Martin occurred in June 2003. Under the kickback agreement, Martin was to receive a kickback of approximately $50,239.

Leahy 37 As of May last year, the Justice Department declined to identify for the Judiciary Committee the number of civil false claims cases that have been referred to or remain pending at the Justice Department, and only identified one case where the Justice Department has joined a qui tam relator in a case involving allegations of contracting fraud in Iraq or Afghanistan. Will you provide the Committee with an update on the status of these unresolved civil false claims cases? Please identify how many false claims cases have been referred to the Justice Department for investigation, how many the Justice Department has joined, and how many cases the Justice Department has declined to join. Also, please identify any new public settlements under the False Claims Act related to allegations of contracting fraud in Iraq or Afghanistan, and briefly describe the facts of these cases.

ANSWER: As of April 18, 2008, fifty-one *qui tam* actions have been filed under the False Claims Act against private contractors that provided support for U.S. government activities in the Middle East, including Iraq and Afghanistan. Of these fifty-one cases, the Department has intervened in and is litigating one case, has settled, at least in part, three other cases, and has declined to intervene in another fifteen cases. The Department continues to investigate the remaining matters. The Department is also investigating a number of non-*qui tam* matters involving the Middle East that have been referred to the Department by other governmental agencies.

As noted, the Department has resolved three *qui tam* actions, at least in part, relating to the war in Iraq and Afghanistan, which resulted in four separate settlements.

Additionally, the Department has settled one non-*qui tam* matter under the False Claims Act involving the Middle East. These five settlements are briefly described below:

1. Houston-based EGL, Inc., operating as Eagle Global Logistics, a subcontractor for Kellogg Brown and Root, settled for $4 million on August 6, 2006. The settlement resolved allegations that EGL inflated invoices for shipments under government contracts for support of military operations in the Balkans, Afghanistan and Iraq. This settlement resolved in part a *qui tam* case that remains sealed.

2. In a second settlement arising out of the same sealed *qui tam* case discussed in the prior paragraph, EGL, Inc. paid the United States in June, 2007, an additional $300,000 to settle allegations that the company's local agent in Kuwait overcharged the military for rental charges on shipping containers to Iraq for the period from January through June, 2006.

3. Force Protection Industry, Inc., of Ladson, South Carolina, agreed on August 23, 2006, to pay the United States $1.8 million to settle fraud claims related to the manufacture and delivery of armored vehicles for use in Iraq. These allegations were the subject of a *qui tam* action captioned *United States ex rel. Chomyn v. Force Protection Industry, Inc*., No. 2:05-1906 (D.S.C.).

4. Northrop Grumman settled a voluntary disclosure case on July 18, 2007, by paying $8 million in connection with deficient testing of night vision goggles and sniper scopes used throughout the military.

5. On December 18, 2007, the Department settled with Sioux Manufacturing Corp. for $1.9 million the allegations in United States ex rel. Kenner v. Spirit Lake Tribe, No. 2-06-CV-48 (D. N.D.). This qui tam case alleged that the defendant failed to follow specifications in making protective cloth material for military helmets.

Finally, as noted, the Department is currently litigating one case relating to the Middle East. On June 11, 2007, the United States intervened in the *qui tam* case captioned *United States ex rel. Dye v. ATK Thiokol, Inc.*, No. 1:06CV39 (D. Utah). The lawsuit alleges that ATK delivered defective illumination flares used in search and rescue, and combat operations critical to the U.S. military, including operations in Iraq and Afghanistan.

Leahy 38 As of May last year, the Justice Department reported to the Judiciary Committee that there was only one FBI agent assigned to Iraq and one assigned to Kuwait to investigate significant contracting fraud. Since May 2007, has the Justice Department assigned more full-time FBI agents or other federal investigators to work on contracting fraud cases in Iraq and Afghanistan? If not, why not?

ANSWER: The FBI currently has Special Agents (SAs) deployed in Iraq, Afghanistan, and Kuwait to provide full-time support to the International Contract Corruption

Initiative, which addresses major fraud and corruption in the war and reconstruction efforts in Iraq and Afghanistan. These deployments are conducted in 120-day rotation cycles and SAs work jointly with the Defense Criminal Investigative Service, Army Criminal Investigation Command Major Procurement Fraud Unit, Special Inspector General for Iraq Reconstruction, and U.S. Agency for International Development, who also have agents deployed to address this crime problem. The FBI's overseas assignments in direct support of this multi-agency initiative are as follows: one SA in Kuwait; two SAs in Afghanistan; and one Legal Attaché and two SAs in Iraq (one of the two SAs in Iraq is scheduled to deploy in April 2008).

Leahy 40 According to press accounts, the FBI agreed in November to provide a list of all where bullet lead analysis was used to the Innocence Project in order to begin working to identify cases where there may be problems. Do you support this collaborative effort? Has anyone in the Justice Department taken any steps to support or oppose this agreement between the FBI and the Innocence Project?

ANSWER: In an FBI press release on November 17, 2007, the FBI announced it has undertaken an additional round of outreach, analysis, and review efforts concerning bullet lead analysis. This has included joint work with the Innocence Project, which has done legal research to identify criminal cases where bullet lead analysis has been introduced at trial.

The Department, including the FBI, takes this issue very seriously, and we are developing procedures to ensure that appropriate disclosures are made to the relevant parties. Thereafter, the parties involved can make an assessment of the effect of any potentially erroneous testimony.

Leahy 41 Will you commit to fully and vigorously enforce the OPEN Government Act, so that the presumption of openness which is at the heart of FOIA is restored for the American people?

ANSWER: Yes, the Department is fully committed to vigorously implementing the OPEN Government Act, which was signed into law by the President on December 31, 2007. The Department of Justice's Office of Information and Privacy (OIP) has been actively involved in providing government-wide guidance on the new FOIA amendments. On January 9, 2008, written guidance on the new FOIA amendments was posted on the Department of Justice's Website. See FOIA *Post*, "Congress Passes Amendments to the FOIA," (posted 1/9/08). Subsequently, on January 16, 2008, OIP held a conference attended by over 500 government FOIA personnel which focused on the requirements of the new law. See FOIA *Post*, "Upcoming Conference Providing Guidance on Newly Enacted Amendments to the FOIA," (posted 1/7/08). Additionally, OIP has incorporated into its FOIA training programs a new session which focuses exclusively on the FOIA amendments. The first such training session was held on February 27, 2008, and another was held on March 19, 2008. OIP's director has also

already given two presentations on the FOIA amendments at conferences attended by members of the press and the FOIA requester community, as well as by government personnel. Those conferences were held on February 21, 2008, and March 4th. OIP will issue additional guidance and continue its training government wide to ensure that all federal agencies are in full compliance with the OPEN Government Act.

QUESTIONS FROM SENATOR SPECTER

Specter 43 At your nomination hearing last October, I asked you about the so-called Thompson and McNulty memoranda and the Department of Justice's practice of requesting and obtaining corporate waivers of the attorney-client privilege. There has been considerable controversy over whether these waivers are in fact voluntary. In October, you stated, "I haven't reviewed the McNulty memorandum recently. I think it has to be examined very, very carefully." Have you since reviewed the McNulty Memo "very, very carefully?"

ANSWER: The Attorney General has reviewed the McNulty Memorandum carefully. He has also asked the Deputy Attorney General to analyze carefully the Department's policy regarding waiver and the McNulty memorandum.

Specter 44 Your written testimony states that you believe the McNulty Memo "strikes the appropriate balance."
Does this mean you oppose revising the McNulty Memo? Would you allow Mark Filip, if confirmed, a free hand in reassessing and revising the McNulty Memo?

ANSWER: The Department continues to analyze its practices and procedures in this area in an effort to ensure fairness and justice for both the victims of corporate fraud and corporate defendants. In particular, as noted in the answer to the previous question, the Attorney General has asked the Deputy Attorney General to analyze waiver and the McNulty Memorandum.

Specter 47 Does the McNulty Memo have anything in place to allow confidential reporting of the types of breaches of the memo's policy cited by Justice Veasey?

ANSWER: The McNulty Memorandum does not specifically address "confidential reporting" of breaches. If there were breaches of the McNulty Memorandum, the Department would certainly wish to be apprised of them. Indeed, the Department is committed to ensuring that all of its prosecutors and officials play by the rules. To that end, we have provided and will continue to provide training to prosecutors regarding the policies and procedures set forth in the McNulty Memorandum and to take any appropriate action against prosecutors who violate Department policy. Additionally, as described above, above, the Department continues to analyze its practices and procedures in this area in an effort to ensure fairness and justice for the victims of corporate fraud as well as corporate defendants.

Specter 49 How do you square this disparate treatment of the two sides of the privilege with Justice Rehnquist's opinion in Upjohn v. United States, 449 U.S. 383 (1981), in which the Court tied the very purpose of the privilege to the client's

willingness to communicate with the lawyer? Id. at 389 ("Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client").

ANSWER: As noted in the response to Question 48, the McNulty Memo does not treat "lawyer-to-client" communications differently than "client-to-lawyer" communications.

Specter 50 The McNulty Memo still allows prosecutors to request attorney advice to the client, albeit after getting approval from the Deputy AG's office. The law already allows prosecutors to request this information where the defendant: (1) asserts and advice of counsel defense; or (2) used the privilege to perpetrate a crime or a fraud. Moreover the McNulty Memo already exempts requests for attorney advice in these types of cases from the consultation and approval process set forth in the Memo. Can you give me an example of a situation where DOJ needed attorney advice to a client outside of the crime-fraud exception or the advice of counsel context?

ANSWER: The Deputy Attorney General has not approved a single Category II waiver request since the McNulty Memo took effect. That experience is consistent with the McNulty Memo's directive that Category II information "should only be sought in rare circumstances."

Specter 58 In addition to the Weldon leak case being closed and notice given on that front, on January 4, 2008, the Washington Post reported that "the Justice Department has informed former senator Conrad Burns (R-Mont.) that it has closed its investigation of his dealings with disgraced lobbyist Jack Abramoff and will not bring criminal charges." These two reports beg the question of whether the Department has already modified its policy. Has the Department changed its policy regarding advising former targets and subjects of investigations that the investigation has closed?

ANSWER: Regarding notice to former Senator Conrad Burns, notice was given that was fully consistent with the U.S. Attorneys Manual (USAM) policy, considering the fact that the investigation had become public. The Department has not changed its existing policy regarding advising former targets and subjects of investigations that the individual is no longer considered to be a target of the investigation. The existing policy, as outlined in the United States Attorney's Manual 9-11.155, gives the U.S. Attorney the discretion to notify an individual who has been the target of a grand jury investigation that he or she is no longer considered a target by the U.S. Attorney's Office. The USAM lists the circumstances under which notification to a former target may or may not be appropriate.

USAM 9-11.155 Notification to Targets when Target Status Ends

The United States Attorney has the discretion to notify an individual, who has been the target of a grand jury investigation, that the individual is no longer considered to be a target by the United States Attorney's Office. Such a notification should be provided only by the United States Attorney having cognizance over the grand jury investigation.

Discontinuation of target status may be appropriate when:

The target previously has been notified by the government that he or she was a target of the investigation; and,

The criminal investigation involving the target has been discontinued without an indictment being returned charging the target, or the government receives evidence in a continuing investigation that conclusively establishes that target status has ended as to this individual.

There may be other circumstances in which the United States Attorney may exercise discretion to provide such notification such as when government action has resulted in public knowledge of the investigation.

The United States Attorney may decline to issue such notification if the notification would adversely affect the integrity of the investigation or the grand jury process, or for other appropriate reasons. No explanation need be provided for declining such a request.

If the United States Attorney concludes that the notification is appropriate, the language of the notification may be tailored to the particular case. In a particular case, for example, the language of the notification may be drafted to preclude the target from using the notification as a "clean bill of health" or testimonial.

The delivering of such a notification to a target or the attorney for the target shall not preclude the United States Attorney's Office or the grand jury having cognizance over the investigation (or any other grand jury) from reinstituting such an investigation without notification to the target, or the attorney for the target, if, in the opinion of that or any other grand jury, or any United States Attorney's Office, circumstances warrant such a reinstitution.

Specter 59 If not, have you considered changing this policy? At your confirmation hearing, I asked you if you agreed "that fair play would best be served by telling people when [a government investigation is] over, if it is over?" You responded: "If it's over, I agree that it's desirable for people to know that it's over." You agreed to "take a look" at the issue. Have you done so?

ANSWER: The Department has undertaken a thorough review of its target notification policy, to include consideration by the Criminal Division and the United States Attorney community. The decision to give such notice continues to rest in the discretion of the U.S. Attorney who has been conducting the investigation, and who should take into account the circumstances set forth in the policy. As such, the target notification policy remains the same.

Specter 70 One of the major problems we find in combating gang activity is that the gangs often operate on several different levels. Gang members may themselves not be enrolled in school, but they often support affiliated groups in local high schools and even in the middle school environment. While the Route 222 corridor project and others include funding for prevention, what kinds of programs can the Justice Department engage in to help stop gang recruitment?

ANSWER: The Department of Justice is committed to working with youth to prevent "at risk" youth from joining a gang. The primary role of DOJ's Office of Justice Programs' (OJP) Office of Juvenile Justice and Delinquency Prevention (OJJDP) is to support states, local communities, and tribal jurisdictions in their efforts to develop and implement effective programs for juveniles. OJJDP is committed to supporting prevention activities in communities with identified gang problems, especially where there is a high risk of juveniles entering a gang, and intervening with youth who are already gang involved.

Examples of Department-supported efforts which have focused on prevention and intervention for youth in and around schools include:

- Comprehensive Anti-Gang Initiative (CAGI) - 10 sites;
- Project Safe Neighborhoods community efforts;
- Weed and Seed programs;
- Project Safe Neighborhood Comprehensive Anti-Gang Training;
- Gang Prevention Summits hosted by United States Attorney's Offices;
- Gang Resistance Education and Training Program (G.R.E.A.T.);
- National Gang Center; and
- National Youth Gang Center.

Additionally, as part of the 222 Corridor CAGI, the mayors of six 222 Corridor cities, Easton, Bethlehem, Allentown, Reading, York, and Lancaster, have each established a gang prevention task force, which include local government officials, law enforcement, community, and faith based organizations. Each of the six task forces have developed specific plans and initiated programs to prevent gang youth recruitment. Examples of such programs underway along the 222 Corridor include the following:

- Easton - Communities and Schools - Youth Awareness Initiative;

- Bethlehem - Gang Prevention through Targeted Outreach of the Boys and Girls Clubs of Bethlehem, Southside Ministries Youth Program, and The Young Playwrights' Lab;
- Allentown - Gang Prevention Classes;
- Reading – Gang Resistance Education And Training (G.R.E.A.T.) has been presented to more than 500 5th grade school children in the Reading school district by the Reading Police Department;
- Lancaster - Gang Resistance Intervention Education and Prevention (GRIPE) training is being provided to 86 elementary age school children and 12 adjudicated youth by members of the Educational Sub-committee of the Mayors Task force specifically trained in GRIPE by the 222 CAGI and the East Coast Gang Investigators Association.

OJJDP has developed a Comprehensive Gang Model which promotes the development of pro-social programs in communities that have identified gang problems. Specifically, the Comprehensive Gang Model is a guide to assist policymakers, practitioners, and community leaders in assessing and understanding their youth gang problem. As you know, gang problems differ among and within communities. This Model helps communities conduct a comprehensive assessment of the nature and scope of their gang problem, its origins, potential causes, and contributing factors. A comprehensive, data-driven assessment of the gang problem will:

- Identify the most serious and prevalent gang-related problems;
- Determine factors contributing to gang problems;
- Identify target group(s) for intervention, suppression, and prevention efforts;
- Shape community mobilization efforts and identify community members who should be involved;
- Identify organizational or systems issues that must be addressed in order to have a long-term effect on the problem; and
- Identify current efforts to address gangs and gang-involved youth.

The Model calls for five core strategies to be delivered through an integrated approach by a team of community agencies and organizations. The five strategies are: (1) community mobilization, (2) social intervention, (3) opportunities, (4) suppression, and (5) organizational change. These strategies are seen as effective ways of combating the negative influence or "pull" of gangs.

An additional resource the Department of Justice can offer to help stop gang recruitment is the Gang Resistance Education And Training (G.R.E.A.T.) Program. This program is administered by OJP's Bureau of Justice Assistance (BJA) and is a school-based, law enforcement officer-instructed classroom curriculum. With prevention as its primary objective, the program is intended as an immunization against delinquency, youth violence, and gang membership.

The goal of the G.R.E.A.T. Program is to help youth develop positive life skills that will help them avoid gang involvement and violent behavior. G.R.E.A.T. uses a

community-wide approach to combat the risk factors associated with youth involvement in gang-related behaviors. The curricula, developed through the collaborative efforts of experienced law enforcement officers and specialists in criminology, sociology, psychology, education, health, and curriculum design, are designed to reinforce each other. The three different curricula are intended for different audiences and are most effective when youth are exposed to more than one of the curricula. The lessons included in each curriculum are interactive and designed to allow students to develop positive habits and behaviors that will remain with them for the remainder of their developing years.

Many law enforcement agencies have implemented the program over the 15 years since the G.R.E.A.T. Program went nationwide. In 2007, the program was delivered in 400 communities across the United States.

G.R.E.A.T. has developed partnerships with nationally recognized organizations, such as the Boys & Girls Clubs of America and the National Association of Police Athletic Leagues. These partnerships encourage positive relationships among the community, parents, schools, and law enforcement officials. The Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) and the U.S. Marshals Service are also involved in the program, partnering with local law enforcement to expand and teach the program.

Five regional training centers, including one in Philadelphia, provide training to sworn law enforcement professionals to teach the G.R.E.A.T. curriculum in elementary and middle schools across the country. The regional training centers also do outreach in each region in order to introduce the program into more communities.

Two formal national evaluations of the G.R.E.A.T. Program, a cross-sectional evaluation and a five-year longitudinal evaluation, were conducted in the 1990s by researchers from the University of Nebraska at Omaha. The evaluations found that the program demonstrated several positive effects. Four years after participating in the program, when compared to the control group, G.R.E.A.T. students still reported:

- Lower levels of victimization;
- More negative views about gangs;
- More favorable attitudes about law enforcement;
- Reductions in risk-seeking behaviors; and
- Increased associations with peers involved in pro-social activities.

A summary of the studies was published in 2004 by OJP's National Institute of Justice (NIJ) and is available online at http://www.ncjrs.gov/pdffiles1/nij/198604.pdf.

The evaluation process prompted the G.R.E.A.T. National Policy Board to order a thorough program review by a national board of experts. This review led to significant, research-based changes in the content and implementation of the curriculum, providing for greater involvement of the regular classroom teacher and more focus on active

learning than lecturing. The additions of an elementary school component and family training program have also enhanced the program's impact.

NIJ recently commissioned a new longitudinal study of G.R.E.A.T. with funding from BJA, which formally began in 2006. This study will provide a more accurate and current picture of the impact of the improved curriculum and additional program components.

Specter 71 Do you believe federal authorities will have to take a more active role in what has traditionally been considered the domain of the states—the juvenile justice system—in order to identify gang members at a younger age and to more aggressively combat the recruitment of school-age children?

ANSWER: There is a greater need to implement cooperative strategies and information sharing that link schools, juvenile justice officials, and law enforcement officers into a seamless information grid. Such cooperative strategies serve to hold juvenile offenders accountable for wrong-doing, but also provide them access to a broad range of beneficial private, non-profit, and public sector opportunities. State and local juvenile justice officials agree that addressing juvenile crime issues on a local level is more efficient. The states may be better equipped to prevent gang recruitment of youth, and to intervene and rehabilitate those who have started down the path of gang violence. State and local juvenile justice officials are determined to invest in prevention programs as a complement to enforcement strategies.

The Department believes that addressing juvenile crime will remain primarily within the purview of the various states and their juvenile justice systems. The federal government, however, can assist the states in several ways. One such way is for the Department's Office of Justice Programs, through its various components, to disseminate "best practices" to the local officials for identifying youth vulnerable to gang recruitment. The Department also encourages any sharing of information between schools, police, juvenile corrections and youth service organizations regarding specific youth who may be at-risk of gang recruitment.

Specter 72 In urban areas, gang activity often spikes in and around schools around 3 PM—the time that children are dismissed from the classroom. What kinds of solutions would you offer to combat this problem?

ANSWER: In the Comprehensive Anti-Gang Initiative sites and in other cities using Project Safe Neighborhoods and Weed and Seed funds, public school systems have opened their classrooms to relevant after-school programs. Such programs have the capacity to serve a large number of students from 3pm-6pm and provide invaluable mentoring, work experience, academic tutoring, and recreation. Collaboration between the school districts, faith based organizations, non profit organizations, city government,

social services, and police departments result in after-school programs which give youth positive alternatives to the gang lifestyle.

The Department is also promoting the creation of safe corridors for children to walk to and from schools. Every day, many students are forced to walk through areas controlled or impacted by gangs. Additional federal funding for busing and other means of transportation could substantially diminish the impact that gangs have on children before and after school. These safe corridors also make it more difficult for gangs to recruit children in and around schools.

The Department also encourages regular intelligence sharing meetings with various school and community partners. These meetings include campus resource officers, counselors/teachers, local police department gang officers, school system gang officers, community-based gang interventionists, juvenile probation, re-entry court officials, and social service agencies. Pro-active strategies based on recent information are developed to address any gang-related situations which may occur on the campuses or throughout the community.

Additionally, OJJDP's Strategic Planning Tool assists communities in assessing and addressing gang problems through three interrelated components: a community resource inventory section that allows users to identify and record information about community organizations, programs, services, and activities that could be incorporated into a collaborative, comprehensive approach to gangs; a planning and implementation section that provides users with access to a database of proven and effective programs, strategies, and activities; and a risk factors section that describes research-based risk factors that are correlated to gang behavior and organized by age.

Once a community has identified who the individuals are who are engaging in the gang activity and where they are coming from (and/or going after school) then the community can collaboratively implement a plan that will provide resources or programmatic alternatives to those youth; while at the same time increasing the law enforcement response to gang related incidents during the targeted period of time.

After school programs, such as those found in Boys and Girls Clubs and community recreation centers offer rewarding, challenging, and age-appropriate activities in a safe, structured, and positive environment. They may reduce delinquency by way of a socializing effect through which youth learn positive virtues such as discipline or simply reduce the opportunity for youth to engage in delinquency.

Specter 73 What are the Department and its components doing to support mentoring initiatives?

ANSWER: The Department and its components are identifying ways to reach out to young people before they become involved in violence, as well as addressing the underlying problems that lead too many young people to crime. The Department's Office

of Justice Programs' Office of Juvenile Justice and Delinquency Prevention (OJJDP) has a long history of supporting mentoring programs. OJJDP has partnered with national organizations such as Big Brothers Big Sisters of America, Boys and Girls Clubs of America and the MENTOR/National Mentoring Partnership.

In Fiscal Year 2006, OJJDP provided $1.6 million to four mentoring partnerships under the Mentoring Initiative for System Involved Youth (MISIY). The main objective of the program is to identify effective mentoring programs and strategies and determine how to enhance and expand these approaches for youth involved in the juvenile justice system, reentry, and foster care. In Fiscal Year 2007, grant awards from Support for Mentoring Initiatives for System Involved Youth were made to support the implementation of initiatives that assist in developing and enhancing the capacity of community programs to provide mentoring services to at-risk youth.

In addition, OJJDP has funded youth-serving organizations, such as the National Network of Youth Ministries, Youth Friends, Virginia Mentoring Partnership, People for People, the Pittsburgh Leadership Foundation, and the Messiah College, among others, to provide mentoring to at-risk youth.

OJP's Community Capacity Development Office (CCDO) assists communities around America as they seek to prevent crime, increase community safety, and revitalize neighborhoods. CCDO works with local communities to develop solutions that deter crime, promote economic growth, and enhance quality of life. The Office of Weed and Seed is CCDO's premier community development initiative. Communities work with their U. S. Attorneys to develop a Weed and Seed strategy that aims to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted high-crime neighborhoods across the country. Many Weed and Seed communities include mentoring for at-risk youth as a component of their strategies.

An example of collaboration is in the 222 Corridor, where the prevention and re-entry components are working together to develop a mentoring program which will recruit and train mentors for such at-risk youth and reentering ex-offenders. Recently, a mentoring conference was attended by more than 200 people at Franklin and Marshall College in Lancaster. From this conference, a Mentoring Partnership is being formed by the 222 Regional Steering committee to develop more efficient and standard criteria for recruiting, training, and sustaining mentors across the region. This effort will serve to maximize mentoring grants and reduce duplication of effort and funds.

Specter 74 The fight against gang activity cannot be waged strictly in the courts. Partnerships between the schools (where gang members are often recruited), Juvenile Probation offices (where actual and aspiring gang members can be identified), and local police departments (which often have school resource officers who can identify potential "problem" individuals early on) are an important part of the fight against gang activity. What kinds of things can projects like the Route 222 corridor initiative do to encourage these alliances?

ANSWER: The Department's Office of Justice Programs (OJP) provides innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the art knowledge and practices across America, and providing grants for the implementation of crime fighting strategies. Because most of the responsibility for crime control and prevention falls to law enforcement officers in states, cities, and neighborhoods, the federal government can be effective in these areas only to the extent that it can enter into partnerships with these officers. Therefore, the Department is committed to working in partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges.

Alliances between schools, juvenile probation offices, and local law enforcement agencies are strongly encouraged by the Department and initiatives such as the Comprehensive Anti-Gang Initiative (CAGI) provide a framework that includes collaboration and coordination between federal, state and local law enforcement, corrections, key public stakeholders, and the community. The CAGI supports law enforcement efforts to combat violent gangs, while also promoting prevention efforts that discourage gang involvement. CAGI also has a reentry component.

Another initiative underway that encourages collaboration on the anti-gang front is the Project Safe Neighborhoods (PSN) Anti-Gang Training. On January 29- 31, 2008, the Department hosted the first of 12 regional trainings throughout the nation, in Chapel Hill, North Carolina, for more than 550 attendees. The regional trainings will focus on anti-gang training for law enforcement, prosecutors, prevention and re-entry representatives. The goal of this new anti-gang training program is to improve the level of knowledge, communication, and collaboration involved in addressing the criminal gang issue impacting communities throughout the nation. Courses are comprehensive and focus on gang-related prevention, enforcement, prison re-entry programs, and an executive session which is geared toward law enforcement executives.

To further our efforts in combating gang activity, in June 2008, OJJDP will be hosting a Youth Gang Symposium in Atlanta, GA. The theme is "Partnering to Prevent Gang Violence: From Faith-Based and Community Organizations to Law Enforcement". The conference will feature focused workshops to enhance efforts by law enforcement, school personnel, faith-based and community organizations, policymakers, youth serving agencies, and others who are working together to combat youth gang issues.

In Fiscal Year (FY) 2007, OJP's Bureau of Justice Assistance (BJA), through the FY 2007 Edward Byrne Discretionary Grants Program, provided funding to the National Crime Prevention Council (NCPC) to launch a new program that will provide community mobilization and engagement support to the City of Philadelphia, as part of the Route 222 Corridor initiative, and a handful of other cities in 2008. NCPC will be working in each location to enhance public awareness of crime prevention and personal safety practices and to identify potential areas of community concern. NCPC will engage leaders in law

enforcement, city government, community, and private business in prevention-focused action across the community.

One of OJP's most important functions is to support the work of practitioners in state, local and tribal justice systems through training and technical assistance (T&TA) programs. T&TA provides direct assistance to develop and implement comprehensive, system-wide strategies for public safety and improving criminal justice systems.

Specter 75 What federal programs are available to foster such alliances? If so, has OJP notified the law enforcement and community contacts within the Route 222 corridor of these programs?

ANSWER: The Department fosters law enforcement and community involvement through: 1) Weed and Seed programs, 2) Project Safe Neighborhoods, and 3) the Comprehensive Anti-Gang Initiative (CAGI). The CAGI sites employ all three initiatives to deal with gang violence. These programs target high crime neighborhoods and facilitate seamless communication among law enforcement, community leaders, and social workers who are familiar with the needs of the community.

The Department strives to disseminate resources and information to the field and to encourage alliances. To reinforce the Comprehensive Anti-Gang Initiative (CAGI) framework, a "Six Cities Kick-Off Meeting" was held on November 8-9, 2006. In attendance at this meeting were representatives from Los Angeles, CA; Tampa, FL; the Eastern District of Pennsylvania's 222 Corridor; Cleveland, OH; Dallas/Ft. Worth, TX; and Milwaukee, WI. Additionally, in August 2007, a "Four New Sites Kick off Conference" was held for the sites in Indianapolis, IN; Raleigh/Durham, NC; Rochester, NY; and Oklahoma City, OK. Both conferences consisted of a series of workshops on the topic areas of: gang enforcement, prevention and reentry. The workshops addressed issues involved in the implementation and operation of their programs. A direct result of the training was an increased level of cooperation and collaboration between all of the CAGI sites. CAGI sites are also supported by a team of resident experts in the areas of enforcement, prevention and reentry, and have had on-site visits by Department personnel to address both training and operational issues. Additionally, during the PSN National Conference, held on September 17-19, 2007, in Atlanta, Georgia, all ten of the CAGI sites received specialized ½ day training, while also attending various Project Safe Neighborhoods (PSN) workshops throughout the rest of the conference.

In October 2007, the OJP's Bureau of Justice Assistance (BJA) awarded $75 million, through the Targeting Violent Crime Initiative, to 106 local law enforcement agencies to support multi-jurisdictional violent crime task forces. The goal of this initiative is to assist jurisdictions in responding to violent crime by expanding the use of intelligence-led policing among state, local, and tribal agencies as they collect and analyze information to identify threats, develop tactics and partnerships to respond to violent crime, and then measure the effectiveness of their responses. A major objective

of this initiative is to establish data-driven, multi-jurisdictional responses to violent crime.

Another initiative which reinforces partnerships is the Law Enforcement and Youth Initiative. This initiative builds collaboration among law enforcement and youth-serving organizations such as schools and Boys and Girls Clubs. In October 2007, over 200 community teams – consisting of a law enforcement official, a community leader, and a Boys and Girls Club executive – were given the opportunity to choose among 20 different national programs. The Department then provided training and technical assistance on their chosen program and provided each team, through the Boys and Girls Club, with seed money for implementation of their chosen program. With their seed funds, the local clubs will bring law enforcement and youth serving organizations together through community-based programs.

Specter 76 As part of their effort to curb gang activities and to identify gang members coming on to campus, schools have tried to hire additional security personnel and install cameras on their premises. Funds are short in the school system, however. Do you think it would be a good idea for projects such as the Route 222 corridor initiative to utilize some of their funds to try to assist the schools in this identification process, or would the funds be better spent on traditional law enforcement prosecution activities?

ANSWER: The decision to utilize funds from initiatives such as the Route 222 Corridor initiative to assist schools in the identification process of gang members should be a local one. Closer collaboration between schools and law enforcement would assist in this effort. That is an area where the Gang Resistance Education And Training (G.R.E.A.T.) Program is useful. The relationships between law enforcement teaching the program and students are critical to keeping the lines of communication open.

Many communities have found that trained, sworn law enforcement officials assigned to schools make a positive difference in establishing and maintaining safe environments that are conducive to learning. Both schools and law enforcement agencies benefit from these partnerships. Schools benefit from on-site law enforcement services, and law enforcement agencies benefit by having the opportunity to engage in a joint problem-solving process with schools to address school and community crime and violence.

A school/law enforcement partnership is a process rather than an event. Partnerships do not just happen when a law enforcement official is assigned to a school, but are built on a foundation of shared goals, ongoing communication, and positive relationships. When schools and law enforcement agencies work together—and in concert with other community-based organizations, parents, and students—as they do in the G.R.E.A.T. Program, a number of positive outcomes can be expected:

- Schools, law enforcement agencies, and community groups are better able to work together in developing innovative, system-wide, long-term approaches to reducing and preventing different kinds of crime and disorder in and around their schools;
- Schools and law enforcement agencies can have measurable impacts on targeted crime and disorder;
- Duplication of efforts is reduced;
- Students, school personnel, parents, and community members have less fear of crime and violence; and
- Schools and communities show an improved quality of life.

Specter 77 Traditionally the federal government has had some success obtaining forfeiture orders on the assets of drug dealers where it can show that those assets are either utilized in or the fruits of the defendant's involvement in the distribution of illegal drugs. Is the Justice Department pursuing aggressive forfeiture actions against gang assets pursuant to the Route 222 project or other anti-gang initiatives?

ANSWER: Yes. Each United States Attorney's Office has at least one Assistant United States Attorney (AUSA) who pursues Asset Forfeiture cases, both criminal and civil. Many offices of have Forfeiture Units staffed with AUSAs, paralegals, and support personnel identifying forfeitable assets and bringing these cases to court. Asset forfeiture plays in important role in the fight against gang crime. Gang-related forfeitures typically include firearms, cash, and vehicles.

Specter 78 Please provide data of the forfeiture actions initiated in the Route 222 corridor during the Route 222 project's tenure.

ANSWER: The following amounts are derived from the two United States Attorney's Offices in which their geographical area encompasses a portion of the 222 Corridor. The Comprehensive Anti-Gang Initiative began in these districts in 2007. These gang-related asset forfeitures are reported from each of the two districts from fiscal years 2007-2008, combined:

District	Assets Forfeited	Assets Pending Forfeiture
PA-E	$1,678,680.	$14,187,958.
PA-M	$437,943.	$8,801,474.

QUESTIONS FROM SENATOR KENNEDY

Kennedy 130 This Administration's record on voting rights has been unacceptable. The Administration has repeatedly failed to protect voting rights, and some of its activities have made it harder for citizens to gain access to the ballot. The Department of Justice's Voting Access and Integrity initiative, adopted in the early years of the Bush Administration, shifted the Department's priorities and resources away from efforts to increase access to voting, and toward the prevention of voter fraud – despite the lack of evidence that voter fraud is a real problem. From 2002 to 2007, despite the Administration's strong focus on voter fraud, there have been only 86 convictions nationwide. In 2004, the Department filed amicus briefs in the key battleground states of Florida, Michigan, and Ohio in 2004, seeking to prevent the counting of provisional ballots in the Presidential election. In 2006, the Department fired eight U.S. Attorneys, under circumstances suggesting that several of them had been dismissed for failing to prosecute Democrats on voter fraud charges that they felt lacked merit. At the same time, the Division has failed to vigorously enforce laws protecting the right to vote. The Bush Civil Rights Division has developed and filed only two cases to protect African Americans against racial discrimination in voting since it took office. It also has failed to file cases to enforce provisions of the National Voter Registration Act that increase voters' access to the ballot. Instead, it has tried to use the Act to force states to purge voters from registration lists. The Department brought one such case in Missouri, but it was thrown out because there was no evidence that any inaccuracy in Missouri's registration lists would affect the outcome of an election. It is my hope that this pattern will not be repeated in this election year. Please describe how you plan to you ensure that the Voting Section fulfills its duty to enforce voting rights in a fair and nonpartisan manner.

ANSWER: The Department is committed to vigorously enforcing each of the voting statutes within its jurisdiction in a fair and nonpartisan manner. This commitment is clearly demonstrated by the Voting Section's recent record of voting rights enforcement.

Section 2 of the Voting Rights Act prohibits intentional, purposeful racial discrimination in voting as well as conduct with a racially discriminatory effect. Although most commonly used to address issues of minority vote dilution, Section 2 also has been the basis for other types of legal relief involving voter registration and election-day practices, including: the use of dual (state and municipal) voter registration systems, the refusal to recruit or hire minority poll workers, the intentional targeting of voters for challenges based on their race or ethnicity, misconduct by poll officials favoring candidates of a particular race, changes in candidate residency requirements intended to disqualify minority candidates, and actions and failures to act resulting in the denial of equal access to the political process for language minority voters, in the form of hostile poll workers and refusal to permit bilingual assistance.

In March 2008, the Voting Section filed and resolved a lawsuit under Section 2 against the Georgetown County, South Carolina, Board of Education on the grounds that the at-large method of electing school board members unlawfully diluted the voting strength of black voters in Georgetown County. No black candidates have won a school board election during the last three election cycles. The current school board is all white, although black citizens comprise approximately 38% of the population of Georgetown County. The consent decree creates seven single-member districts and two at large seats on the nine-member school board, and in three of the new single-member districts black citizens will constitute a majority of the age-eligible population. This settlement ensures that minority voters in Georgetown County will have the opportunity to elect school board members of their choice.

In 2006, the Voting Section filed and resolved a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic-American voters – including at least three United States citizens on active duty with the United States Army – based entirely on their perceived race and ethnicity. The Section also filed a Section 2 lawsuit in Ohio in 2006 that challenged the mixed at-large/ward method of electing the city council in Euclid, Ohio, on the basis that the method unlawfully diluted the voting strength of African-American voters. Although African Americans comprise nearly 30 percent of the city's electorate, and there have been eight recent African-American candidates for the Euclid City Council, not a single African-American candidate has ever been elected to the nine-member city council or to any other city office. In August 2007, the court ruled that the city's method of electing its city council violated the Voting Rights Act and stayed Euclid's council elections until a new method of election is approved by the court.

Also among the successes under Section 2 is the Voting Section's lawsuit against Osceola County, Florida, where we brought a challenge to the county's at-large election system. In October 2006, we prevailed at trial. The court held that the at-large election system violated the rights of Hispanic voters under Section 2 and ordered the county to abandon it. In December 2006, the court adopted the remedial election system proposed by the United States and ordered a special election under that election plan that took place in April 2007.

The United States filed a complaint on December 15, 2006, alleging that the at-large system of electing the governing Board of Trustees in Port Chester, New York, diluted the voting strength of Port Chester's Hispanic citizens, in violation of Section 2 of the Voting Rights Act of 1965. On March 2, 2007, after an evidentiary hearing, the court enjoined the March 20 elections, holding that the United States was likely to succeed on its claim. On January 17, 2008, the court ruled that the at-large system of election used by Port Chester to elect its trustees violates the Voting Rights Act because it denies Hispanics an equal opportunity to participate in the political process. According to the evidence adduced at trial, and as cited in the court's opinion, the 2000 census shows that almost half of Port Chester's residents, and 22 percent of Port Chester's citizens of voting age, were Hispanic. By July 2006, the number of Hispanic citizens of voting age had increased to about 28 percent. Despite these figures, no Hispanic has ever been elected to

Port Chester's municipal legislature, the six-member Board of Trustees. Indeed, no Hispanic has ever been elected to any public office in Port Chester, despite the fact that Hispanic candidates have run for office six times – twice for the Board of Trustees and four times for the Port Chester Board of Education, which manages a school system that is overwhelmingly Hispanic.

Also in 2007, in Fremont County, Wyoming, the Division successfully defended the constitutionality of Section 2 of the Voting Rights Act, for the fourth time in this Administration. In addition, the Division filed and resolved a claim under Section 2 involving discrimination against Hispanic voters at the polls in Philadelphia and obtained additional relief in an earlier Section 2 suit on behalf of Native American voters in Cibola County, New Mexico. The actions against Philadelphia and Cibola County are noteworthy because both involve claims not only under the Voting Rights Act but also under HAVA and the NVRA. In Cibola County, which initially involved claims under Sections 2 and 203, the Division brought additional claims after the County failed to process voter registration applications of Laguna Pueblo and other Native American voters, removed Native American voters from the rolls without the notice required by the NVRA, and failed to provide provisional ballots to Native American voters in violation of HAVA. In Philadelphia, the Division added to our original Section 203 and 208 claims additional counts under Sections 2 and 4(e) of the Act to protect Hispanic voters, a count under the NVRA pursuant to which the City has agreed to remove from the rolls the names of numerous ineligible voters, including those who are deceased or have moved, and two counts under HAVA – to assure that accessible machines are available to voters with disabilities and that required signs at the polls also are posted in Spanish.

In 2007, the Section litigated a case in Mississippi under Sections 2 and 11(b) of the Voting Rights Act. On June 29, 2007, U.S. Senior District Judge Tom S. Lee found the defendants in *United States v. Ike Brown et al.* (S.D. Miss.) liable for violating the Voting Rights Act by discriminating against white voters and white candidates. The Department will continue to closely investigate claims of voter discrimination and vigorously pursue actions on behalf of all Americans wherever violations of federal law are found.

In recent years, the Department has broken records with regard to enforcement of Section 208 of the Voting Rights Act. Section 208 assures all voters who need assistance in marking their ballots the right to choose a person they trust to provide that assistance. Voters may choose any person other than an agent of their employer or union to assist them in the voting booth. During the past six years, we have brought nine of the eleven such claims brought by the Department since Section 208 was enacted twenty-five years ago, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress in 2006, remains strong, with nine lawsuits filed in fiscal year 2007. In September 2007, we settled the first lawsuit filed under Section 203 on behalf of Korean Americans in the City of Walnut, California. During the past 7

years, the Civil Rights Division has brought more cases under the minority language provisions than in all other years combined since 1965. Specifically, we have successfully litigated over 60 percent of all the Department's language minority cases in the history of the Voting Rights Act. These cases include the first Voting Rights Act cases in history on behalf of Filipino, Korean, and Vietnamese Americans.

Our cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. Due in part to our lawsuit, Boston now employs five times more bilingual poll workers than before. As a result of our lawsuit, San Diego added over 1,000 bilingual poll workers, and Hispanic voter registration increased by over 20 percent between our settlement in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters, and Vietnamese voter registration rose 37 percent. Our lawsuits also spur voluntary compliance: after the San Diego lawsuit, Los Angeles County added over 2,200 bilingual poll workers, an increase of over 62 percent. In many cases, violations of Section 203 are accompanied by such overt discrimination by poll workers that Section 2 claims could have been brought as well. However, we have been able to obtain complete and comprehensive relief through our litigation and remedies under Section 203 without the added expense and delay of a Section 2 claim.

The Voting Section will also continue to process Section 5 submissions in a timely, fair and evenhanded manner. In 2006, the Voting Section processed the largest number of Section 5 submissions in its history. The Department has interposed six objections to submissions pursuant to Section 5 since January 2006, in Georgia, Texas, Alabama, North Carolina, South Dakota, and Michigan, and in 2006 filed a Section 5 enforcement action. Additionally, the Department is vigorously defending the constitutionality of Section 5 of the Voting Rights Act in an action brought by a Texas jurisdiction in 2006 and filed an amicus brief in a Mississippi Section 5 case in 2007. The Department also consented to four actions since 2006 brought by jurisdictions that satisfied the statutory requirements for obtaining a release, or "bailout," from Section 5 coverage.

The Voting Section has continued to work diligently to protect the voting rights of our nation's military and overseas citizens. The Department has enforcement responsibility for UOCAVA, which ensures that overseas citizens and members of the military, and their household dependents, are able to request, receive, and cast a ballot for federal offices in a timely manner for federal elections. Just since January 2008, the Department has taken legal action in two States to resolve UOCAVA violations for the February 5 federal primary elections. In Illinois, we participated as amicus curiae in a case to ensure the State adequately ensured the voting opportunities for UOCAVA voters under their truncated 2008 election calendar, and on January 30, 2008, the court approved a consent decree with Tennessee to resolve our complaint filed over the late mailing of overseas ballots in that state. In calendar year 2006, we filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina and reached a voluntary legislative solution without the need for litigation in South Carolina. In Alabama and North Carolina, we obtained relief for military and overseas voters in the form of State legislation. We also

obtained permanent relief in the form of legislation in a suit originally filed against Pennsylvania in 2004. The Department will continue to make every effort to ensure that our citizens abroad and the brave men and women of our military are afforded a full opportunity to participate in federal elections.

A major component of the Department's work to protect voting rights is the Voting Section's election monitoring program, which is among the most effective means of ensuring that federal voting rights are protected and respected on Election Day. The Department deploys hundreds of personnel to monitor elections across the country. In 2006, a record number of Department monitors and federal observers from the Office of Personnel Management were deployed to jurisdictions across the country for a mid-term election. In total, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 states during the November 7, 2006, election. In calendar year 2006, we sent over 1,500 federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year.

During calendar year 2004, a record 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 106 jurisdictions in 29 states. This compares to the 640 federal observers and 110 Department personnel deployed during the entire 2000 presidential calendar year.

For the 2008 elections, the Department will implement a comprehensive Election Day program to help ensure ballot access. As in previous years, the Department will coordinate the deployment of hundreds of federal government employees in counties, cities, and towns across the country to ensure access to the polls as required by our nation's civil rights laws.

As in prior years, in 2008 the Department will monitor states' compliance with the requirements of the Voting Rights Act, the Help America Vote Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the National Voter Registration Act, instituting enforcement actions as necessary. In that regard, we will closely monitor compliance with our numerous court orders, consent decrees, and other agreements, many of which will be in effect through the 2008 election cycle. The Department's efforts to ensure voter access in accordance with federal law will include training a responsible official, the District Election Official (DEO), in every U.S. Attorney's Office across the country on ballot access laws to stand ready to protect the voting rights of all Americans.

Such extensive efforts require substantial planning and resources. Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. To that end, Department officials will meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations that advocate on behalf of racial and language minorities, as well as groups that focus on disability rights. Department officials also will meet with representatives of State and local election officials before the 2008 general

election. These meetings will provide a forum for discussion of state and local officials' concerns.

On Election Day, Department personnel here in Washington will stand ready. We will have numerous phone lines ready to handle calls from citizens with election complaints, as well as an internet-based mechanism for reporting problems. We will have personnel at the call center who are fluent in Spanish and the Division's language interpretation service to provide translators in other languages.

Kennedy 131 Will you use the tools at your command, such as the National Voter Registration Act and HAVA to promote access to the ballot? Please explain.

ANSWER: The Department will enforce all of the federal voting rights laws at its disposal to promote and protect access to the ballot. The Department has worked closely with states to ensure compliance with those federal laws that regulate the voter registration process, such as the NVRA and HAVA. The Department will continue to work to monitor state efforts to comply with these statutes, and we will bring enforcement actions where necessary to promote access to the ballot.

The NVRA sets forth certain federal standards for conducting voter registration programs by mail, for providing voter registration opportunities at state public assistance offices, and for adding and removing voters from the voter rolls, including notice of decisions on voter registration applications and notice of removals for voters who have moved. The NVRA requires states to take steps to ensure that voter registration rolls are accurate, including steps such as mailings or canvasses of voters to see whether they have moved or died.

The Department's enforcement actions have focused and will continue to focus on ensuring that election officials properly apply all of these provisions of the NVRA, including the provisions for ensuring registration opportunities, as well as properly registering and removing persons from the rolls.

Since 2001, the Voting Section has filed 10 suits alleging violations of the National Voter Registration Act. Two of the cases were to enforce NVRA provisions requiring state public assistance or disability agencies to improve voter registration access, and five cases dealt with the improper removal of voters from the poll lists without the notice required by the NVRA and/or the failure to add voters who had properly applied to register to vote. Since 2006, we have filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico. Every one of these suits was resolved by agreed orders that protect the interests and rights of voters.

Aside from lawsuits, we actively investigate the practices of jurisdictions to determine if they are complying with the NVRA. In the past few months, we sent letters to 18 states inquiring about their practices and procedures regarding the provision of

voter registration opportunities at state offices that provide public assistance, disability, and other services. In the past year, we sent letters to a dozen states inquiring about their list maintenance practices when we learned that there appeared to be significant imbalances between their numbers of registered voters and their citizen populations.

The Department works hard to help States satisfy HAVA's requirements as well, through speeches and mailings to election officials, responses to requests for our views on various issues, and maintaining a detailed website on HAVA issues as well as cooperative discussions with States aimed at achieving voluntary compliance. With January 1, 2006, came the first year of full, nationwide implementation of the database and accessible voting machine requirements of HAVA. HAVA requires that each State and territory have a statewide computerized voter registration database in place for federal elections, and that the voting systems used in federal elections, among other requirements, provide accessible voting for persons with disabilities in each polling place in the nation.

Where cooperative efforts prove unsuccessful, the Department enforces HAVA through litigation. Since January 2006, the Department has filed lawsuits against the States of New York, Alabama, Maine, and New Jersey. In New York and Maine, the States had failed to make significant progress on both the accessible voting equipment and the statewide databases. In Alabama and New Jersey, the States had not yet implemented HAVA-compliant statewide databases for voter registration. The Department ultimately obtained a favorable judgment and remedial order in Alabama, a preliminary injunction and the entry of a remedial order in New York, and favorable consent decrees in Maine and New Jersey.

The Department recently won a motion for further relief against New York for failure to achieve full compliance with HAVA's voting system requirements, and the court there has entered a supplemental remedial order to cure the continuing violations. In addition, we filed HAVA claims against Galveston County, Texas, for failing to provide provisional ballots to individuals eligible to vote, post required voting information at polling places, and provide adequate instructions for mail-in registrants and first time voters. We also filed HAVA claims against an Arizona locality for its failure to follow the voter information posting requirements of the Act, and our recent lawsuits in Cibola County, New Mexico, and Philadelphia, Pennsylvania, discussed above, also included HAVA claims to protect Native American and voters with disabilities, respectively.

The Department also has defended three challenges to HAVA in a private suit involving the HAVA accessible machine requirement. A separate Pennsylvania State court judgment barring the use of accessible machines was overturned after the Department gave formal notice of its intent to file a federal lawsuit.

HAVA requires that states offer persons who do not appear on voter registration lists on election day for federal elections, and who claim to be registered and eligible, the opportunity to vote by provisional ballot. This provisional process is aimed at ensuring

that persons who may be mistakenly omitted from the rolls through bureaucratic error can vote and have that vote counted. The eligibility of such persons to vote can be verified under state law after the election when there is more time to search registration records than exists on Election Day. Whether the vote counts will depend upon whether state and local officials subsequently determine that the voter was, in fact, eligible to vote. The Department will continue to work with states to ensure compliance with HAVA's provisional ballot requirements.

Kennedy 134 On January 24, 2008, the Committee received your responses to written questions submitted to former Attorney General Alberto Gonzales. The responses to questions 149 and 153 included an attachment listing cases filed by the Civil Rights Division's Voting and Employment Litigation Sections. Please indicate the time frame covered by the list of voting cases submitted in response to answer 149, and identify any additional cases filed by the Voting Section since this attachment was submitted.

ANSWER: The time frame covered by the list of voting cases submitted in response to question 149 previously submitted to Attorney General Alberto Gonzales is October 1, 1976 – September 30, 2007.

As of April, 2008, the Voting Section has participated in the following cases:

Plaintiff – Section 2 Case

U.S. v. Georgetown County (S.C.) School District	D.S.C.	3/14/08

Plaintiff – HAVA Case

U.S. v. Bolivar County, Mississippi	N.D. Miss.	2/15/08

Plaintiff – UOCAVA Case

U.S. v. State of Tennessee	M.D. Tenn.	1/28/08

Amicus Curiae – UOCAVA Case

DuPage County Bd. Of Election Comm'rs v. Illinois State Bd. Of Electors	N.D. Ill.	1/16/08

Kennedy 135 The list of Employment Litigation Section cases indicates that it dates from 1993. Please explain why this date was chosen, and identify whether any additional Title VII cases have been filed since this list was submitted.

ANSWER: Written question 152 submitted to former Attorney General Alberto Gonzales requested information on Employment Litigation Section (ELS) cases from both the previous and current Administration. Thus, information was provided back to 1993.

ELS has filed the following additional lawsuits since that list was submitted:

Tracey Marshall v. Hillsborough County Clerk
On October 12, 2007, we filed a compliant alleging that the Hillsborough County Clerk violated the Uniformed Services Employment and Reemployment Rights Act of 1994 by failing to return Ms. Tracey Marshall to her pre-service position as supervisor of the Court Clerk II Section upon the conclusion of her 2005 military deployment. The complaint also alleged that the Clerk's Office violated USERRA by retaliating against Ms. Marshall for filing a USERRA claim with the Department of Labor. The complaint seeks back wages, interest, and remedial measures.

Anthony Jackson v. Union County College
On December 14, 2007, we filed a complaint on behalf of Anthony Jackson against Union County College alleging violations of the Uniformed Services Employment and Reemployment Rights Act of 1994. The complaint alleges that Union County College discriminated against Mr. Jackson because of his military service, including discharging Mr. Jackson without cause. The complaint seeks back wages, interest, and other remedial measures.

United States v. Policia de Puerto Rico
On March 3, 2008, we filed a complaint under Section 706 of Title VII of the Civil Rights Act of 1964, as amended, against the Puerto Rico Police Department alleging that the Police Department engaged in gender discrimination against Ms. Jeanette Caraballo by subjecting her to a hostile work environment, including sexually discriminatory comments and insults, and assignments to clerical duties not required of male officers. The complaint further alleged that the Police Department discriminated against Mr. Manuel Bonilla by retaliating against him because he opposed what he reasonably believed to be sex discrimination against Caraballo and other female co-workers. This case is currently being litigated.

Jerimiah Macintire v. Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) and Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing)
On March 14, the United States District Court for the Western District of Wisconsin approved and entered the Settlement Agreement executed by all parties and tendered with the Complaint we filed on behalf of Jerimiah Macintire in the case *Jerimiah Macintire v. Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) and Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing)*; Civil Action No. 08–cv–134 (WD WI). The Complaint, which was filed on March 11, alleged that Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) and Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing) violated the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). Specifically, the Complaint alleged that the defendants

violated Section 4312 and 4313 of USERRA by failing to reinstate Macintire to his pre-service position following the completion of his Reserves duty and violated Section 4311 of USERRA by taking into account his military status in deciding whether to discontinue his employment with Pan-O-Gold Baking Company.

Kennedy 137 I am concerned about the politicization of the process for appointing immigration judges. Testimony before this Committee clearly demonstrates that the Office of the Attorney General was actively involved in the selection of immigration judges between 2004 and 2006. The former Attorney General placed the selection and hiring of immigration judges in the hands of Monica Goodling, who frequently bypassed regular channels in order to accommodate friends of the Administration. Some of these appointments were made without benefit of any civil service notification or job posting. Immigration judges are civil servants charged with the important responsibility of determining whether an individual should be deported, or allowed to remain in this country on the basis of a claim for asylum or other legal claims. Despite the life or death consequences, the former Attorney General allowed this process to be corrupted by political cronyism. What assurance can you give this Committee that you will thoroughly review all immigration judge appointments made between 2004 and 2006? In your review, you should consider whether and to what extent impermissible political considerations were taken into account during the hiring process, the number of positions filled without benefit of posted job announcements or without interviews, and the expertise in immigration law of those hired. If you find deficiencies in these areas, can you commit to correcting the problems?

ANSWER: There is no place for political considerations in the hiring of our career employees or in the administration of justice. This matter has been referred to the Office of Professional Responsibility and the Office of the Inspector General, and that investigation is ongoing. In the meantime, the Department has taken the following steps to ensure that any previous mistakes are not repeated. In January 2007, the Department's leadership offices, in consultation with the Executive Office for Immigration Review (EOIR) and other relevant components, developed a new process for screening and evaluating immigration judge (IJ) applicants, which was implemented in early April 2007.

The new process has been formalized to make it more routine and consistent, and has placed the initial vetting, evaluation, and interviewing function within EOIR. EOIR has enhanced supervisory review of newly appointed IJs. All new IJs serve an initial trial period, during which time their performance and conduct on the bench are assessed. This review, which includes feedback from both the private bar and government attorneys who practice before that IJ, determines whether the new judge possesses the proper temperament and aptitude necessary to be retained as an IJ.

Additional reforms have been implemented to improve the immigration courts overall and ensure that IJs provide a fair process through which aliens have an

opportunity to present their claims. Proposed codes of judicial conduct have been published, new judicial training programs have been developed, a new position has been created to oversee all judicial misconduct allegations, and we have also instituted a written immigration law exam requirement for all newly appointed IJs. The Department remains committed to these reforms and will continue to demand that all IJs maintain the highest levels of integrity and professionalism.

Kennedy 138 Finally, in 2006 Attorney General Gonzalez announced a review of the operations of the Immigration Judges and the Board of Immigration Appeals, which included 22 directives to expand and professionalize the immigration court system. What is the status of that review? How many of those directives have been completed? In particular, how many Immigration Judges and Members of the Board of Immigration Appeals have been hired to help deal with the overwhelming numbers of cases in the Immigration Court system?

ANSWER: The Department has made substantial progress on implementing these initiatives. To date, the majority have been completed, including: (1) requiring all newly appointed immigration judges (IJs) and members of the Board of Immigration Appeals (Board) to pass a written exam prior to adjudicating cases; (2) improving training for new appointees and developing a continuing education program for veteran IJs and members of the Board; (3) creating a system to evaluate the performance of newly appointed IJs and members of the Board; (4) developing a training program to strengthen the ability of Board staff attorneys to perform their screening and drafting duties; (5) creating a more systematic way for members of the Board and Office of Immigration Litigation attorneys to report conduct, professionalism, or quality concerns; (6) reviewing and analyzing concerns raised regarding disparities in asylum grant rates; (7) creating the position of Assistant Chief Immigration Judge (ACIJ) for Conduct and Professionalism to monitor and review all allegations of misconduct against IJs; (8) improving transcription services; (9) developing a process for referring complaints about immigration fraud and abuse; (10) assigning ACIJs to six regional offices; (11) revising the IJ Bench Book; (12) publishing a comprehensive immigration court practice manual; (13) pursuing appropriate budget increases; and (14) forming a committee to oversee the expansion and improvement of the Executive Office for Immigration Review's (EOIR) Pro Bono programs.

Other initiatives are well under way or are near completion, but require additional steps to complete them. These include: (1) implementing a performance appraisal system for IJs and members of the Board; (2) clarifying the conduct standards that IJs and members of the Board must abide by; (3) making final improvements to the streamlining reforms; (4) increasing the size of the Board; (5) implementing sanction authority for IJs and expanding the bases upon which discipline may be imposed on attorneys and representatives who appear before immigration courts or the Board; (6) implementing and installing a new digital audio recording system; (7) enhancing interpreter services; and (8) enhancing the sanction authority of the Board.

IJ hiring has taken place and continues; 12 new IJs entered on duty in March 2008 and 1 in May 2008, with hiring continuing for an additional 25 judges. With respect to the Board, the Department recently published a final rule increasing the size of the Board to 15 permanent members. The rule also expanded the pool of persons eligible to serve as temporary board members. The Board has continued the use of temporary board members to assist in handling its increased workload. On May 30, the Attorney General announced the appointment of five permanent members to the Board. Announcements for permanent Board member positions have been posted and the hiring process is ongoing.

Kennedy 139 Under the Homeland Security Act of 2002, immigration enforcement and benefit functions were transferred from the Department of Justice to the Department of Homeland Security. Only the Executive Office for Immigration Review, which houses the immigration courts and the Board of Immigration Appeals, remains under the jurisdiction of the Attorney General. Immigration judges determine whether an individual is eligible for relief from removal. In particular, immigration judges must assess eligibility for asylum, withholding of removal, or protection from torture — all issues that require significant expertise in political and cultural matters. During your years on the federal bench, you routinely accorded great deference in evaluating the determinations of the Board of Immigration Appeals and decisions by immigration judges. There is significant evidence, however, that many immigration judges do not receive sufficient training on complex issues such as country conditions and human rights. I have heard numerous reports that immigration judges often fail to consider cultural differences, or fail to understand the political realities in particular countries. A study published last year by three law professors found that asylum grants by immigration judges are inconsistent and vary widely across the country. As a former judge, you're well aware that the integrity of the judicial process is called into question when such disparities exist. Regulations went into effect last October requiring the Executive Office for immigration Review to ensure that appropriate training is provided and that professional conduct is appropriately monitored. What training should immigration judges receive, particularly with respect to asylum and human rights? How will you use your authority as Attorney General, including your power to review immigration decisions, to ensure that integrity is restored to the immigration courts? Will you monitor the implementation of new regulations regarding management of the courts? Will you conduct further evaluations to determine whether these reforms have gone far enough to restore integrity?

ANSWER: Both the Department and the Executive Office for Immigration Review (EOIR) take the integrity of the immigration courts very seriously, and have taken concrete steps toward improving training and oversight of immigration judges (IJs).

With respect to new IJs, EOIR has expanded new judge training to provide each judge with five weeks of training prior to taking the bench, including the opportunity to

work with mentor judges both in their home court and in a training court. The classroom curriculum includes training on asylum and other forms of humanitarian protection.

For all judges, EOIR provides training through conferences, specialized on-line resources, and legal publications. In August 2007, EOIR held a week long training conference for IJs and the Board of Immigration Appeals (Board). This past year, EOIR launched new and dramatically improved on-line resources for IJs, Board members, and legal staff. The newly overhauled Immigration Judge Benchbook contains a growing library of reference materials on asylum and other immigration law topics. In January 2007, EOIR launched a monthly newsletter for IJs, Board members, and all EOIR legal staff, containing topical articles on substantive legal issues and analyses. EOIR also distributes topical reference materials from external sources on an ongoing basis, such as circuit court summaries from the Office of Immigration Litigation, and the EOIR Virtual Law Library is regularly updated and expanding. Finally, EOIR has recently developed a more structured peer mentoring program, where IJs who are experts on immigration law topics, including asylum, make themselves available to advise colleagues on particular areas of law and procedure.

Public confidence in the immigration courts depends in large part on the professionalism of the immigration judges. In coordination with the Department, EOIR has instituted reforms to address concerns about judge professionalism, including the creation of a senior level position dedicated to IJ conduct and professionalism, the development of a code of judicial conduct for IJs, and an ongoing emphasis on increased professionalism throughout the ranks of EOIR. The Department is very much committed to enhancing public confidence in the immigration courts and, through oversight and coordination with EOIR, taking the steps necessary to achieve that end.

Kennedy 140 In 2002, Attorney General Ashcroft issued regulations ordering the Board of Immigration Appeals to reduce its backlog of asylum and deportation cases. This so-called "streamlining" regulation reduced the size of the Board from 23 members to 11, and eliminated review by three members of the Board in many cases. Instead, the regulation permits a single member to issue a decision in many cases, without any requirement for a reasoned explanation of the decision. This "streamlining process" has been heavily criticized by both the immigration bar and the federal courts.in the past two years, however, we understand that the number of appeals affirmed without opinion has dropped from 36 percent to under 10 percent and the number of federal court filings from Board rulings has decreased 23 percent. In addition, the number of published precedent decisions increased significantly, providing important guidance to parties in proceedings as well as the federal courts on the Board's interpretation of immigration law. In a directive issued by Attorney General Gonzalez, the size of the Board was to be increased slightly from 11 members back up to 15, which will help ensure that case backlogs do not become a problem again at the BIA. What steps have you taken to see that these positive trends continue, and that the Board fully restores fairness and due process to its decision making? What steps have been taken to expand the Board to

15 members? Can we have a commitment from you that you will support additional increases in the Board's membership if the caseload merits it?

ANSWER: For the past two years, the Board of Immigration Appeals (Board) has taken significant steps to adjust its practices in response to the Attorney General's directives. As noted, the Board has reduced the rate of single member affirmances without opinion, from a high of 36 percent in 2003 to 9 percent currently, and is issuing decisions that contain more detail and analysis than before. There are signs that this approach has improved the climate for Board decisions in federal court. In addition, the Board has worked hard at fulfilling its mission to give guidance to the immigration judges and the parties in proceedings. In 2007 the Board significantly increased the number of published decisions to 45 precedent decisions. The Board has also successfully eliminated the backlog of cases awaiting transcription that had existed for some time.

In response to the 2006 directives, the Department published an interim rule expanding the Board to 15 permanent members. On May 30, 2008, the Department announced the appointment of five new permanent Board members. The interim rule also expanded the pool of persons eligible to serve as temporary board members to include not only IJs but also EOIR attorneys with at least 10 years of experience in the field of immigration law. This has in part, enabled the Board to handle its increased workload. The Board will continue to monitor and project future caseloads, and adjust resources accordingly, including the number of temporary board members. The Department is committed to providing the necessary resources to meet caseload needs at the Board.

On June 18, 2008, further implementing the 2006 directives, the Department issued a proposed rule that would amend the Board's administrative review procedures to give it more flexibility in handling its case load.

Kennedy 141 There have been a number of recent proposals to require state and local police to enforce the immigration laws or lose their federal funding. Strong objections were raised by state and local officials, mayors, police chiefs, and sheriffs around the country, who believe such a requirement will seriously jeopardize their efforts to fight crime and protect us from future terrorist attacks. It could obviously have a disastrous effect on community policing, in which local police cultivate bonds of trust with the public, including immigrants of all statuses, to root out crime and bring offenders to justice. It will also divert precious resources from the police's primary mission of protecting our communities. Security experts have repeatedly stated that good intelligence is the key to national security. Helpful information comes from all sources, including immigrants. Permitting state and local police to enforce immigration law will also heighten the risk of discrimination and racial profiling. These law enforcement officers don't have training in the complex and technical area of immigration law, and they'll have no basis to determine immigration status. They'll be likely to target individuals who look or sound foreign for questioning, detention, or arrest. Isn't this is a function that the federal

government should retain exclusive jurisdiction over? What role, if any, do you think state and local law enforcement agencies should have in enforcing federal immigration laws? Do you believe such a policy would affect the successes achieved by community policing? How do you think this policy would affect our ability to obtain good intelligence? Won't immigrants be afraid to approach local law enforcement officials for fear of being deported, thereby denying important information and jeopardizing the security of our nation?

ANSWER: The federal government has the primary role in immigration matters. State and local officials are important partners in immigration matters (just as they are in other matters). Moreover, state and local governments have jurisdiction and interests over persons (including aliens) within their states and localities. Immigration issues are best resolved when the federal government and state and local governments work together in a cooperative way.

When Congress enacted Section 287(g) of the Immigration and Nationality Act it provided a mechanism whereby the Attorney General (now the Secretary of Homeland Security) could enter into formal agreements with state and local governments and provide critical training to state and local officials regarding immigration matters. Section 287(g) is not, however, mandatory and no state or local government is required to enter into such agreements. *See* INA § 287(g)(9). The Department of Justice has been supportive of the Department of Homeland Security's efforts to enter into INA § 287(g) agreements with state and local governments. The Department is unaware of any situations where the existence of an INA § 287(g) agreement has undermined a state or local law enforcement officials ability in other contexts.

Kennedy 142 Over 1,400 immigration bills were introduced in state legislatures last year, more than double the number filed the year before. Approximately 130 local governments have introduced or passed ordinances dealing with immigration. However, under Supreme Court precedent, the federal government has exclusive authority to regulate immigration. What is your perspective on efforts by state and local governments to enact their own immigration laws? Will the Department of Justice vigorously challenge such efforts under your leadership?

ANSWER: The Department of Justice generally does not take a position on bills pending in state legislatures. Like any other issue, the Department will decide on a case by case basis whether to intervene in or initiate litigation relating to state or local law. Any decision regarding litigation would be made in close consultation with the Department of Homeland Security.

Kennedy 145 What are U.S. Attorneys doing to ensure that the courts are aware of any truly dangerous offenders?

ANSWER: When courts have allowed them the opportunity, Assistant U.S. Attorneys assigned to review sentencing reduction motions, in many instances, have reviewed the motions, retrieved factual background information underlying the offenders' convictions, contacted the Bureau of Prisons to obtain information concerning the prisoners' post-sentencing behavior, and considered the propriety of Probation Office sentencing recommendations. In cases where an offender's post-sentencing conduct involves criminal behavior or where the circumstances underlying the offender's original conviction are particularly egregious, Assistant U.S. Attorneys have the discretion to alert the court to those circumstances and oppose a sentencing reduction.

Some courts, however, have granted sentencing reduction motions *sua sponte* since the March 3, 2008, retroactivity effective date without allowing the government an opportunity to review the offender's motion, the facts underlying his case, or his post-sentencing conduct, and reply to the motion accordingly. The government's ability to alert the courts to every dangerous offender has been further hindered by the sheer volume of sentencing reduction motions filed in districts where hundreds or thousands of offenders are estimated to be eligible for a reduction.

Kennedy 149 How much training is the FBI currently providing to state and local law enforcement authorities to improve identification, reporting, and response to hate crimes?

ANSWER: The FBI's Uniform Crime Report (UCR) program provides training materials in print, online, and, when funding permits, on site for the agencies that request it. During the last three fiscal years, the FBI's UCR program has provided almost 6,000 printed hate crime training manuals to law enforcement. In addition, the UCR program has conducted on-site training for 63 agencies regarding issues specific to hate crimes, and Web-based hate crime training is available to law enforcement through Law Enforcement Online (LEO). The UCR program also provides training regarding hate crime reporting when it trains law enforcement personnel regarding Summary reporting and the National Incident-Based Reporting System. UCR program contributors and stakeholders are informed of hate crime reporting procedures and training opportunities through the UCR *State Program Bulletin* and *UCR Newsletter*, among other means.

Kennedy 150 What steps are you taking to ensure that the Department makes prosecution of hate crimes a top priority?

ANSWER: Please see the above response to Question 148. Violent crime, including violent crime motivated by prejudice or animus against a particular class or group of citizens, should never be tolerated. Therefore, aggressively prosecuting hate crimes remains a priority of the Department.

Generally speaking, with respect to hate crimes and other criminal civil rights matters, the Department initially determines whether the local law enforcement

authorities intend to proceed with a prosecution. Not only are bias-motivated crimes prosecutable as violent crimes under existing laws in every state, but they are specifically prohibited by the vast majority of states. The Department will prosecute such cases if the state either fails to prosecute the matter or a state prosecution does not vindicate the underlying federal interest that is at stake.

The Civil Rights Division has brought a number of high profile hate crime cases in recent years. Examples of recent hate crimes prosecutions include:

- *United States v. Eye and Sandstrom* (W.D. Mo.): On March 8, 2008, the defendants were convicted of fatally shooting an African-American man as he was walking to work in downtown Kansas City. Both defendants were sentenced to life in prison without parole.

- *United States v. Milbourn* (S.D. Ind.): On March 11, 2008, the defendant was convicted of conspiring to interfere, and interfering, with housing rights on March 12, 2006, by burning an eight-foot-tall cross in the yard of a home because the resident has three bi-racial children.

- *United States v. Syring* (D.D.C.): The defendant entered a guilty plea to violating a federally protected right for sending threatening e-mail and voicemail messages to the Director of the Arab American Institute as well as staff members between July 17 and 19, 2006. Sentencing is anticipated in summer 2008.

- *United States v. Laskey, et al.* (D. Or.): In April 2007, defendant Jacob Laskey, a member of the Volksfront white supremacist group, was sentenced to 11 years and three months in federal prison for conspiring to vandalize the Temple Beth Israel by throwing rocks with swastikas etched in them through the closed windows during an evening service.

- *U.S. v. Walker, et al.* (D. Utah): Three members of the National Alliance, a white supremacist organization, were charged with assaulting a Mexican-American bartender in the Salt Lake City bar where he was working. Less than three months later, the defendants assaulted an individual of Native-American heritage outside a different bar in Salt Lake City. In 2007, all three defendants were convicted at trial.

- *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 interference with an Arab-American family's housing rights by igniting an explosive device inside the family's van that was parked near their home.

- *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 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.

As described above, the Division also has a strong and ongoing commitment to reexamining and investigating unsolved Civil Rights-era murders and other crimes. In February 2007, the Attorney General, the Assistant Attorney General for the Civil Rights Division, and the FBI Director announced an initiative to investigate Civil Rights-era crimes and a new partnership with non-governmental organizations.

- 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. The victims in this case were kidnapped by a group of White Knights of the Ku Klux Klan that included the defendant. 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. Last June, Seale was convicted on all counts, and in August, he was sentenced to life in prison.

- 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 Dr. Martin Luther King, Jr., to the area, was lured into a national forest and shot multiple times. That conviction was affirmed in April 2004.

Kennedy 151 As states continue to enact hate crime statutes, the clear trend has been to include gender-based crimes in these laws. In 1990, only seven of the statutes in the thirty-one states with hate crime laws included gender. Today, including the District of Columbia, twenty-eight of the forty-five states with penalty-enhancement hate crimes statutes include gender-based crimes. Eight states now include gender in their hate crime data collection mandate, and gender-based crimes are subject to

federal sentencing enhancements under 28 U.S.C. § 994.Do you believe that the FBI's Hate Crime Incident Report should include a box in the Bias Motivation section for gender-based hate crimes?

ANSWER: The categories of bias reported in the UCR are based on the Hate Crime Statistics Act of 1990, as amended, and the minimal standards for race and ethnicity designations established by the Office of Management and Budget (OMB). While the FBI does not anticipate revising the bias motivation categories absent revision of these authorities, there is no legal impediment to seeking additional voluntary reporting from law enforcement. If the FBI were to contemplate this, they would seek consideration of the proposal by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

Kennedy 153 In meetings with government officials and community-based organizations, FBI representatives have indicated that an interagency hate crime working group was created to revise and update FBI resources under the Act. What is the current status of this hate crime working group?

ANSWER: The Attorney General (AG) convened a Hate Crime Working Group at DOJ in May 1997. The Working Group was initially chaired by David W. Ogden, Counselor to the AG, and met approximately weekly. Members of the Working Group included interested components throughout DOJ and the FBI. Although currently inactive, the Working Group examined five principal areas related to hate crime: legislative initiatives, data collection, community outreach, prosecution and enforcement, and coordination. The Working Group developed a number of specific recommendations, including the formation of local hate crime working groups in federal judicial districts under the leadership of or with the participation of each U.S. Attorney's Office. The local working groups were envisioned as including local community leaders and educators, as well as federal, state, and local law enforcement officials, and were to be the primary mechanism for evaluating and addressing the hate crime problem in the local community.

Kennedy 154 Professor Jack McDevitt, Director of The Center for Criminal Justice Policy Research at Northeastern University in Boston, has emphasized the need for an expanded narrative in reporting hate crimes. In his September 2002 report, "Improving the Quality and Accuracy of Bias Crime Statistics Nationally", funded by the Justice Department's Bureau of Justice Statistics, Professor McDevitt suggested that more detailed reporting can reduce the occurrence of "information disconnect" between the investigating officer and Uniform Crimes Report reporting officials. What is the status of plans to revise and update the FBI's Hate Crime Incident Report forms to provide space to encourage additional narrative about the bias motivation?

ANSWER: The UCR program is evaluating the current Hate Crime reporting program and exploring opportunities for program enhancement, including the possible inclusion of

narrative comments or structured narrative fields. This evaluation includes researching user initiatives; evaluating the data collection process; examining and possibly revising data collection forms and guidelines; exploring publication content, formats, and methods; and reviewing the audit process to ensure data quality. We will also consider how to ensure that subjective, unstructured narrations constitute valuable information and how to limit the burden imposed on those relied on to draft narratives so they depict incidents accurately and succinctly. Once the FBI has evaluated this issue, recommendations will be provided to the FBI's CJIS APB for review and recommendation to the FBI Director.

Kennedy 156 Will you support legislation in Congress that would require firearms manufactured and sold in the U.S. after 2010 to be equipped with microstamping technology?

ANSWER: We believe the additional study described above needs to be completed before commenting on or supporting the legislation regarding this technology.

Kennedy 158 Do you intend to conduct your own investigation of Mr. Adams and the Office of the Pardon Attorney?

ANSWER: The Inspector General has conducted an investigation and made findings. While we cannot discuss the specifics of any case involving discipline, we can say that where the Inspector General finds misconduct, the Department's protocol for imposing discipline tracks the process established by merit systems regulations. The protocol requires issuance of proposed discipline. The employee can either accept the discipline, or respond to the proposal. A higher level manager than will issue a decision on the proposal. If the imposed discipline involves a suspension of more than fourteen days or removal, then the employee can request a trial de novo by a Merit Systems Protection Board (MSPB) judge. The MSPB judge has the option to affirm the punishment, reduce the punishment, or exonerate the individual.

QUESTIONS FROM SENATOR BIDEN

Biden 160 Because of its critical importance to our criminal justice system, I have long advocated for increased federal assistance to local forensic laboratories and law enforcement. Just a few years ago Congress passed the Justice for All Act. That far-reaching legislation included the Debbie Smith DNA Backlog Grant Program that authorized $700 million in federal funding to states and police agencies to help eliminate the backlog of untested DNA rape kits – kits that were tragically sitting on shelves in police warehouses and crime labs. This legislation also included the Paul Coverdale grants program that authorized funding to assist state crime labs. Regrettably, backlogs persist; the FBI recently estimated that 180,000 federal convicted offender samples are waiting for DNA processing. The most recent, comprehensive study by the National Institute of Justice found 542,700 cases with evidence waiting for DNA testing. Many provisions of the Justice for All Act expire next year. To comprehensively reauthorize these programs, it is critical that Congress have accurate and up to date information on the collection, testing and use of forensic evidence at the Federal, state, and local level. The last comprehensive DNA backlog survey was produced over four years ago in 2003. A more recent compendium of forensic information is needed. We must move full speed ahead to harness this technology to the benefit of our criminal justice system. In light of the need for the latest information on forensic analysis, I would like answers to the following questions: Please provide the latest estimate of the backlog at Federal, state and local forensic labs of samples of convicted offenders waiting for DNA testing?

ANSWER: In October of 2007, thirty-three States responded to a survey that was distributed to State Combined DNA Index System (CODIS) Laboratories. The results of these responses show a current backlog of 33,533 convicted offender samples awaiting testing with the addition of an estimated 259,896 anticipated total sample submissions through September 30, 2008. Responsive States also collecting arrestee samples reported 1,026 arrestee samples in the current backlog and the anticipated receipt of 5,003 arrestee samples through September 30, 2008. The FY 2008 Convicted Offender and/or Arrestee DNA Backlog Reduction Program announcement will close on April 4, 2008, and the number of backlog convicted offender and/or arrestee samples for which federal assistance will be awarded in 2008 will be known shortly after the receipt of all requests.

Having said that, the backlog of convicted offender samples is not readily quantifiable due to the fact that newly collected samples are received into State CODIS Laboratories for analysis every day, thereby adding to existing backlogs. In addition, legislative changes in collection statutes impact the number of samples collected each year. Recent trends in such legislative changes, ranging from the increase of qualifying offenses for DNA sample collection to the collection of DNA samples from arrestees for qualifying offenses, have resulted in a significant increase in national backlogs of samples awaiting DNA analysis and subsequent entry into CODIS. As a result of this

trend, in 2007 NIJ began providing financial assistance to states with backlogs of arrestee samples.

Each year, NIJ performs a voluntary survey of State CODIS database units requesting that they provide a value for the current existing backlog of convicted offender and arrestee samples, as well as an estimate of the number of samples that will be received through September 30 of the following year.

The results of the October 2006 survey revealed a total of 708,706 convicted offender samples (combined existing backlog and anticipated collection samples from States who responded to the survey). NIJ received requests for assistance in testing 441,019 of these samples and funded 100 percent of the requests received for federal assistance. It is inferred that State resources were available to test the remainder of the samples, or that states were working the anticipated sample receipts in a timely fashion.

As of March 31, 2008, the backlog of convicted offender samples at the FBI Laboratory is 231,488. This total is distributed across progressive and separate processing steps as follows: 1,319 specimens to be inventoried; 4,938 specimens to be scanned into electronic records; 144,611 specimens to be analyzed; and 80,620 specimens awaiting data review.

Biden 161 What is the current turn-around time between collection of samples and DNA testing, and how many samples are processed through federal funds annually?

ANSWER: One hundred and six DNA laboratories, utilizing funds awarded in 2006 under the Forensic DNA Capacity Enhancement Program, reported a reduction of 5.7 days in the average number of days between submission of a DNA sample to the laboratory and delivery of the test results to the requesting agency. Nationwide, laboratories reported an average increase of 16.9 more samples analyzed by each analyst per month than at the beginning of the grant period. The number of samples processed through federal funds annually is not available.

Based upon the preliminary review of progress reports from forty-nine DNA laboratories utilizing funds awarded in 2007 under the Forensic DNA Backlog Reduction Program, the current turnaround time ranged from 16 days to 395 days. Reductions in turnaround time between October 2007 to December 2007 range from 0 to 180 days; however, in some instances the turnaround time actually increased (a range of 1.5 to 100 days).

Biden 162 Is there, either at the National Institute of Justice or the Bureau of Justice Statistics, an estimate for the backlog of crime scene samples waiting for DNA testing? How many crime scene samples undergo DNA processing through federal funds annually?

ANSWER: There is no published estimate of the current size of the DNA backlog. The NIJ-funded *National Forensic DNA Study Report* (2003) by the Division of Governmental Studies and Services Washington State University and Smith Alling Lane estimated that the total crime cases with possible biological evidence either still in the possession of local law enforcement, or backlogged at forensic laboratories is 542,700 (264,000 of these were property crimes, with the remainder homicide and rape cases). This report is available at http://www.ncjrs.gov/pdffiles1/nij/grants/203970.pdf

According to the *Census of Publicly Forensic Crime Laboratories, 2002*, from the Bureau of Justice Statistics, the nation's public forensic crime labs ended 2002 with more than 500,000 backlogged requests for forensic services. Of these, 48,811 were for DNA analysis. The BJS study included 33 federal, 203 state or regional, 65 county and 50 municipal forensic crime laboratories. This report is available at http://www.ojp.usdoj.gov/bjs/pub/pdf/cpffcl02.pdf.

From FY 2003 through FY 2007, NIJ has provided assistance to 103,824 forensic DNA cases. Also, NIJ has two studies underway that will examine forensic backlogs, including, but not limited to DNA cases. Both studies are scheduled for completion by the end of 2008.

One study includes a survey of law enforcement agencies to determine their existing backlogs of criminal cases and forensic evidence. This project will also identify challenges that contribute to the backlog.

The second study will identify crime laboratory policies and practices that influence the size and nature of backlogs in various forensic disciplines, including DNA. This study will provide a detailed view of emerging areas in forensic DNA, and how these areas may impact demand for DNA analysis.

Biden 163 What percentage of biological crime scene evidence, the long-term storage of which is sometimes essential to post-conviction exonerations, is properly stored in agency evidence repositories? What efforts, if any, are being made at the federal level to help State and local law enforcement and crime laboratories properly store DNA evidence?

ANSWER: At this time there is no known data on the actual percentage of biological crime scene evidence which is properly stored in agency evidence repositories. A number of grant programs under the President's DNA Initiative including the Convicted Offender DNA Backlog Reduction and DNA capacity enhancement programs allow for the expenditure of funds for facilities/renovations that laboratories could use to upgrade or increase the storage areas for DNA evidence. The Paul Coverdell Forensic Science Improvement Program also allows for funds to be used for similar purposes.

Biden 164 In addition to DNA, there are also substantial backlogs in other forensic analysis. Please provide an analyses of the backlogs for other forensic sciences, and a breakdown of the federal resources dedicated to DNA and to other forensic sciences.

ANSWER: According to a study conducted by the Bureau of Justice Statistics (BJS), the nation's public forensic crime laboratories ended 2002 with more than 500,000 backlogged requests for forensic services (see table below, which was adapted from Table 11 of the BJS report), compared to 290,000 requests that were backlogged at the beginning of the year. The laboratories received more than 2.7 million new requests during 2002. The BJS study of the nation's 351 federal, state and local forensic crime laboratories, conducted in 2003 and 2004, is the first such census of publicly funded forensic crime laboratories and included 33 federal, 203 state or regional, 65 county and 50 municipal laboratories with about 9,400 full-time employees. This report, entitled "Census of Publicly Forensic Crime Laboratories, 2002, is available at: http://www.ojp.usdoj.gov/bjs/pub/pdf/cpffcl02.pdf.

BJS is currently completing a similar study with more recent data. The results of this study are expected to be released later in 2008.

In FY 2008, Federal resources appropriated (pre-rescission) to DNA-related and other forensic programs and activities exceed $150,000,000. The FY 2008 appropriation for Paul Coverdell Forensic Sciences Improvement Grants Program is $18,800,000.

Biden 165 The National Institute of Justice recently held a forum on forensic sciences here in Washington, D.C. Please provide details on this forum – what were the purposes, the participants, the conclusions and policy recommendations?

ANSWER: OJP believes that improvements to forensic science capabilities in State and local law enforcement should be a priority at all levels of government. In connection with a Congressional recommendation, and in keeping with the applicable statutory authorities, the National Academy of Sciences (NAS) is undertaking a fundamental review of forensic science in the United States with a grant from NIJ. The NAS is expected to issue its report in the spring of 2008. OJP believes that this report will address the important issues identified by Congress in forensic science improvement, including backlog reduction, professional and laboratory standards, governance of forensic disciplines, training and certification, validation of forensic disciplines, and related matters.

Recognizing the important work being conducted by the NAS, NIJ hosted a "Forensics Policy Summit," December 17-18, 2007, in Washington, D.C., to bring together those individuals who might be impacted by the work of the NAS, and provide a forum for the deliberation of policy matters which might affect the implementation of the NAS recommendations. NAS was present at the Summit and gave a presentation on the progress of their study. Participants will use the recommendations from the final NAS

report, among other findings, to eventually develop a strategic plan on forensic science, constructed by forensic science practitioners and constituents. The plan will not only define the current state of issues affecting our nation's ability to maximize the value of forensic evidence, but will also address policy matters and outline a road map for the future of forensic science from crime scene to court room and beyond.

Participants were selected based on their experience in the criminal justice and forensic science communities, while ensuring the inclusion of the widest variety of stakeholders possible. Forensic laboratory directors, academicians, prosecutors, defense attorneys, judges, law enforcement, medical examiners, forensic nurses, victims and victim advocates were in attendance.

Biden 168 Please describe, in detail, the Violent Crime Reduction Partnership program set forth in the President's fiscal year 2009 budget proposal.

ANSWER: The $200 million Violent Crime Reduction Partnership Initiative (VCRP) sought by the President's budget is part of the Department's ongoing efforts to identify effective strategies for assisting our partners prevent and control crime. VCRP is based on the Department's experience administering the Byrne/JAG grant program. The JAG formula program can be used for almost any criminal justice purpose, which makes it is difficult to evaluate the positive impact of the program. One use to which JAG funds have been put that can be measured is multijurisdictional task forces; for example, in FY2007 states put a total of $103 million in JAG funds toward this activity. Building on this proven success, VCRP funding would be used to help communities address high rates of violent crime by forming and developing effective multi-jurisdictional law enforcement partnerships between local, state, tribal and federal law enforcement agencies. These partnerships are designed to disrupt criminal gang, firearm and drug activities, particularly those with a multi-jurisdictional dimension.

Under the VCRP, applicants would be state, local, or tribal law enforcement agency with a plan to establish or expand an intelligence-led, data-driven, multi-jurisdictional response to violent crime and gangs. Among other things, applicants would need to show an ongoing partnership with at least one federal law enforcement agency. Priority consideration would be given to applicants who: 1) document an increase in violent crime rates; 2) document a history or commitment to form a multi-jurisdictional, multi-disciplinary violent crime response; 3) demonstrate a data-driven analysis capacity or a willingness to adopt intelligence-led policing for planning and implementing violent crime initiatives; and 4) use a minimum of 10 percent of grant funds for justice information sharing related to the proposed violent crime problem. In short, VCRP combines the best of proven law enforcement strategies, but allows each community to tailor its solution to their specific crime challenge.

Last year, with discretionary funds provided by Congress, the Department demonstrated this approach with a competitive solicitation seeking applications to fund task force activities with focused strategies, including intelligence led policing, to address

the specific crime problem represented by a given community or region. In the end, BJA awarded over $75 million to 106 sites in 37 states through this program last fall. This initiative is tracked at: www.ojp.usdoj.gov/BJA/grant/tvc.html. With the resources sought by the President's larger request of $200 million, we can expand this success and better assist communities that continue to struggle with violent crime.

Biden 169 Please describe, in detail, the Byrne Public Safety and Protection program set forth in the President's fiscal year 2009 budget proposal.

ANSWER: This proposal would consolidate OJP's state and local law enforcement assistance programs into a single, flexible, competitive grant program that would help state, local, and tribal governments, and non-profit entities, develop programs appropriate to the particular needs of their jurisdictions. Through a competitive grant process, OJP would assist state, local, tribal, and community efforts to address concerns in a number of high-priority areas, such as: (1) law enforcement programs (including those improving the capacity of law enforcement and justice system personnel to make use of forensic evidence and reducing DNA evidence analysis backlogs, and those addressing domestic trafficking in persons); (2) prosecution and court programs (including those improving services to victims of crime, to facilitate their participation in the legal process); (3) education and training programs (including those for state and local prosecutors and trial judges, designed to improve the quality of criminal cases involving capital offenses); (4) corrections and community corrections programs (including those improving and expanding prisoner re-entry initiatives); (5) drug treatment, monitoring, interdiction, and eradication programs (including those addressing the criminal justice issues surrounding substance abuse through drug courts, residential treatment for prison and jail inmates, prescription drug monitoring, methamphetamine lab cleanup, and cannabis eradication efforts); (6) planning, evaluation, and technology improvement programs (including those promoting and enhancing law enforcement information sharing efforts through improved and more-accurate criminal history records); and (7) reducing violent crime at the local level through the Project Safe Neighborhoods initiative. The grants, training programs, and technical assistance activities provided under this program will assist law enforcement agencies, courts, and other components of the criminal justice system with resources that help them prevent and address violent crime, protect the public, and ensure that offenders are held accountable for their actions.

Biden 170 The Department has reprogrammed at least 1,000 FBI agents—some reports say as many as 2,400 agents—from fight crime to combating terrorism. The President's budget proposes to add 280 new counterterrorism agents. Combating terrorism is important, but we can't make this an "either/or." Americans need the FBI to both fight crime and combat terrorism. Yet reports indicate that the FBI brought 34 percent fewer criminal cases in 2005 than in 2000, with sharp drops in white collar prosecutions and civil rights cases, and resources transferred away from FBI violent crime programs. Nonetheless, the Administration has not supported my bill to hire 1,000 additional FBI agents dedicated to fighting crime.

Director Mueller has said in response to questions from me that the additional agents would help the FBI fight crime. Do you agree with the FBI Director that replacing agents reprogrammed to fight terrorism will help DOJ perform its crime fighting mission? Will you support my bill to hire 1,000 additional agents?

ANSWER: The Department's highest national priority is to prevent criminal acts of terrorism. Since September 11, 2001, the FBI has been called on to assume an increased role in national security efforts. To more accurately reflect workload associated with this new role, the FBI has reprogrammed agents from criminal investigations to counterterrorism investigations. Since FY 2007, Congress has approved the Administration's request to permanently move 400 agents from working traditional criminal cases to terrorism cases. The Department believes the changes since FY 2007, along with the additional positions proposed in the FY 2009 budget request will more accurately balance the number of criminal and counterterrorism agents and alleviate the need for further shifts of agents from criminal matters to counterterrorism matters.

Biden 171 The Department of Justice has placed a lot of emphasis on Project Safe Neighborhood. I asked CRS to examine appropriations to determine how much has been appropriated to Project Safe Neighborhoods initiatives to fight gang and gun violence. According to CRS, only about $305 million was appropriated from fiscal year 2002 to the present to combat gun and gang violence under Project Safe Neighborhood. Yet, in your opening statement you testified that since 2001 "Project Safe Neighborhoods has committed approximately $2 billion to federal, state, and local efforts to fight gun and gang violence." Please explain this apparent discrepancy and how you reached your $2 billion figure.

ANSWER: The $2 billion dollar figure represents funding from FY 2001 to FY 2008 and includes funding spent directly by Department of Justice agencies, such as the Bureau of Alcohol, Tobacco, Firearms and Explosives, and distributed through the Office of Justice Programs. The attached table provides a detailed break-out of these amounts. The Department cannot speak to the discrepancy between our figure and that provided by CRS without knowing the methodology CRS used to reach $305 million.

Biden 172 Please provide a detailed break-down on where how this funding was allocated, in which cities and whether it was effective in driving down crime.

ANSWER: The attached table provides a detailed break-down of how this funding was allocated between Department of Justice agencies. Funding break-down by geographical location is currently not available.

Biden 176 The recent report by former Majority Leader George Mitchell found that abuse of performance-enhancing substances in baseball—including steroids

and human growth hormone—was widespread. What is the Department doing to investigate illegal distribution and trafficking of these substances?

ANSWER: The unlawful diversion of controlled substances is a serious crime and is actively investigated by the Drug Enforcement Administration and other law enforcement agencies. Suspected violations of the Controlled Substances Act (Title 21 United States Code) are carefully reviewed by United States Attorneys Offices. The Executive Office for United States Attorneys, representatives from selected United States Attorneys Offices, the DEA, and the Criminal Division of the Department of Justice meet to discuss issues relating to internet pharmacies and the unlawful diversion of controlled substances.

QUESTIONS FROM SENATOR KOHL

Kohl 186 On January 31, 2008, The New York Times reported that Eli Lilly was in discussions with the Department of Justice about settling a civil and criminal investigation into the company's off-label promotion of Zyprexa. Did the Department of Justice learn any new information about Eli Lilly's off-label marketing efforts and knowledge about harmful side-effects from the documents leaked by the New York Times in 2006?

ANSWER: Yes, Department of Justice lawyers did learn new information from those articles.

Kohl 187 Given the secret settlements and the grand jury investigation into Eli Lilly's practices related to Zyprexa, do you think that protective orders and sealed settlements have the potential to prevent the DOJ or other law enforcement agencies from learning about public health or safety dangers or from pursuing criminal or civil investigations based on corporate actions that impact public health or safety?

ANSWER: If a target of a DOJ criminal investigation were to invoke a protective order or sealed settlement from a private court action to prevent the government from learning facts about public health or safety issues, the Department could move the court that had entered such an order to permit the Department to have access to the needed information.

QUESTIONS FROM SENATOR FEINGOLD

Feingold 214 As a condition of transferring sovereignty to Iraq, the United States insisted upon immunity for its contractors under Iraqi law. There are reports that the United States is negotiating to extend this immunity through a bilateral agreement. If we have been unable to hold contractors accountable under domestic law for the misuse of force against civilians, how can it possibly be appropriate to seek immunity for these contractors under Iraqi law, especially when many of the contractors are third country nationals?

ANSWER: The Department supports legislative efforts to hold U.S. contractors accountable for serious misconduct they may commit abroad, and we will continue to work with the Congress to that end. With regard to any negotiations the United States is pursuing with the government of Iraq concerning immunity for U.S. contractors, we would respectfully refer you to the State Department.

Feingold 221 Earlier this year, the Justice Department publicly issued draft regulations to implement Section 507 of the Patriot Act reauthorization legislation, Public Law 109-177. A provision of that legislation gave the Attorney General, rather than the Courts of Appeals, the authority to allow states that prove they provide competent counsel in post-conviction proceedings to "opt in" to the procedural rules in Chapter 154 of Title 28, which favor the government and disadvantage the inmate who has filed the habeas petition. Serious concerns have been raised about DOJ's proposed implementing regulations by a number of entities. The Judicial Conference has asked DOJ to reconsider the regulations, stating that the regulations provide "no guidance about the criteria to be considered by the decision maker" in assessing whether a state has provided competent counsel. The American Bar Association has said that the proposed rule "is deeply and fundamentally flawed." During your confirmation process, I asked if you would personally review these regulations and the serious criticisms leveled against them. Have you reviewed the critical comments that were filed in opposition to the proposed regulations, including those of the Judicial Conference and the ABA?

ANSWER: The Department of Justice has carefully considered all public comments received on the proposed rule and will make any changes in the final rule that are warranted on the basis of the comments.

Feingold 222 In light of the voluminous criticisms, is the Justice Department considering changes to these proposed regulations before making them final?

ANSWER: Please see the response to Question 221.

Feingold 223 Legal ethics experts have argued that the Attorney General should not be granted this function at all because it creates an inherent conflict of interest for the nation's chief prosecutor to be adjudicating whether states can opt in to prosecutor-friendly procedural rules in habeas cases. Do you see a conflict?

ANSWER: The Attorney General is required by law to carry out the chapter 154 certification function, and has no legal discretion to refuse to do so, regardless of whether some would see a conflict of interest in the discharge of these functions. *See* 28 U.S.C. 2265(a) ("If requested by an appropriate State official, the Attorney General of the United States shall determine" whether the requirements for chapter 154 certification are satisfied); *id.* § 2265(b) ("The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a)."). We do not believe that there is an inherent conflict of interest for the Attorney General in carrying out the certification function under chapter 154 that he is by law required to discharge.

The functions required of the Attorney General under chapter 154 do not involve assessment of the performance of defense counsel in particular cases, nor do they involve policymaking by the Attorney General concerning the capital counsel requirements states must satisfy for chapter 154 certification. Rather, the Attorney General's role is limited to determining whether states have adopted capital counsel mechanisms that satisfy requirements that are expressly set forth in chapter 154 itself. *See* 28 U.S.C. 2265(a)(3)("There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.")

Feingold 230 The New York Times recently reported that a federal grand jury has issued a subpoena to New York Times reporter James Risen. According to Mr. Risen's lawyer, the subpoena seeks the identity of the confidential sources for a chapter of Mr. Risen's book on the Central Intelligence Agency, State of War, which was published more than two years ago. Did you personally authorize the issuance of this subpoena? If not, at what level within the Department was it authorized?

ANSWER: Because Federal Rule of Criminal Procedure 6(e) imposes a secrecy requirement on all pending Grand Jury investigations, we cannot answer any questions pertaining to a specific Grand Jury subpoena or specific Grand Jury proceedings. We can say, however, that the Department's internal Guidelines concerning media subpoenas, reprinted at 28 CFR 50.10, set out the specific factors to be considered before issuing a subpoena to a member of the media and require Attorney General approval before any such subpoena is issued.

QUESTIONS FROM SENATOR SCHUMER

Schumer 250 The High Intensity Drug Trafficking Area Program, run through the Administration's Office of National Drug Control Policy, has played a critical role in nationwide successes in combating major drug trafficking organizations. In 2007, partly in response to both drug smuggling in from Canada and a drug pipeline moving north from New York City, four additional counties in upstate New York (Albany, Erie, Monroe, and Onondaga) were added to the New York/New Jersey HIDTA. It is my understanding that a minimum of $2 million within ONDCP is set aside each year for "new" counties to the HIDTA program. However, I understand that none of this money has made it to the New York/New Jersey HIDTA. This money could be critical for combating violent street gangs, improving the region's intelligence-sharing infrastructure, and slowing the flow of narcotics through the state's northern border with Canada. Can you please help to identify any reasons for why these new, critical counties have not gotten access to any funding available for new counties?

ANSWER: The Office of National Drug Control Policy (ONDCP) administers the HIDTA program, including the distribution of grant funding. While Department of Justice agencies such as the Drug Enforcement Administration and the Federal Bureau of Investigation play active roles in the High Intensity Drug Trafficking Area (HIDTA) program, the Department does not have a role in the distribution of grant funding to HIDTAs. Because ONDCP is not a part of the Department of Justice, we are unable to provide information responsive to your question and we would respectfully refer you to ONDCP.

Schumer 251 What commitments can you make to working with the rest of the Administration to ensure that additional funding is made available to the four counties?

ANSWER: Please see the response to Question 250.

Schumer 252 Since 1994, the National Instant Criminal Background Check system has prevented more that 1.4 million prohibited persons from purchasing firearms. On January 8, 2008, President Bush signed into law the "NICS Improvement Amendments Act of 2007," legislation that, if appropriately funded, will get states critical funding to improve their records regarding convictions, mental health history, and other disqualifying factors. What assurances can you provide that the Administration will seek full funding under the NICS Improvement Amendments Act of 2007?

ANSWER: The effectiveness of the National Instant Criminal Background Check System (NICS) in preventing gun transfers to prohibited persons depends on the

availability to the system of automated information about which individuals are prohibited from receiving firearms. To promote the availability of automated information, the President's FY 2009 budget request seeks $200 million for the proposed Byrne Public Safety and Protection consolidated grant program for which state criminal record improvements and automation are a grant purpose area. Even before the proposing the grant consolidation for FY 2008, the Administration has a good record of seeking resources to improve state recordkeeping in the form of National Criminal History Improvement Program (NCHIP) funding.

Please see the chart that follows:

Year	NCHIP Funding Requested (Dollars in thousands)	NCHIP Funding Enacted (Dollars in thousands)
2001	70,000	34,923
2002	35,000	35,000
2003	60,000	39,740
2004	56,924	29,684
2005	56,186	24,666
2006	58,180	9,872
2007	39,180	9,872

Schumer 253 What commitments can you make to ensuring that funding for NICS is a Justice Department priority?

ANSWER: The Violent Crime and Anti-Terrorism Act of 2007, which the Administration transmitted to Congress, contains a provision that directs the Attorney General to develop standards for prompt provision of complete, accurate, and automated information and to prioritize applications for grants for improving the NICS pursuant to those standards that propose to address: (1) arrest dispositions, (2) disqualifying mental health adjudications, findings, or orders, (3) protection orders qualified for inclusion in the FBI's National Crime Information Center database, and (4) disqualifying misdemeanor convictions for domestic violence offenses. This directive would apply to the President's grant consolidation as described in the answer to 252 or any other discretionary grant program.

QUESTIONS FROM SENATOR DURBIN

Durbin 254 I am deeply troubled by the fact that our country continues to serve as a safe haven for individuals who have been found to be responsible for horrific crimes by U.S. courts. For example, Colonel Nicolas Carranza, a former Salvadoran Vice Minister of Defense who was found liable by a federal jury in Memphis, Tennessee for the extrajudicial killing of Juan Francisco Calderon and Manuel Franco, lives freely in Memphis. Armando Fenández-Larios, a former officer in the Chilean Army and an operative in Pinochet's secret service, who was found liable for the extrajudicial killing of Winston Cabello by a federal jury in Miami, resides in the Miami area. He has not been criminally charged for the killing of Winston Cabello or extradited to Chile and/or Argentina for prosecution, despite requests from both countries. What steps has the Justice Department taken to review the presence of these individuals and others who have been held responsible by U.S. courts for acts of torture or extrajudicial killing to determine whether prosecution and/or removal would be appropriate?

ANSWER: Bringing human rights violators to justice is a mission of the very highest importance within the Department of Justice. We continue to utilize all avenues available against such perpetrators found in this country -- including criminal prosecution, denaturalization, extradition, removal, and assistance to foreign governments and to various international tribunals that are investigating and prosecuting these cases abroad. We are aware of the Carranza and Fernández-Larios matters, which have received considerable media coverage. However, we cannot comment on any specific investigative or law enforcement plans regarding individuals. Please be assured, however, that we continue to take these and other human rights allegations extremely seriously.

Durbin 255 The Justice Department has been strongly criticized in recent years for advancing policies that restrict voting rights for minority voters. Many of us hoped you would be a breath of fresh air at the Justice Department when it comes to protecting the voting rights of all Americans. But in December, just weeks after you were confirmed, the Justice Department filed an amicus brief with the Supreme Court that waged an aggressive defense of an Indiana photo ID law that has a discriminatory impact on minorities, the poor, and the elderly. The Indiana photo ID law is the most restrictive law of its kind in the nation. The Justice Department was under no obligation to file a brief in this case -- the United States is not a party in the case. The Justice Department could have stayed out of the case altogether, or it could have filed an amicus brief on the side of minority voters and in opposition to the Indiana law. It chose neither option. What role did you play in the decision to file an amicus brief on behalf of the discriminatory Indiana photo ID law? Did you personally review and approve the amicus brief that was filed?

ANSWER: As stated in the Department's *amicus* brief, this case concerns a facial challenge to a state law that requires those who vote in person in federal elections to present a government-issued photo identification and, more generally, the appropriate constitutional standard for reviewing such a law. On April 28, 2008, the Supreme Court issued its decision rejecting petitioners' facial attack on the statute. As stated in Justice Stevens' opinion, the State's interest in protecting the integrity and reliability of the electoral process is sufficient to defeat the facial challenge.

Congress has enacted numerous requirements, including registration and identification requirements, designed to "increase the number of eligible citizens who register to vote" while simultaneously "protect[ing] the integrity of the electoral process." 42 U.S.C. 1973gg(b)(1), (3). In 2002, Congress enacted the Help America Vote Act of 2002 (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (42 U.S.C. 15301 *et seq.*), to establish and modernize various minimum election administration standards for federal elections. Among other things, HAVA requires voters to provide proof of identification before registering or casting their first ballot, see 42 U.S.C. 15483(a)(5)(A), (b)(2)(A), (3)(A). The Attorney General is responsible for enforcing those provisions, 42 U.S.C. 1973gg-9, 15511, and an amicus brief filed by certain Senators and Members of Congress specifically put the proper interpretation of HAVA and its effect on state laws before the Supreme Court. The Attorney General also has authority to prosecute voter fraud in federal elections. See, *e.g.*, 42 U.S.C. 1973i(c), (e), 1973gg-10. Voter fraud itself dilutes the right to vote. *Purcell v. Gonzalez*, 127 S. Ct. 5, 7 (2006). Legitimate efforts to detect or deter voter fraud therefore promote the right to vote.

Durbin 256 Did you agree with the decision to file this amicus brief?

ANSWER: The Department has a longstanding process in place for determining what position, if any, it will take in all cases pending before the Supreme Court. That process includes review by all interested components of the Department. That process was followed in this instance.

Durbin 257 What role, if any, did the White House play in the decision to file the amicus brief in this case?

ANSWER: Please see the response to Question 256.

Durbin 258 What position did the Civil Rights Division recommend be taken in the amicus brief in this case?

ANSWER: Please see the response to Question 256.

Durbin 259 Were there any differences of opinion between the White House and Justice Department on what position should be taken in this case? If there were such differences, please explain what they were.

ANSWER: Please see the response to Question 256.

Durbin 265 In your written testimony you mentioned various steps that the Department is currently taking to address gang violence in numerous regions of the country. You discussed steps such as the expansion of the Comprehensive Anti-Gang Initiative to ten jurisdictions, and the focusing of GangTECC-coordinated resources in four regions of the country. Your testimony did not specifically mention steps that the Department is taking to address gang violence in the Chicago region, a region in which gang violence is a pressing concern. Please provide information on the Department's current efforts to address gang violence in the Chicago region.

ANSWER: In your question, you indicate that GangTECC has "coordinated resources in four regions of the country." This is inaccurate. GangTECC is a multi-agency center located in Washington, D.C., created by the Attorney General and designed to serve as a critical catalyst in a unified federal effort to help disrupt and dismantle the most significant and violent gangs in the United States.

The federal agents at GangTECC work in close collaboration with the prosecutors of the Criminal Division's Gang Squad. The Gang Squad is a core team of experienced anti-gang prosecutors who serve as the prosecutorial arm of the Department's efforts to achieve maximum national impact against the most significant regional, national and international violent gangs. DOJ's anti-gang efforts are complemented by the efforts of other agencies and Departments, in particular those of U.S. Immigration and Customs Enforcement at DHS. Operation Community Shield is a national law enforcement initiative that targets violent transnational gangs.

GangTECC's efforts are not focused in only four regions of the country, but nationwide, with particular attention paid to gangs with national and regional influence. GangTECC is focused on both the Latin Kings and the Gangster Disciples in the Chicago area.

The U.S. Attorney's Office for the Northern District of Illinois is actively involved in addressing gang violence in the Chicago region. The office is both aggressively prosecuting gangs and individual gang members, as well as participating in several restorative justice initiatives to address the underlying societal factors that allow gangs to exist.

Within the City of Chicago, the U.S. Attorney's office in partnership with ATF, has established Gang Strategy Teams to coordinate efforts of the Chicago Police Department, the Cook County State's Attorneys Office, and federal investigative

agencies in the investigation and prosecution of street gangs. Several agencies participate through Project Safe Neighborhoods, such as the Illinois Department of Corrections and Cook County Probation. Outside the City of Chicago, the office has established relationships with local police departments that have high gang activity in their communities.

Most recently, the office funded seven separate initiatives focused on investigating and prosecuting gang members for various local departments using Anti Gang Initiative funding provided through Project Safe Neighborhoods (PSN). In addition, the office has aggressively pursued prosecutions against gang organizations. In FY 2005, 16 Organized Crime Drug Enforcement Task Force (OCDETF) gang investigations were initiated, resulting in 153 defendants being charged. In FY 2006, 18 OCDETF gang investigations were initiated, resulting in 96 defendants being charged. Many other gang investigations from FY2007 are pending investigation.

The U.S. Attorney's Office is also aggressively pursuing prosecution against individual gang members through PSN prosecutions. These prosecutions focus on the unlawful possession of guns by prohibited persons who are affiliated with gangs. These efforts are targeted in the Chicago neighborhoods with the highest incidences of violent crime. The office is expanding this initiative to other larger communities in the Chicago area, such as Joliet and Aurora.

Finally, the U.S. Attorney's Office participates in several Department programs that address the underlying societal factors that create an environment that allows gangs to thrive. First, the office is actively involved in two Weed and Seed sites within the city of Chicago (both are in PSN designated districts), and three other sites in the Northern District of Illinois. The Weed and Seed program uses Department funding to establish community-based solutions to crime problems, coupled with increased law enforcement efforts in those areas. Through PSN, the office sponsors parolee forums where recently released convicted felons are warned of the severe criminal consequences of being found in possession of a firearm. These convicts are provided with employment, counseling, and educational/vocational training opportunities. In FY 2007, through PSN, the office funded 12 community based social service programs that supported youth anti-violence and prisoner re-entry initiatives.

Finally, the office is engaged in the High Point restorative justice initiative funded through the Bureau of Justice Assistance, which focuses on young adult offenders engaged in gang-related criminal conduct. These youth are provided with employment and educational opportunities in lieu of criminal prosecution.

Durbin 266 Earlier this year, the President signed into law the NICS Improvement Amendments Act. This is legislation that Congress passed in response to last year's tragedy at Virginia Tech, where a mentally ill student bought several guns and used them to take the lives of 32 victims and wound 25 others. In the wake of Virginia Tech, Congress recognized that the NICS background check system was

missing the names of many criminals, mentally ill persons, and others who are prohibited by law from buying guns. This new law directs the Attorney General to make grants to states to help them supply timely and accurate information about prohibited purchasers to the NICS system. In order to make sure the NICS system works, and in order to keep guns out of the hands of those like Cho Seung-Hui, the Virginia Tech shooter, it is essential that this new law be funded. Will the Administration commit to seek full funding for this law?

ANSWER: The effectiveness of the National Instant Criminal Background Check System (NICS) in preventing gun transfers to prohibited persons depends on the availability to the system of automated information about which individuals are prohibited from receiving firearms. To promote the availability of automated information, the President's FY 2009 budget request seeks $200 million the proposed the Byrne Public Safety and Protection consolidated grant program for which state criminal record improvements and automation are a grant purpose area.

QUESTIONS FROM SENATOR GRASSLEY

Grassley 267 I continue to await responses to the following requests and ask that they be delivered forthwith: Questions for the record from FBI Director Robert Mueller III that were sent following the March 27, 2007, hearing titled, "Oversight of the Federal Bureau of Investigation." Specifically, responses to questions 64-83 regarding the Michael German Transcript which were said to be "provided separately" in responses date January 25, 2008. These responses were never "provided separately." It is my understanding these items have been sent for "clearance" and are awaiting final approval. I find it troubling these questions were not provided when they were said to be and I request an immediate response.

ANSWER: The Department's classified responses to the Questions for the Record referenced in your question were transmitted to the Committee on February 14, 2008.

Grassley 277 As part of your confirmation hearing, I penned a number of written questions to you about a Memorandum of Understanding (MOU) between the Attorney General, the Secretary of Treasury, and the Postmaster General regarding money laundering. This memorandum was signed in 1990, almost 20 years ago, and does not even include the Department of Homeland Security—the agency tasked with conducting many investigations into money laundering. In your responses, you stated there is no effort to update this MOU and that you were not familiar with interagency workings and could not pledge to coordinate an update to this MOU. Now that you are the Attorney General, and have three months experience, can you pledge to update this MOU so that our Nation's law enforcement agencies are working together under current authorities to investigate money laundering?

ANSWER: The basic premise of this MOU was that the Federal agency with historical jurisdiction over the "Specified Unlawful Activity" (SUA), that generated the proceeds of the money laundering offense, would have jurisdiction over the money laundering violations involving those proceeds. For example, DEA was given jurisdiction over all money laundering violations which involved the proceeds of narcotics violations. This basic premise of the MOU remains in place today, even though the MOU has not been updated to reflect the creation of DHS and the transfer of certain law enforcement functions to that agency.

While it may be advisable to update the MOU to reflect the changes that have taken place since 1990, there is no need to alter the underlying purpose and premise of the MOU, and there is no pressing need to renegotiate such a complex agreement merely to change the name of the parties involved when the Homeland Security Act's Saving Clause (section 1512, now codified at 6 U.S.C. § 552) clearly provides for DHS's interests in the agreement.

Grassley 278 On January 25, 2008, the Department provided a series of in-depth responses to questions I asked about the False Claims Act. These responses indicated that the outstanding caseload of qui tam cases at the Department was approximately 1000 cases. I'd appreciate some further elaboration on those cases including responses to the following: Please provide, in dollars, a ballpark estimate of the total potential liability that these 1000 qui tam cases represent.

ANSWER: Since the Department's response of January 25, 2008, the Department has completed its investigation of many *qui tam* cases, but has also received and started investigating many newly filed *qui tam* cases. Accordingly, the current number of *qui tam* cases under investigation throughout the Civil Division and the U.S. Attorney's Offices is approximately 900.

Unfortunately, it is not possible to furnish a reliable estimate of the potential recovery in these cases. The cases are in all stages of investigation, and until an investigation is complete, it is difficult to assess the value of any given case. Many of the *qui tam* cases investigated by the Department are declined due to the absence of a viable claim. Even in cases where the Department determines that false claims have been submitted, its initial estimate of damages may be refined as additional evidence becomes available. As a result, it is not feasible for the Department to offer any ballpark estimate of damages.

Grassley 279 Of the 1,000 cases under seal, how many of those cases have been under seal for longer than 13 months?

ANSWER: Because courts will occasionally keep a case under seal even after we complete our investigation and inform the court whether we elect to intervene, our answers to this and the following questions encompass only those cases that are under seal pending the United States' decision on whether to intervene.

Of the approximately 900 cases currently under investigation, approximately 540 cases have been under investigation for more than 13 months—a period calculated beginning with the Civil Division's receipt of a qui tam case.

Grassley 280 Of the 1,000 cases under seal, how many of those cases have been under seal for longer than 24 months?

ANSWER: Of the approximately 900 cases currently under investigation, approximately 330 cases have been under investigation for more than 24 months.

Grassley 281 Are there any cases under seal that have been under seal for longer than 36 months?

ANSWER: Of the approximately 900 cases currently under investigation, approximately 170 cases have been under investigation for more than 36 months.

Grassley 282 How many FCA cases under seal involve classified information or state secrets?

ANSWER: The Department's records do not track how many cases may involve classified information or state secrets.

Grassley 283 As you are aware, section 3733 of the FCA authorizes the Department to issue civil investigative demands (CIDs) when conducting a FCA investigation. The use of CIDs has been limited over the years because of statutory language prohibiting the Attorney General from delegating the authority to issue CIDs. As such, my legislation, S.2041, the False Claims Act Correction Act would remove this limitation and allow the Attorney General the authority to delegate CID issuance. In order to gain a better understanding of the Department's use of CIDs, please answer the following: In how many FCA cases did the Department issue CIDs during FY 2007? How many from September 2007 through today?

ANSWER: Since multiple CIDs can be requested in the same case, the total number of CIDs requested may be more meaningful than the total number of cases where CIDs were requested. During FY 2007, the Department issued twenty CIDs in four False Claims Act cases. From the beginning of FY 2008 through March 12, 2008, the Department issued eleven CIDs in two False Claims Act cases.

Grassley 284 In how many FCA cases during FY 2007 did line attorneys request the issuance of CIDs which were not authorized by the Attorney General? How many from September 2007 through today?

ANSWER: All CIDs requested by Department attorneys in FY 2007 and FY 2008 have been approved by the Attorney General.

Grassley 285 Does the Department view the CID as a necessary tool for investigating FCA cases? If not, why not?

ANSWER: CIDs are one of the necessary tools available to the Department for investigating False Claims Act cases. CIDs are the only means available to the Department's civil attorneys for compelling testimony and interrogatory answers during False Claims Act investigations. Moreover, CIDs provide an important supplement to the subpoena powers of agency Inspectors General for obtaining documents. However, as the Department explained in its views letter on S.2041. ("The False Claims Act Corrections Act of 2007"), and as Deputy Assistant Attorney General Michael F. Hertz

reiterated during the February 27, 2008 hearing on that bill, the current CID provisions contain restrictions, including the cumbersome requirement that all CIDs be personally approved by the Attorney General. Thus, the Department has typically sought other means to acquire evidence where possible.

Grassley 286 The FBI's Office of Professional Responsibility (OPR) has had a reputation for having a double standard of discipline, one for supervisors and a harsher one for line agents. After a special report in 2004 by former Attorney General Griffin Bell and Former Associate Director Lee Colwell, the FBI implemented several reforms to address the criticisms. In attempting to do follow-up oversight, I have been denied information on many occasions with claims that there is a policy of not providing OPR files to Congress. For example, a former FBI agent named Cecilia Woods came to my office saying that she was retaliated against for reporting that her supervisor engaged in an inappropriate intimate relationship with a paid FBI informant. The FBI denied access to the documents from the OPR investigation of her supervisor, citing DOJ policy. After your confirmation hearing, last summer, I asked you whether you would continue the policy of withholding from Congress all OPR documents, and if so, what is the legal basis for saying that this entire category of information is off-limits to Congress. In your written response, which we did not receive until last Friday, you said you were not yet familiar with the policy or its legal basis. Now that you have been on the job for a while, can you please explain whether you believe Congress should be prohibited from seeing final reports or other documents from OPR? If so, on what legal grounds?

ANSWER: Consistent with longstanding Executive Branch policy, the Department's goal in all cases is to satisfy legitimate oversight interests while protecting significant Executive Branch confidentiality interests. As a general matter, the disclosure of OPR investigative files implicates significant individual privacy interests because these files discuss allegations against individuals under investigation. The Department has consistently offered to accommodate Congressional requests for information about OPR investigations through briefings, minimizing the intrusion on the privacy of Executive Branch employees.

Grassley 287 How can Congress do its Constitutional duty to conduct oversight if the Executive Branch will not open up its files so that we can get to the bottom of allegations brought to us by whistleblowers?

ANSWER: Please see the response to Question 286.

Grassley 288 The Department of Justice is the lead agency for terrorist financing investigations and must address the challenges posed by alternative financing mechanisms which continue to be exploited by both terrorist and criminal

organizations. What specific procedures have been established by the Department of Justice to educate and train law enforcement officials about the various alternative financing methods being used by criminal and terrorist organizations?

ANSWER: The FBI is by law the lead agency for terrorism investigations, including terrorist financing investigations. The Bureau and the Department use a variety of programs and vehicles to share such information among ourselves and with other law enforcement agencies and international partners.

The FBI's Counterterrorism Division (CTD) provides terrorist financing information and training for law enforcement officials and support personnel, including intelligence and financial analysts, primarily through the Terrorist Financing Coordinator (TFC) Program. Every FBI Field Division designates a TFC, who functions as the primary liaison between CTD's Terrorist Financing Operations Section (TFOS) and the law enforcement officials and support personnel conducting field investigations. TFOS is in regular communication with the TFCs to share information regarding current terrorist financing cases, events, and trends. TFOS has recently established a TFC team website where the TFCs can share information directly with each other and with TFOS, including information regarding new terrorist financing methods they are encountering in local investigations. TFOS provides training for the TFCs at annual TFC conferences and TFCs are introduced to the full scope of the terrorist finance related work done in the FBI during visits to FBI Headquarters.

TFCs are encouraged to provide training for local law enforcement partners regarding terrorist financing trends and methods, including alternative financing methods, and to submit requests to TFOS to provide speakers for regional training events for local and state police. TFOS sends an agent and analyst team to 10 to 15 field office Joint Terrorism Task Forces (JTTFs) each year, providing training regarding terrorist financing trends and methods, investigative tools useful against these trends, alternative finance mechanisms, and case reviews. This training targets multiple agencies because JTTFs include state and local police departments and often also include the Drug Enforcement Administration, Immigration and Customs Enforcement (ICE), U.S. Secret Service, Customs and Border Patrol, and Internal Revenue Service (IRS), among others. The intelligence products developed by TFOS Intelligence Analysts regarding the various financing methods being used by terrorist groups and cells are distributed to law enforcement officials and analysts throughout the FBI and the broader intelligence community in a variety of formats.

Field offices are encouraged to respond to requests for training from their local partners, and the FBI also provides training for regional and state-level law enforcement organizations and other agencies, such as the State Department Foreign Service Institute and Naval Criminal Investigative Service (NCIS), upon request. The FBI regularly participates in training conducted by other government agencies such as the Federal Deposit Insurance Corporation, the Federal Financial Institutions Examination Council, the Office of the Comptroller of the Currency, and the IRS Criminal Investigative Division.

Additionally, like the FBI, the Justice Department conducts national security training for federal prosecutors, mostly at the National Advocacy Center in Columbia, South Carolina, about the latest terrorism trends, including terrorism financing. For example, the Justice Department conducted training for prosecutors on investigating non-governmental organizations for terrorist financing as well as a program on obtaining international evidence in terrorism matters that included discussion on obtaining financial information. While these programs are mainly for training federal prosecutors (AUSAs and Main Justice litigators), certain conferences provide team training for AUSAs, JTTF members, and FBI agents. One of the most recent team training programs focused on Hizballah investigations, many of which center on fundraising and material support allegations.

Moreover, Justice Department representatives have participated in and taught at various meetings and conferences within the United States and overseas attended by prosecutors and law enforcement personnel involving these same terrorist financing issues. For example, the criminal prosecutors in the National Security Division's Counterterrorism Section have regularly scheduled and frequent meetings with the FBI's International Terrorist Operations Sections and with its Terrorist Financing Operations Section to ensure, *inter alia*, that all parties are current with the latest trends and developments in alternative terrorist financing methods. The Department's Criminal Division includes among its training offerings for foreign nations, presentations that address terrorist financing typologies, including various alternative financing methods.

Information on such methods is also regularly shared by DOJ components with other federal law enforcement and intelligence gathering officials who, along with DOJ components, sit as co-members of the interagency groups that manage U.S. participation in the multilateral international organizations that concern themselves with terrorist financing. Such multilateral international groups include the US delegations to the Financial Action Task Force, the Organization of American States' Counterterrorism Committee and the G8 Lyon Roma Group.

In addition, the Justice Department's National Security Division's Counterterrorism Section has regional coordinators that stay in close contact with the coordinators of the Antiterrorism Advisory Councils (ATACs), federal-state-local law enforcement collectives located in each federal judicial district and managed by our U.S. Attorneys. These ATACs facilitate the Justice Department's dissemination of information and intelligence on specific cases and new threats and trends in terrorism financing to state and local law enforcement. Additionally, when classification permits, we share information on alternative financing mechanisms with the non-Justice Department ATAC members.

Outside of the counterterrorism context, the FBI's Criminal Investigative Division is responsible for overseeing and coordinating the FBI's criminal money laundering program, conducting money laundering and other financial crime related training, including training regarding alternative financing mechanisms, throughout the United

States for both law enforcement and task force personnel. This training is made available to state and local officers where appropriate, and the FBI has worked closely with DOJ's Asset Forfeiture and Money Laundering Section to educate and inform federal, state, and local law enforcement regarding the processes, procedures, terms, and methodologies of alternative financing and remittance mechanisms.

Grassley 289 What procedures have been instituted by the Department of Justice to share this information with other departments and agencies that may encounter alternative financing mechanisms in their investigations? If none currently exist, are procedures being developed?

ANSWER: The FBI's TFOS participates in a variety of working groups and interagency initiatives that facilitate the sharing of information regarding various aspects of terrorist financing, including alternative financing mechanisms. These groups include the National Security Council-led Sub-Counterterrorism Security Group (Sub-CSG) on Terrorist Financing and a variety of Department of Defense-led working groups with multiple agency participation including Joint Interagency Task Forces (East and West), the Joint Intelligence Task Force for Counterterrorism, and the threat finance coordination mechanism for the Army's Central Command. These interagency initiatives, which include initiatives with Financial Crimes Enforcement Network (a Department of Treasury entity) (FinCEN), ICE, and other agencies, are generally sensitive in nature. Further, the FBI and the Department routinely share information about typologies and methodologies in the context of interagency preparation for meetings with various multilateral terrorist financing and anti-money laundering organizations, such as the Financial Action Task Force and the Organization of American States' Counterterrorism Committee.

The FBI also participates with other agencies in personnel exchange programs to facilitate case coordination and information exchange. Currently, FBI counterterrorism personnel are detailed to ICE, the Central Intelligence Agency (CIA), and the National Security Agency, and employees of the Treasury Department, CIA, ICE, and NCIS are detailed to the FBI's CTD.

Beyond the counterterrorism context, the FBI works closely with DOJ's Asset Forfeiture and Money Laundering Section and has a representative at FinCEN headquarters who serves as a liaison between the FBI and FinCEN and is in a position to learn about new investigative issues concerning alternative financing mechanisms. The FBI produces both Intelligence Information Reports and broad, strategic-level analyses based on Suspicious Activity Report (SAR) filings that identify criminal enterprises and businesses involved in the suspicious movement of funds. This information is disseminated externally to the intelligence community and to other Federal, state, and local law enforcement agencies through LEO and Intelink.

Grassley 290 The Department of Justice will likely play a significant, long-term role in providing training and technical assistance to Mexico through the Merida Initiative. In fact, I have heard that to be successful, this project must extend far beyond the three year time frame established by the State Department. What is the Justice Department's long-term strategy and timeline for implementing its provisions of the Merida Initiative?

ANSWER: The Department has been working closely with Mexico for decades to address our mutual concerns over the drug trafficking and other criminal activity that threaten each of our nations. The Merida Initiative (Merida) is a multi-year proposal for foreign assistance funding for equipment and training to confront the criminal organizations that threaten security in Mexico and Central America and that have transnational ramifications. The Merida Initiative will increase and accelerate our collaborative efforts, and illustrates our commitment to become partners with these governments and support the will they have recently demonstrated in attacking the criminal organizations that are no longer local problems but threats to the rule of law and national security throughout our shared hemisphere.

We will ask for continued Merida-level funding if appropriate. In any case, we expect that our common fight to stem the flow of narcotics into the United States and emasculate the cartels that gain profit and power from that trade will continue until we win.

Grassley 292 What additional resources do you believe are necessary to ensure that the Department of Justice adequately executes its provisions of the Merida Initiative?

ANSWER: U.S. law enforcement deploys a variety of programs to fight crime in Mexico and along our common border, many of which are consolidated in our National Southwest Border Counter Narcotics Strategy. The Department has not yet determined whether additional resources, beyond those requested in the President's 2009 Budget will be necessary in future years.

Grassley 294 In 1990, I sponsored legislation known as the Antiterrorism Act of 1990. This legislation created a civil remedy for any individual, their estate, survivors or heirs, who were injured or killed by an act of terrorism, to sue those who committed the act or sponsored the terrorist act. I prepared this important legislation to empower victims of terrorism to take the fight back to the terrorists and hit them where it counts, in their pocket books and bank accounts. It helps victims seek justice by become an active participant in recovering funds from those who seek to harm Americans at home, or abroad. I am happy to report that some victims have successfully utilized this statute to win awards against terrorists and sponsors of terrorism. Just as I intended, these courageous victims are taking the fight back to the terrorists through American courts and are winning.This

legislation is a vital tool in the war on terror and just as in 1990, while money will never bring back a loved one, it can help to prevent terrorists from committing other violent acts against Americans. However, I am concerned that as judgments against sponsors of terrorism pile up, there may be political efforts to have our government intervene and unduly influence the decisions of the courts or hamper enforcement of court judgments. Attorney General Mukasey, do you appreciate my comments on the purpose and history of the Antiterrorism Act of 1990?

ANSWER: The Department also believes that that Antiterrorism Act of 1990 is an important statute. The Department of Justice has authority, pursuant to 28 U.S.C. § 517, to attend to the interests of the United States in any pending suit, and we use that authority to protect the interests and obligations of the United States, including those related to international law and foreign relations.

Grassley 295 Will you pledge to support this law?

ANSWER: The Department supports the properly enacted statutes of the United States, including the Antiterrorism Act.

Grassley 296 Will you ensure that the Department acts in accordance with the original intent of the Antiterrorism Act?

ANSWER: The Department applies and interprets the Antiterrorism Act and other statutes in accordance with appropriate canons of statutory construction. These include looking to court decisions as well as to Congress' evident purpose in passing the Act.

Grassley 297 Will you pledge to support victims of terrorism who bring forth good faith claims and win judgments against terrorists and state sponsors of terrorism?

ANSWER: The Department supports victims of terrorism. The question of whether a specific plaintiff or judgment creditor is entitled to relief sought in the courts depends on the particular facts at hand.

Grassley 299 How will the Justice Department meet these audit requirements under the bankruptcy law?

ANSWER: As noted above, the Department has submitted an Operating Plan for FY 2008 to the Appropriations Committees of the Senate and the House of Representatives that, if approved, will allow for the reinstatement of a more limited number of debtor audits using prior year unobligated balances.

Grassley 300 Pub. L. No. 109-8 requires the U.S. Trustee Program to file motions for Chapter 7 debtors who meet the presumption of abuse under 11 U.S.C. 707(b). How many 707(b) motions were brought in 2007? What was the outcome of these motions?

ANSWER: In fiscal year 2007, the USTP filed 3,370 motions to convert or dismiss under section 707(b)(2) of the Bankruptcy Code based on a presumption of abuse. Of the 2,833 motions disposed of in fiscal year 2007, the outcomes were as follows: 1,099 cases were voluntarily converted to chapter 13; 417 cases were voluntarily dismissed; 391 cases were dismissed after court hearing; 69 motions were denied by the court; and 857 motions were withdrawn by the United States Trustees, typically as a result of debtors providing additional information that demonstrated special circumstances.

It is important to note that even if a case is determined not to be "presumed abusive" under the means test calculation, the reform law does not preclude the USTP from taking action when it finds the case to be abusive under a "totality of the circumstances" or bad faith analysis. Accordingly, the USTP filed 1,411 motions to convert or dismiss in fiscal year 2007 under section 707(b)(3) of the Bankruptcy Code. Of the 1,143 motions disposed of in fiscal year 2007, the outcomes were as follows: 355 cases were voluntarily converted to chapter 13; 113 cases were voluntarily dismissed; 244 cases were dismissed after court hearing; 39 motions were denied by the court; and 392 motions were withdrawn by the United States Trustee.

NOTE: The USTP's data collection systems are specific to the date of action (e.g., filing or disposition of a motion); therefore, the number of cases disposed of in one fiscal year, for example, may relate to motions filed in a previous fiscal year.

Grassley 301 How many times has the Justice Department declined to file these motions in 2007?

ANSWER: Approximately 10 percent of all chapter 7 debtors are above their state's median family income and, of those, about 10 percent are presumed abusive under the means test formula. The USTP declines to file motions to dismiss in more than 30 percent of all presumed abuse cases that do not voluntarily convert or dismiss. This means that the USTP exercises its discretion under the new law and does not file an enforcement action based solely upon the mathematical means test formula without consideration of other factors. During FY 2007, 4,308 cases were presumed abusive, and the USTP declined to file motions in 1,441 cases. Despite the high rate of declinations, the USTP files motions to dismiss for abuse at about three times the rate it did prior to the reform law (about one motion per 98 chapter 7 cases versus one per 274 cases before enactment of the new law).

Grassley 302 Why has the Justice Department declined to file these motions?

ANSWER: The USTP has judiciously implemented the new law and has utilized the means test as a useful tool for identifying abuse. Based on an analysis of the specific facts and circumstances of a case, United States Trustees may exercise the discretion given to them by the Congress to decline to prosecute cases that are not appropriate for dismissal even though the presumption of abuse has arisen. Under 11 U.S.C. § 707(b)(2)(B), debtors have an opportunity to rebut the presumption of abuse by demonstrating "special circumstances." There are three "special circumstances" that account for about 75 percent of the USTP's declinations: loss of job or income (not due to health); medical reasons; or a one-time income event which artificially inflated monthly income prior to filing.

Grassley 303 What efforts will you personally undertake to make sure that this mandate of the bankruptcy law is fulfilled?

ANSWER: The United States Trustee Program has assembled a substantial record of accomplishment since enactment of the BAPCPA. The Department will continue to support the efforts of the USTP and work cooperatively with all components of the bankruptcy system to satisfy its obligations to implement the law with fairness, efficiency, and effectiveness for the benefit of all stakeholders. Through the appropriations process, we will continue efforts to ensure a sufficient level of funding for the USTP to carry out the mandates of the BAPCPA.

Grassley 305 Was her alien file ("A-file") reviewed at the time? If not, why not?

ANSWER: As indicated in the above response, in accordance with procedures then in place, Nada Prouty's alien file was not reviewed at the time. Procedures for the corroboration of naturalization information provided in employment applications called for the FBI to accomplish this through contact with the former INS, whose mission included the creation, management, and retention of alien files. The FBI has since revised its procedures to include a review of the alien file.

QUESTIONS FROM SENATOR BROWNBACK

Brownback 325 On December 4, 2007, the House considered on suspension and passed a proposed reauthorization of the Trafficking Victims Protection Act, H.R. 3887. H.R. 3887 has now been referred to this Committee. The Administration has indicated its strong support for reauthorizing this vital anti-trafficking law. However, the Department of Justice has issued a views letter opposing certain provisions contained in the House bill, particularly those that would eliminate the requirement that prosecutors demonstrate that trafficking victims engaged in prostitution due to force, fraud, or coercion. Under the House bill, any person who "persuades, induces, or entices" another person to engage in illegal prostitution would be guilty of sex trafficking. We all recognize that prostitutes may be extremely reluctant to testify against their pimps, even where their pimps actually do use force, fraud, or coercion to lure them into or keep them in prostitution. Advocates for the House bill's expanded trafficking definition have argued that removing the need to prove force, fraud, or coercion will lift a great weight off the backs of prosecutors and allow them to charge all pimps with "per se" sex trafficking crimes. Would eliminating the force, fraud, or coercion requirement allow DOJ to conduct "per se" pimping or trafficking prosecutions?

ANSWER: It is a misconception and a misnomer to refer to "per se" pimping crimes. All crimes have elements that must be proven beyond a reasonable doubt, as is required under our criminal justice system, and the proposed legislation is no exception. The proposed legislation would require proof beyond a reasonable doubt that a defendant persuaded, induced, or enticed a person into prostitution. Based on our prosecutorial experience under statutes criminalizing similar conduct, such as the Mann Act and the current sex trafficking statute as it applies to minors, this element of proof will generally require testimony of victims and witnesses; absent such testimony, the relevant acts of the defendant, and relevant knowledge and intent, often cannot be proven beyond a reasonable doubt. The victim's testimony is generally essential to proving the defendant's involvement in transporting or recruiting the victim for prostitution purposes, as there are generally few other sources of evidence to establish the defendant's conduct, knowledge, and intent beyond a reasonable doubt.

Since the basic challenges to securing any victim testimony must still be overcome to establish the elements of any pimping crime, removing the force, fraud, or coercion requirement will not enable the Department to increase the number of prosecutions. The force, fraud, or coercion requirement is not an obstacle preventing the highly successful prosecution of trafficking crimes. The Department has consistently prosecuted force, fraud, or coercion crimes with great success, and where force, fraud, or coercion cannot be proven beyond a reasonable doubt, the Department has successfully prosecuted Mann Act charges and other federal crimes.

Brownback 326 The Mann Act, for example, does not require evidence of force, fraud, or coercion. It simply makes it a crime to transport an individual in interstate or foreign commerce for prostitution. Is DOJ generally able to prosecute Mann Act cases without testimony from the victim? What sort of testimony is required?

ANSWER: Although prosecution of Mann Act cases generally requires victim testimony, each case is individually assessed to determine whether there is sufficient evidence to establish each element of the offense beyond a reasonable doubt even without the victim's testimony. However, the best source of evidence that an individual was transported across state lines is often the individual herself. In cases where the person was transported by car or where the transportation costs were paid in cash, it can be difficult to obtain extrinsic evidence that there was movement across state lines, and the victim's testimony is often crucial to establish that she was being transported for the purpose of engaging in prostitution.

There are also several reasons why a victim would be called to testify even in cases where all the elements of the offense can be proven without her testimony. As a strategic matter, having the victim testify puts a face on the crime, focusing the jury on the very real consequences of the defendant's actions. Testifying can also be cathartic and therapeutic for the victim, allowing her an opportunity to tell her side of the story. Many victims and witnesses have described the process of testifying as an empowering one, which results in holding the defendant accountable for the entirety of his conduct and vindicating the full scope of the wrongs the victim has suffered.

QUESTIONS FROM SENATOR COBURN

Coburn 327 Last week, DOJ's Inspector General Glenn Fine testified before the Judiciary Committee. He sharply criticized the Department of Justice's (DOJ) Office of Justice Programs (OJP), which exists to manage DOJ's extensive grant programs. Specifically, he stated that OJP has "a spotty record of monitoring the approximately $2-$3 billion of grants it awards each year." He added that problems at OJP "raise questions about how effectively taxpayer grant funds are being spent." He also criticized OJP for not staffing the new Office of Audit, Assessment and Management (OAAM), which is intended to enhance internal oversight. What will you do to ensure OJP's problems are resolved – or at least improved – during the remainder of your tenure at DOJ?

ANSWER: Ensuring that the Department properly monitors the grants programs it administers is necessary for effective stewardship of public funds. The Department has made strides in this area, conducting on-site monitoring reviews of over 20% of open grant awards in FY 2007. Additionally, as of June 2008, 16 of the 26 positions allocated to OAAM have been filled, 8 more are in final selection or clearance, and two more are posted. During the remainder of the Attorney General's tenure, he will continue to emphasize the importance of effective monitoring and internal oversight.

Many significant improvements in regard to oversight of OJP's grants are explained in detail below.

Coburn 328 Given that there are several divisions (e.g. NIJ, OIG, grant managers) that perform some aspects of oversight for grant programs, is OAAM's oversight duplicative of the oversight functions already existing in DOJ through these other divisions?

ANSWER: OAAM's oversight role is unique to those functions exercised by grant management staff and the National Institute of Justice (NIJ). OAAM is comprised of three divisions, the Audit and Review Division, the Program Assessment Division, and the Grant Management Division. Each Division plays a unique but coordinated role that enhances the ability of the agency to effectively administer its grant programs. These Divisions coordinate with one another to maximize effectiveness and work extensively with bureaus and offices to comprehensively improve internal operations and external oversight capabilities.

The Audit and Review Division (ARD) is comprised of two branches — the Audit Coordination Branch and the Process Review Branch. The Audit Coordination Branch manages all activity related to audits of OJP operations and OJP grants and manages the process for grantees designated as high-risk. The Process Review Branch within ARD and conducts internal reviews of OJP processes and makes recommendations to enhance and strengthen internal controls as required by Office of

Management and Budget Circular A-123, Management's Responsibility for Internal Control. Through this function, ARD works closely with OJP offices to improve financial and information technology practices to maintain a strong internal control structure.

The Program Assessment Division (PAD) is responsible for coordinating the monitoring efforts of OJP offices and COPS grant monitoring staff. This oversight includes a quarterly review to ensure that offices attain a monitoring level of at least 10 percent of open award funding annually as well as review of the quality of monitoring conducted. PAD works with offices to address monitoring deficiencies where identified.

In addition to its monitoring oversight, PAD conducts programmatic assessments of grant programs and initiatives. These assessments are comprised of grant compliance and performance reviews to identify programmatic and policy successes, as well as to identify areas that require improvement or would benefit from strengthened oversight. Assessments encompass a review of individual grants to ensure core requirements are being met. It also includes a review of grant performance information, such as progress reports and performance measures that, when aggregated, provide a grant program-level picture of short-term performance in real time and can be used to affect critical policy and budget decisions. While PAD works in close collaboration with NIJ to share information and coordinate activities, PAD's function is different from that of NIJ's Office of Research and Evaluation, whose mission is to develop, conduct, and direct research and long-term outcome evaluations of criminal justice activities across a wide variety of topic areas.

The Grants Management Division (GMD) creates and maintains tools, policies, and practices to support OJP grant managers in managing their grants effectively. This includes the maintenance of the Grant Manager's Manual, a reference document that governs grant management requirements across OJP throughout the grant management lifecycle. GMD also trains staff on these requirements, providing opportunities for grant managers to enhance their core oversight skills. The GMD also supports OJP's efforts to streamline and standardize grant management policies and procedures across the agency by coordinating the design and enhancement of OJP's Grant Management System, an end-to-end Web-based grant management system.

While the OIG is responsible for identifying and reporting on waste, fraud, and abuse, OAAM is uniquely positioned to enhance the oversight of grant programs from all aspects of grant management by creating internal policies and procedures, making recommendations for improvement of management practices, and providing assistance to ensure improvements are implemented in an appropriate and timely manner.

Coburn 329 If OAAM does not perform duplicative oversight functions, how does it compliment the already existing oversight functions within OJP?

ANSWER: Please see response to question 328.

Coburn 330 Are grant managers accountable for their performance regarding grants they manage? Do they have enough training to address problematic issues reflected in the semi-annual OIG reports evaluating OJP performance?

ANSWER: Grant managers are held accountable for their performance. In FY 2007, OAAM drafted a model Grant Manager Performance Work Plan (PWP) for FY 2008. The PWP addresses all critical elements outlined in the Grant Managers Manual and establishes specific, measurable, achievement-based criteria for effective grants management, against which performance of OJP grant management staff will be evaluated. The PWP is intended to increase accountability of OJP staff and improve team and organizational performance by creating a results-oriented work environment for those individuals responsible for oversight of federal grant dollars.

In FY 2007, OAAM, in coordination with OCIO, also developed management reports using the Enterprise Reporting Tool (ERT) to allow for greater transparency into OJP's grant management process. Reports now enable OJP management to track the processing times for applications, grant adjustment notices, progress reports, and closeouts. These reports enable management to remediate instances where grant managers have not processed their workload in a timely manner. These reports are also used to identify the types of modifications grantees are requesting which result in system enhancements. Reports outlining grantee drawdown amounts and the obligation amounts from the financial reports provide grant managers with information they can use to more effectively manage their grants.

OAAM maintains OJP's Grant Manager's Manual (GMM) which documents policies and procedures for the administration and management of all OJP grants and grant programs. Annually, OAAM publishes the GMM. In an effort to ensure GMM changes, new policies, and important themes are communicated and implemented, OAAM provides annual GMM training. In FY 2007, OAAM conducted OJP-wide GMM training for over 400 grant managers, staff accountants, and other OJP employees. OAAM is in the process of developing the FY 2008 training curriculum.

In FY 2007, OAAM further developed its commitment to developing grant management skills and capabilities by providing a two-day course on basic grant management principles and effective monitoring techniques, during which 30 new grant managers were trained. In addition, OAAM distributed a survey to OJP grant managers in an effort to capture grant manager training needs. OAAM used survey results to develop a Grants Management Training Program for FY 2008. The program has been designed to provide grants management staff with the knowledge, skills, tools, and resources needed to successfully perform job functions and meet professional development goals. One component of the training program is a new grant management course that provides a comprehensive foundation in grant management concepts and OJP-specific procedures. In addition to introducing the broad concepts of grant management, the program includes associated functional skills training and subject matter seminars. In February 2008, OAAM provided a one-day course on the use of

grants, cooperative agreements and contracts, during which 18 grant managers were trained.

In 2007, in coordination with OCIO, OAAM implemented the first session of the GMS certificate training which was designed to give OJP staff the tools needed to be proficient in managing their workload in GMS. Weekly training sessions were held on each of the GMS modules, such as the Application Processing, Progress Reports, Grant Adjustment Notices, and Grant Monitoring modules. Users were provided with step-by-step directions to complete various tasks in GMS as well as an overview of DOJ/OJP grant management policies. In order to receive a certificate of completion, participants were required to attend each of the four sessions on GMS modules, as well as a GMS overview session. In FY 2007, 271 OJP staff participated in these weekly trainings and 24 grant managers completed the certification program. OAAM offered this series of classes again in January 2008.

Coburn 331 Has OJP taken the proper steps to correct deficiencies identified by past OIG reports? What are OJP's plans for correcting the more recent deficiencies noted by the January 2008 OIG report Review of the Office of Justice Programs' Paul Coverdell Forensic Science Improvement Grants Program?

ANSWER: OJP promptly takes steps to implement corrective actions in response to OIG recommendations. During FY 2007, the OIG issued five reports to OJP with recommendations, one of which was closed within eight months of issuance. OJP anticipates full closure of the remaining four reports by the end of FY 2008.

With respect to the January 2008 OIG report on the Review of the Office of Justice Programs' Paul Coverdell Forensic Science Improvement Grants Program, OJP and the OIG have reached agreement on the corrective action plan for two of the three recommendations and OJP is working with the OIG to resolve the remaining recommendation.

Coburn 332 If OJP cannot find solutions to the problems noted by OIG, is another layer of oversight needed to improve efficiency in monitoring the multiple grant programs administered by OJP?

ANSWER: No. Since its inception, OAAM has sought to improve its oversight capability by strengthening and standardizing its grant management processes, improving grant monitoring and grant performance management, and enhancing internal controls around information technology and financial management.

Specific to grant monitoring, in FY 2007 OAAM began an aggressive program to improve the monitoring efforts of OJP and COPS grant managers, beginning with the creation of an OJP/COPS-wide programmatic and fiscal monitoring plan, which included all planned on-site monitoring activity for the year. With this plan in place, OJP and

COPS grant management staff have the ability to coordinate their programmatic monitoring efforts within and between bureaus and program offices, as well as with the OCFO and their financial monitors. With enhanced coordination, OJP and COPS staff have been able to ensure a more comprehensive, coordinated oversight effort.

Creating a monitoring plan has also allowed OAAM to review and report, on a quarterly basis, the level of monitoring completed, and to review monitoring documentation for completeness and quality. By placing a greater emphasis on grant monitoring, OJP and COPS were able to conduct on-site monitoring reviews of 1,026 grants in FY 2007, for a total of $1.9 billion monitored. This equates to over 20 percent of open grant award funds monitored.

In addition, through quality reviews, OAAM has identified opportunities to improve the quality of grant monitoring. The first was the need for a common monitoring format and site visit document submission. In response to this need, OAAM worked with representatives from OJP offices and COPS to develop a standard grant monitoring tool making it possible for OJP staff to monitor grants consistently and thoroughly across the agency by reviewing 28 common elements that address the administrative, financial, and programmatic elements of each grant. This tool was implemented beginning in FY 2008 and is expected to further enhance the quality of monitoring efforts.

In addition to the creation of this monitoring tool, OAAM created a better strategy for completing desk-based reviews of grants to identify those grants in need of more intensive, on-site monitoring. To meet this need, OAAM developed and implemented an OJP/COPS-wide grant assessment tool that uses 15 standard criteria to determine those grantees in need of assistance through on-site monitoring. In addition, each office is able to add additional, program-specific criteria that may be appropriate. The grant assessment tool was used to create the FY 2008 programmatic monitoring plan, and using this tool. OJP and COPS have assessed over 4,000 grants to date.

OAAM continues to work with OJP offices and COPS to enhance the quality of reviews. In FY 2008 this will include enhancements to the grant monitoring and grant assessment tools.

In addition to the monitoring program, OAAM has implemented a rigorous program assessment function in which individual grants are reviewed to create an aggregate, overarching picture of grantee compliance, and grant program success at large. Program assessment is used to identify the immediate benefits of OJP and COPS programs, as well as to identify areas for programmatic improvement, or increased oversight.

Coburn 333 In OIG's various semi-annual reports, each notes specific examples of grantees that are not complying with grant requirements, leading to millions of dollars in questioned costs charged to grants. Has OJP taken steps to make certain

that grantees are actually held responsible for submitting required paperwork to receive grants, and ensuring each follows guidelines that clearly note what purposes are appropriate for using grant funds?

ANSWER: OJP has taken several recent steps within the Grants Management System (GMS) to ensure that grant recipients comply with the terms and conditions of their grants. OJP grantees use GMS to apply for funding, request modifications to their awards, submit the required programmatic and financial reports and the required documents needed to closeout out their grants. Since 2005, OJP has coded various business rules into the GMS. For example:

1. To ensure that grantees comply with financial requirements, GMS is configured to prohibit grantees from requesting a no-cost extension 30 days or less before the end date of the grant or after the end date of the grant. If the grantee can demonstrate undue burden and the request is approved from the Administrator of the Bureau or Program Office, a no-cost will be generated by internal staff.

2. To ensure that grantees submit required progress reports, in December 2006, OJP released an enhancement to the progress report module. With the release of this enhancement, grantee funds are automatically frozen when grantees are delinquent in submitting their progress reports. Grantee funds are also automatically frozen when they are delinquent in submitting the quarterly financial reports.

3. To streamline information to effectively and efficiently monitor grant expenditures, in October 2007, OJP integrated a module to allow quarterly financial status reports to be submitted online with GMS.

4. To improve the timeliness of closing out grants, in February 2008, OJP deployed enhancements to the grant closeout module. With the release of the enhancements to the closeout module, grantee funds are automatically frozen 91 days after the end date of the grant.

OJP is aggressive in ensuring that grantees address the issues identified by the OIG in grant audits conducted by the OIG and audits conducted in accordance with OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. OJP's audit follow-up process with grantees ensures that issues identified by the OIG are timely resolved by either repaying unallowable grant expenditures, providing further support that substantiates the grantees' expenditures, or developing appropriate procedures to ensure future compliance. Between October 2007 and February 2008, OJP closed 66 reports, which included 166 recommendations and questioned costs totaling $9.5 million.

As part of the OJP's efforts to further improve oversight of grantees, in September 2007, OJP developed a high-risk order that outlines a streamlined process to more

effectively and timely address issues with high-risk grantees to ensure appropriate use of OJP funds. Systemic issues noted with grantees during any aspect of OJP's administration of grants are resolved through this process.

See responses to questions 327, 328, and 332 above for information concerning OJP's enhanced monitoring efforts to oversee grantee compliance.