U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

October 29, 2009

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 Eric Holder following his appearance before the Committee at an oversight hearing on June 17, 2009.

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

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

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Jeff Sessions
Ranking Minority Member

Questions for the Record
Attorney General Eric H. Holder, Jr.
Senate Judiciary Committee
June 17, 2009

QUESTIONS POSED BY CHAIRMAN LEAHY

Media Shield

1. **Carefully balanced legislation to create a qualified privilege for journalists that protects the identity of their confidential sources is pending on the Judiciary Committee's legislative agenda. During your confirmation hearing, you expressed support for a well-crafted media shield bill, and you committed to work with me and others on this legislation. The legislation (S. 448) before the Committee does not give the press a free pass, and it contains reasonable exceptions to the limited privilege in cases where information is needed to prevent terrorism or to protect national security.**
Does the Justice Department support S. 448, the Free Flow of Information Act of 2009, currently before the Committee, and will you work with me and others to enact this legislation this year?

Response: As the Attorney General stated at his confirmation hearing, the Attorney General favors the concept of a media shield law that enables journalists to maintain the confidentiality of their sources, provided it does not undermine the Department's ability to protect national security and enforce the criminal laws. The Department is in the process of working with this Committee to produce mutually acceptable legislation that protects both a free and robust media as well as the core functions of the Department.

The Justice Department's Role in Reforming Forensic Sciences

2. **In February, the National Academy of Sciences issued a comprehensive report on the urgent need to improve forensic sciences in the United States. One of the core findings in the National Academy of Science Report is that science needs to be the guiding principle in determining the standards and procedures for forensic science. Among other things, the Report calls for the federal government to set national standards for accrediting forensic labs and for certifying forensic scientists. The report also makes clear that a great deal of work needs to be done to conduct new research into traditional forensic disciplines.**

   a. **Do you agree that there should be a nationwide forensics reform effort including national standards to be set for accrediting forensic labs and certifying forensic scientists?**

Response: Yes, the Attorney General agrees that there should be a nationwide forensics improvement effort. For some time, it has been clear that forensic science is in need of improvements. A 1999 report published by the Department's National Institute of Justice (NIJ) identified lapses in training, standardization, validation, and funding, and in 2004, responding to a Congressional directive, NIJ published a survey of forensic science organizations that emphasized the need for more research; personnel and equipment resources; education; professionalism through accreditation and certification; quality assurance; and enhanced coordination among Federal, State, and local stakeholders.

In response to the report, the Administration convened an inter-agency group under the auspices of the Office of Science and Technology Policy's National Science and Technology Council. The Subcommittee on Forensics has assembled scientists from across the Executive Branch to develop ways to implement the study's recommendations, as appropriate. Although the work of the Subcommittee is ongoing, some early reactions to the recommendations are appropriate at this time.

With regard to the specific issue of accreditation, much progress has already been made on this front. Ninety-seven percent of the public forensic science laboratories are accredited, including virtually all of the U.S. federal government's labs. More should be done, however. For example, although more than 40 private laboratories have been accredited, accreditation of all private forensic science service providers is paramount. Furthermore, accreditation through the International Association for Standardization (ISO), the world's largest developer and publisher of international standards, should become the norm. ISO has developed standard 17025 (ISO 17025), based on the standard for the accreditation of calibration and testing laboratories, and it should become one of the cornerstones of a comprehensive forensic laboratory accreditation program. Finally, operational units external to the crime laboratory, such as latent print and firearms units housed within police departments, while not traditional laboratory environments amenable to accreditation under ISO 17025, should be required to demonstrate compliance with some professional standards.

Likewise, certification of individual forensic practitioners should be examined as part of the effort to improve the forensic science community. Each forensic practitioner should be required to demonstrate that he or she possesses the knowledge, skills, and abilities to competently perform analysis in his or her individual discipline or sub-discipline. A blended approach for demonstrating competencies could include, but not be limited to, passage of proficiency tests, compliance with continuing education requirements, and adherence to a code of ethics. Certification should be recurring and, perhaps, could be stipulated as a requirement before their work or expert opinion can be proffered in a court of law. The Department of Justice is currently examining whether, and if so, how to promote, or even require, certification of our own criminalists.

b. What role should the Justice Department play in this effort to reform forensic sciences in this country?

Response: The Department of Justice is at the forefront of the effort to improve the forensic science community. Although around 98 percent of forensic science is performed outside the federal government, the Federal government has a crucial role to play.

A DOJ official serves as one of the co-chairs of the recently chartered Subcommittee on Forensics of the National Science and Technology Council of the Office of Science and Technology Policy. Of course, the Subcommittee is composed of forensic experts from all parts of the Executive Branch, but DOJ participation and leadership is particularly crucial because forensic science is mostly (though certainly not exclusively) employed in criminal investigations.

As noted earlier, NIJ sponsored the reports that highlighted the need for a comprehensive effort. NIJ provides annual funding for some of the most important research studies in the forensic disciplines and is currently collaborating with the National Institute on Standards and Technology (NIST) on an Expert Working Group on Human Factors in Latent Print Analysis, the first of several working groups which are envisioned to address validation and practice to limit contextual and other biases in qualitative forensic disciplines. The FBI, DEA, and ATF laboratories are models of professionalism for the entire field, with many of their practices adopted by peers. For example, the FBI Lab, with 600 employees, the largest in the world, has been at the forefront of developments in forensic techniques and led the way for the forensic use of DNA. The ATF Lab was the first federal lab to be accredited, and it operates a state-of-the-art fire research facility, the first scientific research laboratory in the United States dedicated to supporting the unique needs of the fire investigation community. An official of the National Fire Protection Association called the Fire Research Laboratory, "one of the best examples of the government spending its money wisely." The DEA Laboratory System was the first forensic laboratory to achieve accreditation under the ASCLD/LAB-ISO International standard and operates a research laboratory recognized internationally for its drug signature and profiling work. And for many years, the FBI and DEA have operated Scientific Working Groups (SWGs), composed of experts in nine forensic disciplines from local, state, and federal agencies across the world, that set uniform guidelines for methods, processes, procedures, practices, standard specifications, and test methods in their respective disciplines.

In sum, the wealth of experience and expertise at DOJ is unparalleled and mandates that the Department have a leading role in the effort to improve the forensic sciences.

Public Corruption Prosecution Improvements Act

3. **We have seen a shift of resources away from public corruption investigations and prosecutions over the past seven years. Recent prominent corruption cases have made clear that public corruption continues to be pervasive problem that victimizes every American by chipping away at the foundation of our Democracy.**

Senator Cornyn and I introduced the bipartisan Public Corruption Prosecution Improvements Act of 2009 (S. 49) that would provide needed funds to the Justice Department for the investigation and prosecution of public corruption offenses and legal tools for federal prosecutors closing loopholes in corruption law and bringing clarity to key statutes. The Department of Justice supports this bill and has submitted a favorable views letter on the legislation. Why does the Department of Justice need this legislation? Do you believe it should be promptly passed?

Response: The Department continues to strongly support S. 49, the "Public Corruption Prosecution Improvements Act of 2009." The Department has worked closely with Congressional staff in the development of this legislation over the course of several years, and we believe that it will bolster the Department's ability to investigate and prosecute public corruption offenses. Combating public corruption is a top priority of the Department of Justice, and this bill would strengthen our ability to carry out that mission by closing significant gaps that exist under current law, providing additional tools to public corruption prosecutors and investigators, and providing needed resources for the investigation and prosecution of public corruption. Some examples of the bill's important provisions include: extending the statute of limitations and increasing the penalties for key corruption offenses; expanding our ability to bring charges in an appropriate venue to enable the Department to charge all of the offenses and offenders most effectively; adding corruption offenses to the list of offenses that may be investigated and charged using Title III wiretaps and the Racketeering Influenced and Corrupt Organizations Act (RICO); and remedying problems and barriers that have resulted from narrow judicial interpretations of the corruption statutes by providing clear legislative coverage. The Department urges that this legislation be passed promptly.

New FOIA Policy

4. **July Fourth marks the 43rd anniversary of the enactment of the Freedom of Information Act ("FOIA"). I commend the President for issuing a memorandum to strengthen FOIA on his first full day in office, and I commend you for issuing a FOIA memorandum in March which restores the presumption of openness to our government. Your FOIA Memo requires, among other things, that this new policy "should be taken into account and applied if practicable" to pending FOIA cases. But there is some concern that the Department and other federal agencies are not actually applying this policy to their pending cases.**

   a. **Is the Department regularly reviewing its pending FOIA cases to determine the impact of your March 19 FOIA Memo on withholding decisions?**

Response: In accordance with the Attorney General's Memorandum, the Department's Civil Division has implemented a policy of reviewing each pending FOIA case to determine whether it is practicable to re-examine documents in that case and whether "there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information." Attorney General's Memorandum at 2. In addition, the Department is in the process of contacting each U.S. Attorney's Office to ensure that it is in compliance with its obligations under the Memorandum.

b. Has your new policy resulted in the release of more information to the public?

Response: Yes. The Department has undertaken extensive outreach, education and training about the new guidelines across the government. We have made clear that agencies must take care to apply the new guidelines from the very earliest stages of a FOIA request. In addition, once cases reach litigation, Department attorneys query agency officials with respect to their application of guidelines, and encourage agencies to make discretionary releases. Thus, the new guidelines have resulted in the release of more information at all stages of the FOIA process. In addition, we have emphasized to agencies in trainings that they need not wait for a FOIA request to release information. In the words of the Attorney General's Memorandum, "agencies should readily and systematically post information online in advance of any public request." Doing so "reduces the need for individualized requests and may help reduce existing backlogs," thus speeding the flow of information in multiple ways.

c. Will you commit to work with me and the FOIA requester community to address concerns about the implementation of this policy?

Response: The Department looks forward to working with you and the FOIA requester community to address any concerns about the implementation of our FOIA policy. As you know, both the President and the Attorney General are committed to increasing transparency. The President's Memorandum and the Attorney General's FOIA Guidelines call on agencies to adopt a presumption of openness and to ensure that our fundamental commitment to open government is realized in practice. The Department's Office of Information Policy (OIP), which has been working with agencies to implement this policy, is also reaching out to the FOIA requester community. In fact, OIP is hosting a Requester Roundtable on August 5, 2009, to provide requesters an opportunity to share concerns and ideas directly with the Department.

Material Support for Terrorism

5. **Upon taking office, Secretary Napolitano announced a broad review of Department of Homeland Security immigration policies, including how to handle asylum cases held in limbo because of the overly-broad definition of material support for terrorism in our immigration laws. I welcome her review and hope that the Department of Justice is fully cooperating in this process.**

   a. **What steps is the Department of Justice taking to revisit past agency interpretations of the material support inadmissibility grounds?**

Response: The statute's inadmissibility grounds are coupled with the authority to grant exemptions to those inadmissibility bars. The National Security Council is leading an interagency process, including the Department of Justice, to make the process for granting appropriate exemptions to the terrorism-based inadmissibility grounds more efficient while ensuring the protection of our national security interests. The Department views exemptions under the statute as an appropriate form of relief in certain circumstances.

   b. **Does the Department of Justice agree that *de minimis* contributions and acts committed under duress should not be considered to be "material support"?**

Response: The Department of Justice does not agree that *de minimis* contributions or those given under duress cannot under any circumstances constitute material support as defined by the statute, and the Department seeks to avoid inconsistencies with its interpretation of such terms in the criminal context. However, an exemption may be appropriate in a particular case under the totality of the circumstances, and the Secretaries of State and of Homeland Security, in consultation with the Attorney General, have the authority to grant such an exemption. *See* 8 U.S.C. § 1182(d)(3)(B).

Asylum Claims Based on Membership in a Particular Social Group

6. **Asylum claims may be based on "membership in a particular social group," but that phrase is not defined by the statute. The standard for defining "membership in a particular social group" was articulated in a 1985 opinion from the Board of Immigration Appeals (BIA) entitled *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985). The *Acosta* decision requires the asylum seeker to show that the members of the social group at issue share a common characteristic that is either immutable or so fundamental to their identity or conscience that they should not be required to change it. For more than twenty years, the BIA followed the *Acosta* standard under the well-established guidance of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the UNHCR Social Group Guidelines.**

In a 2006 decision titled *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006), the BIA introduced a new and troubling concept into its review of social group asylum cases. In *Matter of C-A-*, the BIA required that the social group at issue in the case also be visible in the society. In this ruling, the BIA cited to the UNHCR Social Group Guidelines as a source for its heightened "social visibility" standard, but in doing so, misstated the UNHCR position on the matter. Since that time, UNHCR has stated unequivocally that the BIA misconstrued its meaning. The UNHCR position is that there is no requirement that a particular social group be visible to society at large. Is the Department reviewing this matter and considering a modification to BIA precedent that is consistent with UNHCR Social Group Guidelines?

Response: A litigant in the Eighth Circuit has asked the Attorney General to take his case on certification and reconsider the social visibility requirement for a social group. The UNHCR has joined that request, which is pending. The Department currently is considering the request.

E-FOIA

7. **The Freedom of Information Act was amended in 1996 to cover electronic information. Since then, I and others have worked hard to make sure that our federal agencies are fully complying with that law. Given the explosion of the Internet and other new technologies, compliance with E-FOIA is essential to improving overall FOIA performance across the government.**

   Will the Department conduct a review of agency web sites to determine whether they are in compliance with the affirmative disclosure requirements of E-FOIA?

Response: The Department, through the Office of Information Policy (OIP), conducts reviews of agency websites on a periodic basis. As you know, the May 30, 2008, Attorney General's Report to the President on agency progress under Executive Order 13,392, "Improving Agency Disclosure of Information," asked agencies to review the FOIA Reading Rooms on their websites and certify that they were in compliance with the FOIA. Those certifications were made less than a year ago, on October 31, 2008.

FOIA Processing

8. **Delay in the FOIA process has been a persistent problem, and despite efforts under Executive Order 13392, many agencies have not been able to meaningfully reduce their FOIA backlogs.**

   a. **What do you see as the role of DOJ in helping and/or compelling agencies to reduce their backlogs?**

Response: The Department is charged by the FOIA itself with the responsibility of encouraging agency compliance with the FOIA. As a result, we have long focused on the issue of backlogs and the need to improve the time taken to respond to requests. Indeed, the Attorney General's FOIA Guidelines stressed that agencies must make it a priority to respond to requests in a timely manner and not to view long delays as an inevitable and insurmountable consequence of high demand. The Attorney General has also required agencies to include data on their backlogs in their agency Annual FOIA Reports.

b. Many agencies still do not permit members of the public to submit FOIA requests by e-mail, although doing so would save time and money for both requesters and agencies. Will you issue additional guidance requiring all agencies to accept FOIA requests electronically?

Response: The Department recognizes the value of improving the efficiency of the process and is considering the issue of developing guidance on the electronic acceptance of electronic FOIA requests.

Privacy and MWCOG Multi-Jurisdictional Database

9. In 2002, the Metropolitan Washington Council of Governments ("MWCOG") received federal funding under the COPS program for the development of a Regional Pawn Sharing Database system. State and local law enforcement agencies use this database to aggregate records of consumer credit transactions by pawnbrokers and to deter the marketing of stolen property. The information contained in the Regional Pawn Sharing Database includes sensitive personal information about U.S. consumers who patronize pawnbroker establishments, including name, date of birth, race, address, an identification number from a state-issued identification document (e.g., driver's license) or Social Security Number, as well as occasionally, biometric identifiers such as fingerprints. Given the sensitive personal information routinely maintained in the Regional Pawn Sharing Database, there is growing concern that this database could be vulnerable to privacy and civil liberties violations.

What steps is the Department taking to ensure that state and local law enforcement agencies that receive federal funding to participate in Regional Pawn Sharing Database comply with the privacy and civil liberties requirements established under 28 C.F.R. Part 23?

Response: One of the grant conditions included in the COPS Office Grant Owners Manual for Technology grantees is that grantees using COPS funds to operate an interjurisdictional criminal intelligence system must comply with the operating principles of 28 C.F.R. Part 23. The grantee is required to acknowledge that it has completed, signed and submitted with its grant application the relevant Special Condition certifying its compliance with 28 C.F.R. Part 23.

All recipients are required to agree to the Criminal Intelligence Systems/28 C.F.R. Part 23 Compliance Special Condition as part of their application proposal so the COPS Office can track which agencies intend to use their grant funds to operate interjurisdictional criminal intelligence systems. If an agency intends to use grant funds to operate an interjurisdictional criminal intelligence system, it should have indicated this in its application and certified the agency's agreement to comply with the operating principles found at 28 C.F.R. Part 23. An agency now must comply with 28 C.F.R. Part 23 in operating the interjurisdictional criminal intelligence system funded through its COPS grant.

Grant monitoring and evaluation are critical aspects of all COPS grant programs. The COPS Grant Monitoring Division was established in FY1998 to assess grantee progress in meeting the terms and conditions of COPS grants, assist grantees in their grant implementation, and document and disseminate law enforcement "best practices." In addition, routine monitoring activities assist in tracking the progress and success of COPS funding programs and the advancement of community policing.

In FY2007, the COPS Office began working with the newly-established Office of Audit, Assessment, and Management (OAAM), which was created through the Department of Justice Reauthorization Act of 2005 and subsequently housed within the Office of Justice Programs (OJP) in 2007. The COPS Office has collaborated closely with OAAM since its inception to improve operating efficiency and effectiveness and enhance programmatic oversight for all DOJ grant-making agencies. As its primary achievement to date, a grant assessment tool was developed by the OAAM inter-agency working group to provide a common, organized framework and methodology for systematically and objectively assessing risk associated with grants and/or grantees through a standard set of criteria. By using this tool, COPS and OJP can work to ensure that grantees most in need of assistance are aided through on-site and desk-based monitoring efforts, and that monitoring activities are prioritized based on potential vulnerabilities while simultaneously fostering consistency across all DOJ grant-making components.

The most common methods of monitoring by the COPS Office are:

- ***Site Visits*** – Based on risk assessment criteria as described above, certain grantees are selected for on-site monitoring visits. On-site monitoring is generally conducted through a one-day or two-day site visit, including an entrance interview with law enforcement and government executives, a thorough programmatic and financial review of the grants awarded, and community visits to businesses, neighborhood associations, and/or sub-stations where COPS staff can observe a department's community policing efforts firsthand. Agencies are notified in writing of the results and any actions necessary to remedy identified grant violations.

- ***Office-Based Grant Reviews (OBGRs)*** – Also based on risk assessment criteria as described above, certain grantees are selected for reviews conducted at the COPS Office. Similar to an on-site grant review, an OBGR begins with an internal examination of grant documentation, followed by contact with the grantee to collect any additional and/or supporting documentation demonstrating compliance with grant conditions and requirements. Staff work with grantees to correct any identified problems or deficiencies through telephone contact or written correspondence.

- ***Complaints / Allegations*** – The COPS Office responds to complaints from citizens, labor associations, media, and other sources. Any written complaints or allegations of non-compliance are resolved via direct contact with the grantee in question, in a manner similar to that used for issues identified through either site visits or office-based grant reviews.

QUESTIONS POSED BY SENATOR FEINGOLD

1. **As we discussed at the hearing, I requested in letters I sent to the President on April 29 and June 15 that the administration withdraw the January 2006 White Paper and other classified Office of Legal Counsel (OLC) memos providing legal justification for the NSA's warrantless wiretapping program. At the hearing, you stated that the OLC is reviewing those opinions to determine whether they can be made public.**

   a. **How soon can we expect that review to be completed?**

   b. **My understanding is that OLC attorneys also are reviewing those opinions to determine whether they should be withdrawn. Can you confirm that understanding? When do you expect that review to be completed?**

Response to subparts a and b: The review processes described in your question are still ongoing. The Department will work with you and your staff to provide a better sense of the timing of the completion of both reviews.

2. **President Obama, in his May 29 statement on cyber security, offered the following reassurance: "Let me also be clear about what we will not do. Our pursuit of cyber security will not – I repeat, will not include – monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans." This is a clear statement of the importance of personal privacy as the administration moves forward on cyber security. But the Cyber Space Policy Review report released that day by the White House acknowledged a "complex patchwork" of applicable laws and the "paucity of judicial opinions in several areas."**

   a. **Is there a currently operative Justice Department legal opinion to guide the application of existing law or any new legislative framework that might be proposed? If so, when and by whom was the opinion developed?**

   b. **Is this topic part of the overall review that is underway of OLC memos?**

Response to subparts a and b: There are at least two currently operative OLC opinions that relate to cyber security, both of which were issued during the last administration. The White House recently completed its 60-day study of cyber security issues, and the Department has been working with other Executive Branch agencies to follow up on that study, particularly with regard to reviewing the scope of various surveillance laws and new technologies that might be used to curb intrusions in U.S. government networks.

c. **Will you make public as much of the relevant legal analysis as possible, and will you provide any existing opinions, and any future opinions on this topic, to Congress, so that staff with appropriate clearances will have complete access to the legal analysis?**

Response: We understand that staff members of this Committee have had access to the opinions referenced above, and the Department will work with you to provide you additional information. The Department will consider publication of any unclassified opinions as part of its ordinary publications process.

3. **I was very pleased that you decided to vacate the order issued by Attorney General Mukasey in *Matter of Compean*, and that you have directed the Executive Office for Immigration Review to initiate a rulemaking procedure to evaluate the existing framework for making claims of ineffective assistance of counsel. What is the timetable for issuing a final rule in this matter?**

Response: Attorneys from the Executive Office for Immigration Review (EOIR), in consultation with other relevant Department components, began the review process promptly after the announcement of the Attorney General's order to initiate the rulemaking, evaluate the issues, make recommendations, and begin drafting appropriate language. The rulemaking process involves many separate steps, including publication of a proposed rule and a final rule, and review by the Office of Information and Regulatory Affairs under Executive Order 12866, and some rules may take up to a year or more for completion of the process. This particular matter calls for careful consideration of the important legal and practical concerns presented in these cases, and the Department will also be allowing an appropriate period for public comment. Though no specific target date has been set for issuance of a final rule, the Department will be monitoring the progress of the ongoing review in order to ensure a timely completion of the rulemaking process.

4. **The recent revelations of high-level officials involved in authorizing or ordering the use of torture, including the disclosure last month of the Office of Legal Counsel memos, the publication of the 2007 report of the International Committee of the Red Cross that concluded that our government committed torture, and the report released last month by the Senate Armed Services Committee on the use of torture by the Defense Department, all raise serious allegations of crimes being authorized and ordered at the very highest levels of government. What steps have you taken to ensure that there is an independent review of the evidence of possible criminal acts, and how would you respond to those who believe that only the appointment of an independent prosecutor will allow a credible investigation of wrongdoing to take place?**

Response: The President has stated that such prosecutorial decisions are up to the Attorney General and that he does not want to pre-judge such decisions. In general, the Department does not comment on the existence or non-existence of investigations. We can tell you that with respect to the lawyers who authored the OLC opinions at issue, the Department's Office of Professional Responsibility is conducting a review to determine whether the memos were consistent with the professional standards that apply to Department attorneys. It would be premature at this time to comment on the outcome of that review or on other possible investigations.

5. **At your confirmation hearing in January, I asked if the Justice Department would prepare a detailed report about implementation of the federal death penalty from 2001 to 2008, similar to a report that was issued in 2000. You agreed that it would be appropriate to do an in-depth report and share the results publicly – a response that I greatly appreciated. What is the status of this effort, and when do you expect it to be completed?**

Response: In April 2009, the Attorney General asked the Deputy Attorney General to create and chair a working group to undertake a comprehensive review of federal sentencing and corrections policy. To carry out the review, the Deputy Attorney General created a three-tier structure comprised of: (1) the Sentencing Working Group, an intra-Departmental team representing relevant interests within the Department; (2) a Steering Committee of Department leaders on sentencing and corrections; and (3) Issue Teams responsible for compiling information and drafting papers on individual issues for the Working Group. The group is seeking the perspectives of parties outside the Department by convening meetings and listening sessions.

The Working Group has recently created a new Issue Team to review the Department's handling of capital cases. The Death Penalty Issue Team will take a fresh look at the Department's death penalty protocols and decision-making process, and develop recommendations for the Deputy Attorney General and Attorney General. We think that this structure will provide for a thoughtful analysis of the issue within the larger context of overall sentencing and corrections policy. Part of this group's initial effort will be to undertake a comprehensive review of existing research on racial, ethnic, and geographic disparities in federal capital cases, with an eye towards deciding whether additional studies are warranted and what the focus of any such studies should be.

QUESTIONS POSED BY SENATOR SCHUMER

1. **As you know, I am the Chairman of the Rules Committee, which has jurisdiction over the administration of federal elections. On March 11, we held a hearing to look into the problems with our current voter registration system. We had found that as many as 7 million eligible voters either could not vote or did not vote due to registration issues. This is unacceptable. I know you would agree with me when I say that voter registration is the lifeblood of our republic. And there are several components to achieving successful voter registration under our current system. Two of these components are 1) that states comply with the requirements of the National Voter Registration Act (NVRA), and 2) that various Federal agencies be "designated" as voter registration agencies in order to decrease unnecessary obstacles to registration. I believe both are vital to an effective registration system under our current regime.**

   a. **What steps will you take to reverse the Department of Justice's past practices of non-enforcement of NVRA and the Help America Vote Act, particularly with respect to registering voters from the public assistance lists?**

Response: The Department is committed to enforcing all of the NVRA's provisions to the fullest extent possible. To that end we have commenced a program to evaluate current data, including that just released by the Election Assistance Commission in a report dated June 30, 2009, to determine which jurisdictions are failing to comply with the voter registration requirements under Section 7 of the NVRA. We have committed significant resources within the Department to investigate a number of states to determine whether they are complying with the law. If we believe that they are not, we intend to contact them and, in the event we cannot agree on the terms of an appropriate consent decree, to initiate lawsuits against them.

In the same vein, we are evaluating available information to determine whether states are complying with the NVRA's requirement that they designate additional agencies as voter registration agencies. In the past year, similar efforts led to voluntary actions by Iowa, Nebraska, and Mississippi to amend their laws to comply with the NVRA. We expect to continue these efforts and hope to achieve similar results.

   b. **Would the Department be willing to sue states out of compliance with NVRA?**

Response: Yes. We have recently sent a notice letter to a state informing it that we have received authorization to commence a lawsuit against it alleging claims arising out of violations of Section 7 of the NVRA. We currently are negotiating a possible resolution

of these claims. We fully expect to send similar notice letters to other states determined to be out of compliance with the NVRA, and, where necessary, to commence lawsuits.

2. **There is another aspect of NVRA that deserves significant attention. In order to help improve voter registration and make it easier for some in our population – especially our veterans – to vote, various Federal agencies can be designated as "voter registration agencies." In fact, I wrote to President Obama requesting that this be done as soon as possible. Now, it does not need to be implemented for every Federal agency, but certainly the Department of Veterans' Affairs and HHS would be appropriate places to start.**

   Do you agree with me that such designations are both necessary and helpful, and do you know of any plans to move forward with these designations?

Response: The Department of Justice is according high priority to enforcing Section 7 of the NVRA, and the Department supports the concept of designating federal agencies as voter-registration agencies. We encourage States to designate appropriate federal agencies as voter-registration agencies, and we will work with those federal agencies to make sure they are aware of the benefits of providing voter-registration services. To reach all segments of the population, federal agencies that have heavy contact with members of the public can, and should, play an important role. The Department is currently exploring the legal and practical issues involved in designating particular federal offices as voter-registration agencies.

3. **Early this year, the U.S. Attorney for the District of Columbia declined to prosecute the former head of the Civil Rights Division, Bradley Schlozman, for statements that he made to me and other Senators that the Office of Inspector General found to be untrue. At your confirmation hearing, I asked if you would refer this case to the U.S. Attorney in Connecticut, who is conducting a review of politicization at the Department under the last administration, and to give me an update on this investigation.**

   a. **Can you provide me and the other members of the Committee with an update at this time?**

Response: At his confirmation hearing, the Attorney General indicated that he would review the prosecutive decision that had been made with respect to Mr. Schlozman, and that review is ongoing. Because the review is ongoing, it would be inappropriate to comment further regarding the status of the review. At the conclusion of the review, we will consider whether there are additional disclosures we can make to the Committee consistent with any disclosure restrictions such as those contained in Federal Rule of Criminal Procedure 6(e).

4. As Chairman of the Immigration Subcommittee, one of my primary concerns is the effective operation of our immigration court system. In recent years, many court officials have called for an increase in funding for the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) citing the complexities of immigration cases, unmanageable dockets and unrealistic case completion deadlines.

On average, Immigration Judges have less time than before to dispose of a case despite their burgeoning case loads. In 2007, they received more than 334,000 matters—including bonds, motions and removal proceedings—up from roughly 290,000 in 2002. Based on the total number of judges, this amounts to nearly 1,500 matters per Immigration Judge. In comparison, U.S. District Court judges average 483 matters completed per year.

The Board of Immigration Appeals (BIA) also needs a sufficient number of judges to do its job fairly and efficiently. Reports indicate that there are more than 8,700 cases that took more than five years for the BIA to complete, and tens of thousands more that were pending before the courts for more than two years before they were resolved.

a. What steps have you taken, or do you plan on taking, to ensure that Immigration Judges and BIA members can manage their burgeoning case loads?

Response: The Department of Justice and the Executive Office for Immigration Review (EOIR) continue to address the caseload challenges facing the immigration courts and the Board of Immigration Appeals (BIA). We are responding to these challenges by deploying new and existing resources to locations where the case priorities are highest and the need is greatest, by requesting budget increases for additional staff, and by using video technology to increase efficiency and flexibility. For example, EOIR has moved, and will continue to move, Immigration Judge resources from non-detained to detained locations to accommodate the increasing detained docket.

Overall, EOIR continues to transform its operations to improve and enhance the BIA and immigration courts. The final rule to increase the BIA from 11 to 15 members was published in the *Federal Register* on June 16, 2008. During Fiscal Year (FY) 2008, the Attorney General appointed five new BIA members and a new Chair. A new Vice Chair was appointed in January 2009. The vacancy announcement for the remaining BIA member position closed on April 9, 2009, and will be filled through a competitive selection process. In addition, Immigration Judges and senior EOIR attorneys may serve as temporary members, and have in the past.

Additionally, EOIR has increased the number of Immigration Judge positions and is in the process of filling them. The Administration worked with Congress to secure additional funding in FY 2009. As a result, EOIR received $5 million to help increase the number of Immigration Judges from 224 on board to 253, and fund additional staff.

EOIR brought on board 10 new Immigration Judges on April 12, 2009, and the hiring process is ongoing for the remaining new Immigration Judges who will help EOIR reach its target of 253. Also, the President's 2010 budget request includes an increase for EOIR of 172 positions, including 28 Immigration Judges.

b. How many additional Immigration Judges, BIA members, and staff attorneys do you plan to hire in FY 2009 and 2010?

Response: As stated above, EOIR brought on 10 new Immigration Judges in April 2009, and the hiring process is ongoing for the remaining new Immigration Judges who will help EOIR reach its target of 253. The vacancy announcement for the remaining BIA member position closed on April 9, 2009, and will be filled through a competitive selection process. Additionally, the hiring process for 6 staff attorneys is ongoing. Finally, EOIR has requested 172 new positions, including 28 Immigration Judge positions and 16 staff attorneys, in the President's 2010 budget.

5. With regard to combating the smuggling of illegal aliens into the United States, a 2005 GAO report concluded that—in order to effectively combat alien smuggling—the Government needs civil forfeiture authority that would enable the Government to seize safe houses used in alien-smuggling. This authority has yet to be granted by Congress. I spoke with Secretary Napolitano last week about my intention to draft a bill giving the Government this authority and she was enthusiastically supportive.

a. Would you support my bill giving the Government this civil forfeiture authority to seize safe-houses used in alien-smuggling, and is that something you will work with me to enact?

Response: The Department would strongly support such a provision. The gap in civil forfeiture authority for facilitating property in alien smuggling cases continues to be a real problem for law enforcement. This lack of authority, particularly as it pertains to real property, gravely hampers our efforts to use forfeiture for its deterrent and punitive effects in these cases. We will give whatever assistance is necessary to include a provision authorizing civil forfeiture of facilitating property in proposed legislation and to support its enactment.

6. I recently toured the Federal Correctional Facility in Otisville, New York. What I saw there was deeply troubling. Otisville is operating at 42.7% over capacity and is 14% understaffed. Federal prisons in Manhattan, Brooklyn and Ray Brook, are all more than 50% overcrowded and are also severely understaffed. Nationally, federal prisons are operating around 37% over their rated capacity and are understaffed by an order of 13.4%. Inmates are being held in areas not originally designed as inmate sleeping areas and, at least on some occasions, non-correctional prison staff is being used for correctional duties. Fortunately, thanks to some very outstanding work by our corrections officers, all four New York facilities I mentioned have been

exceptionally safe, and assault numbers were down in 2007. Nonetheless, I'm sure you will agree that we cannot treat prisons like an afterthought.

a. With this in mind, does the Department believe that more funding is necessary to ensure safety for prison staff and security for inmates?

Response: The Department believes it is important to ensure that the federal prison system is adequately funded and safely staffed. For FY 2010, the Administration is requesting an increase of $384 million over FY 2009 enacted for the Bureau of Prisons (BOP) Salaries and Expenses Budget. The FY 2010 budget request supports current services and also provides funding to begin hiring for the two new prisons, which will eventually add 737 new positions including 350 correctional officers.

b. If not, how is the Department planning to address these growing concerns?

Response: As noted above, the Administration is requesting increased funding to ensure adequate resources for BOP to support safe staffing levels. The Department believes that BOP plays a key role in the administration of the federal justice system. BOP provides safe, secure and humane care to federal inmates. BOP also provides programs and other self-improvement opportunities that facilitate successful reentry into society post-release. The Department is focused on finding ways to improve the staffing levels at BOP as well as the training, educational and treatment options available to inmates. The Attorney General recently formed a Sentencing and Corrections Workgroup to make recommendations for addressing the critical challenges facing the federal prison system among other issues.

7. A common refrain from people who are opposed to more restrictive gun laws is that we should "enforce the existing laws on the books." I will say that I think this is a fair statement, and it's one of the rare places on this issue on which we should all be able to agree. But I'm concerned that, at least with respect to the ATF, current staffing limitations may make it impossible to even enforce some of the gun laws we have now. And I say all of this with the important caveat that there are only a few bad apples out there – a handful of gun dealers are responsible for the overwhelming majority of illegally sold guns in the country. Our goal should be finding the bad apples – and the best way to do that will be through routine inspections. As you know, the ATF is now empowered to conduct an annual inspection of a federal firearms licensee's inventory and records. But according to recent news reports, most gun dealers are only inspected once every three to six years, because the pool of ATF auditors is stretched dangerously thin.

a. That estimate was accurate as of April of this year. Do you have any reason to believe that anything has changed with respect to that estimate?

Response: Currently, the total number of Federal Firearms Licensees (FFL) is approximately 114,000. In addition to this number, there are approximately 11,000 Federal Explosive Licensees (FEL), which ATF also regulates. ATF is required, by law, to conduct inspections of FELs once every three years. ATF Industry Operations Investigators (IOI) also conduct approximately 5,000 inspections of new FFL applicants and 1,300 new FEL applicants each year as well as inspections to assist law enforcement and seminars to promote compliance. Given these figures, and the fact that ATF's IOI is currently 580 field IOIs, ATF estimates that FFLs are inspected once every three to six years.

While ATF may not have the resources to conduct annual inspections of every FFL, ATF has a number of inspection programs focusing on FFLs who may either be high-volume, be part of a specific type of the industry, or have previous compliance issues. These focused inspection programs allow ATF to focus its limited resources on those FFLs who are of greatest interest to ATF. ATF has found that increased inspections result in increased compliance. The increase in inspections affords additional opportunities for FFL education which results in improved accountability of firearms inventory, as well as improved record keeping, which will result in a higher percentage of successfully completed traces of firearms.

Likewise, as of 2007, ATF said publicly that conducting a single inspection of every federal firearms licensee in the country would take approximately seventeen years.

b. Do you have any reason to believe that anything has changed with respect to that estimate?

Response: In FY 2008, ATF conducted approximately 11,000 compliance inspections of FFLs. The current population of FFLs is 114,000. Assuming that ATF could continue that same level of inspections, it would take approximately 10 years to conduct a single inspection of every FFL.

c. In light of these numbers, are you concerned that the ATF may be understaffed?

Response: As previously stated, ATF's current IOI field population of 580 does not allow for inspection of FFLs on an annual basis, and limits inspections to a three to six year inspection cycle. The integrated efforts of our agents, IOIs, attorneys, scientists, financial auditors, and administrative professionals allow ATF to effectively identify, investigate, and recommend for prosecution violators of the Federal firearms and explosives laws. On an annual basis, we are able to evaluate the compliance level of 10% of our FFLs via in person inspections. Additionally, our request for fiscal year 2010 includes an additional 93 positions, including 35 new agents.

8. I understand that the Department of Justice is investigating for accomplices to the murder of Dr. George Tiller, and for potential violations of the Freedom of Access to Clinics Entrances (or "FACE") Act – the law that prohibits threats of force or physical obstruction of reproductive-health providers and seekers. According to newspaper reports, criminal enforcement of this important law had declined by more than 75 percent over the last 8 years under the previous administration. Therefore, I appreciate that the Department has launched its investigation, and feel that we must work together to stop these unconscionable acts of violence.

a. How can we work with the Department of Justice to ensure that health-care professionals are protected from acts of violence?

Response: The Attorney General shares your concern for the safety of our nation's health-care providers, and you can be assured that the Department of Justice is doing everything in its power to ensure that they are protected from acts of violence. As you noted, there had been a decline of violent acts against reproductive health care providers in the past several years, but we recognize that recent events may result in renewed unlawful acts, and the Department is prepared for that possibility. Immediately after the murder of Dr. George Tiller, the Criminal Section of the Civil Rights Division coordinated with the United States Marshals Service (USMS), the Federal Bureau of Investigation (FBI), and the provider groups to focus on the immediate safety of other clinic workers around the country. The Attorney General also immediately directed USMS to provide protection to clinics and providers assessed to be at risk in the wake of Dr. Tiller's murder. For example, the USMS, FBI and Wichita Police Department (WPD) provided nearly unprecedented security at Dr. Tiller's funeral and to providers who attended the funeral. As part of this endeavor, the USMS dispatched more than 70 Deputy Marshals to Wichita, Kansas.

Additionally, working with the provider groups, the USMS prioritized a number of clinics and doctors for assessment and protection. USMS established a protocol for assessing threats at clinics and providing additional protection on an as-needed basis. USMS sent a directive to USMS personnel in each judicial district to provide them with criteria for assessing potential threats to the providers within their individual jurisdictions. Threats against clinics and providers are being treated with the same level of urgency as would be accorded threats against federal prosecutors and judges. USMS will continue to coordinate with providers to assess and meet their security needs.

Department officials have held two meetings of the National Task Force on Violence Against Health Care Providers to coordinate the law enforcement efforts with respect to the ongoing federal investigation of Dr. Tiller's murder and to ensure that appropriate security measures are undertaken at abortion clinics around the nation. The Attorney General also personally met with representatives from organizations that seek to protect reproductive rights to convey my commitment to ensuring the safety of reproductive health care providers and seekers, and to listen to their concerns. Additionally, USMS and the FBI are coordinating with the Security Directors for the

provider groups, and Civil Rights Division attorneys have been in regular contact with representatives from the provider groups. The FBI has also directed its field offices to make contact with all clinics that provide abortion services to ensure that the lines of communication are open.

We appreciate your support and concern for the safety of our nation's health care providers. Your work and that of key sponsors who ensured passage of the FACE Act has given the Department a critical tool in our efforts to protect the public. As you know, enhancing civil rights enforcement is a top priority for the Department of Justice. As part of this effort, the President's Budget includes a significant increase in funding to revitalize the Civil Rights Division, which is at the forefront of enforcing the FACE Act.

9. Last week, the Department issued a brief arguing in favor of upholding the Defense of Marriage Act in federal court. Many members of the LGBT community were upset by this brief.

a. Can you please tell me what knowledge you had of this before it was written?

Response: The Attorney General was aware of the brief before it was filed.

b. Can you please elaborate on how this administration's position on the Defense of Marriage Act differs from that of the Bush Administration?

Response: The Administration believes that the Defense of Marriage Act should be repealed. At the same time, the Department of Justice has long followed the practice of defending statutes enacted by Congress when they are challenged in litigation, even when the Department disagrees with the statute as a policy matter, so long as reasonable arguments can be made in support of its constitutionality. This longstanding and bipartisan tradition accords respect to co-equal branches of government.

Pursuant to that longstanding practice, in the Department's first court filing defending the constitutionality of DOMA since President Obama took office, the Department argued that given the strength of competing convictions on this still-evolving issue, Congress could lawfully decide to continue providing federal benefits on the basis of a traditional, centuries-old definition of marriage recognized by all 50 states and the District of Columbia, while reserving judgment with respect to new definitions of marriage recognized by no states at the time DOMA was enacted and by a minority today. The Department did not defend certain rationales for the Act that had been presented in briefs submitted in the Bush Administration, including asserted government interests in encouraging "the development of relationships that are optimal for procreation" and "the creation of stable relationships that facilitate the rearing of children by both of their biological parents."

QUESTIONS POSED BY SENATOR WHITEHOUSE

1. **The Department under your stewardship his continued and reinforced the Bush Administration's arguments regarding the "state secrets" defense. I understand that on a complex issue like this, one may not wish to revisit it on the schedule of an ongoing case, or in that particular context, and I recognize that Senate delays have slowed down the confirmation of your new management team.**

   Can we expect a policy review of this defense, and if so, on what schedule? Are there other areas in which you anticipate or are conducting such policy review?

Response: The Attorney General knows how important this issue is to the Committee and the American people. It is also important to the President. As you know, the President has recently committed to reform of the privilege and has set forth principles to guide that reform. They include: (1) a stricter legal test for deciding what material can be protected under the privilege; (2) a formal process of review within the Justice Department prior to approval of any assertion of the privilege in court; and (3) voluntary reporting to notify Congress of the cases in which the privilege has been invoked and the reasons for doing so.

The Attorney General is also committed to an in-depth review by the Department of the state secrets privilege in all cases in which it was asserted by the prior Administration. He has asked the Deputy Attorney General to set up a task force to carry out that review. The task force was instructed to: (1) assess the assertion of the privilege in each pending case and evaluate its appropriateness under existing law; (2) determine whether the privilege could be asserted in a narrower fashion that would allow the case, or at least key parts of the case, to continue; and (3) identify key policy issues regarding invocation of the privilege in these cases and generally.

The Administration is considering reform consistent with the President's commitments, and the work of the Department's task force. There is extensive interagency discussion and coordination going on now. We recognize that we need to ensure the public has confidence that the privilege is invoked only in the rare cases where appropriate.

We intend to release a public report of our findings and intend to share a copy of the report with Members of this Committee prior to publication.

In addition to reviewing the state secrets privilege, Justice Department personnel are participating in the task forces established pursuant to the Executive Orders the President signed on January 22, 2009, to review interrogation policy (Executive Order 13491); policy regarding detainees at the Guantanamo Bay Naval Base (Executive Order 13492); and detention policy options (Executive Order 13493).

2. **A great deal of damage was done to the Department of Justice during the last administration. What procedures are now in place for capturing disclosures from career Department employees about that damage – be it professional or ethical misconduct, politicized decision-making, or something else? To what office do such disclosures go, so that they can be properly analyzed and, if necessary, acted upon?**

Response: Allegations that relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice are reported to the Office of Professional Responsibility. Allegations of criminal wrongdoing or administrative misconduct are reported to the Office of the Inspector General. DOJ employees may also consult a Designated Ethics Official, a Professional Responsibility Officer, the Office of General Counsel in the Executive Office for U.S. Attorneys, the Professional Responsibility Advisory Office, or, in some components, an Ombudsman. OPR and the OIG coordinate investigations in matters that overlap their respective jurisdictions.

3. **On June 15, 2009, the Department of Justice submitted a brief in support of the Defense of Marriage Act (DOMA), the law that protects the right of states not to recognize same-sex marriages or provide same-sex married couples with federal benefits. At the same time, the President has pledged to support repeal of DOMA (and I too would like to see it repealed). Was the litigation posture taken after a policy review by the Department, or a continuation of the litigation strategy of the previous administration? The distinction between a policy position and a litigation posture is important.**

Response: This Administration believes that the Defense of Marriage Act should be repealed. The Department of Justice, however, has long followed the practice of defending statutes enacted by Congress when they are challenged in litigation, even when the Department disagrees with the statute as a policy matter, so long as reasonable arguments can be made in support of its constitutionality. This longstanding and bipartisan tradition accords the respect appropriately due co-equal branches of government. Consistent with this tradition, the Department has defended DOMA in litigation, including in the *Smelt* case referenced in this question, over the past five years.

In the June 15, 2009 brief—the Department's first court filing on this issue since President Obama took office—the Department argued that given the strength of competing convictions on this still-evolving issue, Congress could lawfully decide to continue providing federal benefits on the basis of a traditional, centuries-old definition of marriage recognized by all 50 states and the District of Columbia, while reserving judgment with respect to new definitions of marriage recognized by no states at the time DOMA was enacted and by a minority today. The Department did not defend certain rationales for the Act that had been presented in briefs submitted in the Bush Administration, including asserted government interests in encouraging "the development of relationships that are optimal for procreation" and "the creation of stable relationships that facilitate the rearing of children by both of their biological parents."

QUESTIONS POSED BY SENATOR WYDEN

1. **Article 4 of the Mexican Federal Penal Code allows for the prosecution of Mexican nationals who have committed a crime in the US and fled back to Mexico. In certain cases, extradition may not be achievable, and Article 4 provides the sole process for obtaining justice for US crime victims and imposing punishment upon the criminal. State and local law enforcement authorities in many states, including Oregon, have had success pursuing Article 4 prosecutions. However, complying with the requirements of Article 4 and working with Mexican law enforcement officials to complete the prosecution is quite an entailed process. Many jurisdictions lack the resources and expertise to pursue Article 4 cases.**

Response: Your statement is correct. Under Article 4 of its domestic penal code, Mexico has extraterritorial jurisdiction to prosecute any Mexican national who commits a crime in foreign territory. In these cases, evidence from a U.S. investigation is transferred to special Article 4 courts in Mexico and the defendant is tried in Mexico, with Mexican prosecutors largely relying on evidence developed in the U.S. investigation. This type of prosecution is not unique to Mexico and is used, if sporadically, in countries that do not extradite its nationals or, as in the case of Russia, where we do not have an extradition treaty relationship. However, Article 4 prosecutions in Mexico are more common and better known to our state prosecutors, because of our shared border and the potential volume of cases.

Article 4 prosecutions were most used widely in the past when Mexico did not extradite its nationals, and thus prosecution in Mexico was the only way to address crimes committed in the U.S. by Mexican nationals who fled across the border. However, that situation has changed dramatically in this decade. A Mexican Supreme Court ruling in 2001 made it clear that Mexican law did not prohibit extradition of citizens or restrict extradition of citizens to extraordinary cases. Since then, the number of extraditions from Mexico has increased steadily each year, with a record 95 fugitives extradited in 2008, the vast majority of whom were Mexican citizens. Some states continue to refer Article 4 cases to Mexico, when they believe that a prosecution in Mexico is a satisfactory way to see that justice is done in a particular case. However, with extradition now available in most cases, state and federal prosecutors increasingly look to extradition, rather than Article 4 prosecution, as the means for bringing defendants to justice. At this juncture, the Department of Justice has been concentrating its resources and expertise on assisting the increasing number of state and federal prosecutors seeking extradition of fugitives. Indeed, the greatest expertise in Article 4 prosecutions is with officials in states such as California and Texas – and this may be true of Oregon as well – officials who we have found to be very willing to share their expertise and insights with prosecutors from other jurisdictions. As to costs, it is not clear whether the costs for an Article 4 prosecution would necessarily be more or less than those for an extradition. We do know that the costs in international cases, under either approach, can sometimes present difficulties, particularly for smaller jurisdictions.

2. **Given the increasing criminal problems arising from the cross-border activities of Mexican drug cartels, do you believe that Article 4 is an important tool for pursuing justice for crimes committed in the US by Mexican national suspects?**

Response: In the arsenal of tools available to address that problem, Article 4 prosecutions may be a useful alternative for some state and local jurisdictions in particular cases. However, for most cases, and certainly for most major drug cases, we believe extradition is a much better alternative. Among other things, our prosecutors and investigating agents have developed tremendous expertise in investigating and prosecuting sophisticated organized crime groups. Our investigations are structured to meet U.S. evidentiary requirements and utilize investigative tools and procedures that conform to U.S. legal requirements and U.S. practices. Transferring these sorts of complex investigations to another country for prosecution under a different system of laws and procedures could be very problematic, and therefore we do not believe Article 4 is a helpful alternative to extradition for these types of cases. Indeed, because of the importance of extradition in our overall strategy against the Mexican drug cartels, we are now in the process of establishing a dedicated Organized Crime Drug Enforcement Task Force (OCDETF) International Unit in the Office of International Affairs in the Department's Criminal Division, to focus on OCDETF cases involving the highest-level Mexico-based targets.

3. **Are you aware of any barriers that would prevent the Department of Justice's Office of International Affairs from providing assistance to state and local law enforcement officials and providing greater coordination and efficiency to the development of Article 4 cases?**

Response: As noted above, in recent years, the Office of International Affairs (OIA) has concentrated on improving our extradition record with Mexico, and on working with our Mexican counterparts to work through legal and procedural barriers that made extradition, and particularly extradition of Mexican nationals, so difficult in the past. This is one area where we have had great success nonetheless. We have gone from a dozen extraditions from Mexico in 2000 to nearly one hundred in 2008. We would be concerned about the OIA taking on new responsibilities in coordinating Article 4 prosecutions for the following reasons.

First, we believe that extradition is the best way to bring foreign fugitives to justice, and that thus extradition, rather than transferring prosecution to foreign courts, should be our priority. Second, since extraditions are part of the foreign relations responsibilities of the federal government, it is necessary that OIA be available to assist state and local prosecutors as well as our federal prosecutors in extradition cases. That is not true with Article 4 prosecutions, where state authorities may directly invoke the process. Third, involvement of OIA, which now handles thousands of international cases a year, could actually delay the Article 4 process and add another level of bureaucracy. Experience indicates that those states that have handled Article 4 prosecutions directly are the states that are the most efficient and obtain the best and most satisfactory results.

Fourth, at this point the expertise with Article 4 prosecutions is at the state, not the federal level. The involvement of OIA is of course available when necessary, but for those states that have developed their own expertise, we do not believe that interjecting OIA into the process would be helpful.

In contrast, OIA recently has obtained record numbers of extraditions from Mexico for a wide variety of offenses. For example, the past three years (2008, 2007, and 2006) saw records numbers of fugitives returned by Mexico to the United States. In 2008, Mexico extradited a total of 95 fugitives, 78 of whom were Mexican nationals, and 23 of whom were extradited for drug charges, to the United States. In addition, Mexico deported approximately 172 fugitives to the United States in 2008. As recently as 2000, Mexico had extradited only 12 fugitives to the U.S. only one of whom was a Mexican national. Given the increasingly successful rate of extraditions from Mexico, Article 4 prosecutions are and should remain the rare exception.

In sum, we believe state governments wishing to continue to transfer prosecutions to Mexico under Article 4 should do so under their own authority and resources but that this is not an area where the federal government need assert responsibility or divert resources already strained by other critical work.

QUESTIONS POSED BY SENATOR HATCH

1. **Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by terrorist suspects. Director Mueller appeared before this committee this spring and described how important these tools are in furthering the FBI's mission in investigating terrorism activity here in the United States. He also expressed his support for reauthorizing the provisions without modifications. The Director also provided the committee some useful statistics regarding the usage of these techniques. For example, between 2004 though 2007 the FBI used the business record examination tool 225 times. During that same time period, the FBI used roving wiretaps 147 times. What is your assessment of these tools and does the administration and the Department of Justice support their reauthorization without additional modifications?**

Response: As you may be aware, the Administration recently completed its review of the provisions of the PATRIOT Act that were set to expire on December 31 of this year. As part of the review, the Department consulted with the experts that deal with the provisions set to sunset as well as other stakeholders. We provided a comprehensive assessment of these tools in a letter to Judiciary Chairman Leahy on September 14, 2009. For your convenience, we have attached a copy of that letter.

2. **There are 15 High Security prisons under the control of the Department of Justice. The total rated capacity of these facilities is 13,448 inmates. The current population of inmates in these facilities is 20,001. Presently, there is only 1 dedicated Supermax prison in the BOP arsenal and as you know this is located in Florence, Colorado. As of June 4, 2009, the current population of the Florence Supermax was 468 inmates. This number means that this facility is currently at its maximum capacity. ADX Florence already houses 33 inmates incarcerated there with ties to international terrorism. Inmates at ADX Florence are locked down for 23 hours a day. There is no congregate dining or religious services in this facility. I bring this up because this is exactly the same conditions that the high security unit at Guantanamo offers. With the administration's self imposed deadline for closure looming on the horizon there is a lot of criticism that there has not been one hint of a plan for Guantanamo's closure. Some of my colleagues in the majority party have floated the idea that there is plenty of room to incarcerate these detainees in BOP facilities. However, the BOP has stated time and again that they do not have the room. BOP has provided population figures to both sides of the aisle that proves this. Can you give me your view on where the Department of Justice is going to house these detainees when Guantanamo is closed?**

Response: We are currently examining a number of different options for housing Guantanamo detainees. We can assure you that we will not move any detainees into the United States unless and until we are convinced that the detainees will be held safely and securely in a facility that satisfies all of our security concerns.

3. **Recently, the Obama Administration has advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. This practice has been implemented by agents of the FBI. In January, when you appeared before this committee for your confirmation you stated that in your belief this country is "at war." In January, the President's issued an Executive Order stating that the Army Filed Manual would be the "rule book" governing the treatment of prisoners. The Army Filed Manual does not mention providing Miranda warnings to prisoners. Is the Justice Department endorsing an approach of using criminal investigative techniques in battlefield interrogations? Can you explain this rationale behind reading a waiver to combatants and Al Qaida operatives that informs them of their U.S. Constitutional rights in a foreign nation?**

Response: The Obama Administration has not advocated that *Miranda* warnings should be given to combatants captured on the battlefield in Afghanistan. As the Attorney General explained in his letter of July 21, 2009, to the Chairman and Ranking Member of the House Committee on Armed Services, "[i]t has been the long-standing practice of the U.S. government, including administrations of both parties, to use Miranda warnings in a very small number of cases in which it is important to our national security to ensure that statements made by terrorists can be used in a criminal prosecution. The warnings are given in locations removed from the battle-field, and only after the military's intelligence gathering and force protection needs have been met."

4. **As you know the College Football Bowl Championship Series (BCS) has been a matter of significant controversy for many throughout the country, including President Obama. While some may dismiss the BCS as too trivial a matter for government attention, it involves hundreds of millions of dollars in revenue every year, most of which is reserved for participants most favored by the BCS. This system places nearly half the schools who field Division I football teams at a competitive and financial disadvantage. While most reasonable people agree that the BCS arrangement is unfair, I, along with others, have raised questions about the legality of the BCS in light of our nation's antitrust laws. In addition, I know that you have been contacted by Utah state officials regarding this matter. At this point, what is the disposition of the Justice Department, particularly the Antitrust Division, regarding the BCS? Are there any ongoing Justice Department efforts to examine the legality of the existing BCS system?**

Response: The Department is committed to ensuring that the antitrust laws are enforced to maintain competition in every industry, including college sports, which is financially significant to the colleges involved and a vital part of our nation's sports and entertainment industry. The Department has reached no conclusion as to whether the BCS violates the antitrust laws. We note that the Department attended the recent hearing held on July 7, 2009, by the Antitrust Subcommittee of the Senate Judiciary Committee entitled "The Bowl Championship Series: Is it Fair and In Compliance with Antitrust Law?"

QUESTIONS POSED BY SENATOR GRASSLEY

Timeliness Responses to Congressional Inquiries

1. **I continue to await responses to a number of outstanding requests for documents and information from the Justice Department and its subordinate agencies. A number of these requests have gone unanswered. Further, there are outstanding Committee requests including a number of Questions for the Record (QFRs). Some of these questions are well over a year old (e.g. FBI Oversight Hearing QFRs 9/17/08 and 3/5/08). I am particularly concerned about these QFRs because they appear complete, yet exempt out specific questions from members—often time only questions from this member.**

   At the latest FBI Oversight hearing in March I asked FBI Director Mueller about these outstanding QFRs. Director Mueller informed the Committee they had been provided to the Department in June and December of 2008, but that the Department had them tied up in a clearance process. This is unacceptable and contrary to the repeated promises I've received from you and other nominees at the Department. Here is a list of outstanding correspondence that the Department has either not answered or answered in an incomplete manner:

Agency	Nature of Request	Date of Request	Date Due
DOJ	Agriculture Antitrust	5/26/2009	ASAP
DOJ	Title 21 Investigative Authority	4/21/09	ASAP
FBI	Cecilia Woods	3/27/06	4/10/06
DOJ	Anti-trust determination of Norvir and Kaletra	1/16/07	1/25/07
FBI	Whistleblower: Jane Turner	2/26/07	3/07/07
DOJ-OIG	Whistleblower: Bassem Youssef	3/16/07	ASAP
FBI	Use of National Security Letters by the Communication Analysis Unit	3/19/07	ASAP
FBI	Mismanagement of confidential case funds	1/10/08	1/25/08

DOJ-OIG	Requested briefings on 7 ongoing inquiries	6/04/08	ASAP
FBI	Use of Exigent Letters	6/25/08	ASAP
FBI	Amerithrax	8/07/08	8/21/08
DOJ-OIG	Whistleblower: Elizabeth Morris	10/22/08	11/05/08
FBI-OPR	Whistleblower: Elizabeth Morris	10/22/08	11/05/08
DOJ-IG	7 Issues that were brought up in June 2008	4/22/2009	ASAP
DOJ and FBI	Heparin	5/20/2009	Update needed

These outstanding responses and unanswered questions are unacceptable and I expect the Department to get the Committee answers in a timely manner. If not, we'll have to examine ways to make the Department respond in a timely fashion, including holding nominations and looking at appropriations.

(a) When can I expect complete and thorough responses to all the outstanding requests?

(b) At your confirmation hearing, I asked you about the "clearance" review process at the Department. You responded that you needed time once you were confirmed to "check on the internal workings of the department to make sure that we're doing it as quickly as we can." You've been on the job for nearly 5 months now. Have you reviewed the internal workings of the Justice Department Clearance process? If so, what were the results of this review? If not, why not?

(c) Can you explain why the Department of Justice has had QFR responses from the FBI for over a year and has yet to produce those responses and documents to the Committee in a timely fashion?

(d) In your opinion, how long should the clearance process take at the Department once questions are received from a subordinate agency? Why does it take that long?

Response to subparts a through d: The Department considers timely and thorough communications with Congress to be a critical priority, and is committed to responding to all Congressional correspondence in a timely manner. To that end, the Office of

Legislative Affairs has been working with your staff to identify with precision any current requests for which answers have not yet been provided and has provided to your staff an annotated notebook containing replies to a number of your earlier requests. As you may know, all but 4 of the letters listed above were referenced in an earlier list provided to the Department. The 4 new items set forth above also have already been answered by the Department. A complete list of this correspondence, including the date and manner of our response, is enclosed. We will continue to work with you and your staff to respond as fully as possible to all current requests.

With regard to the Committee's Questions for the Record (QFRs), the Department makes substantial efforts to respond to the Committee's QFRs following each hearing. These QFRs, which are submitted by the Committee pursuant to the requests of each Member, are often voluminous and include multiple subparts. Each QFR initially must be analyzed to determine which Department component would likely have responsive information. In some instances, a single QFR can require input from more than one component. The information provided by the components is then reviewed in order to assure that the Department has made its best efforts to develop answers that are responsive to the Committee's interests. The draft responses are then vetted with the other Department components that have an interest in the matters raised in the QFRs. Once the draft QFR responses have been fully vetted by both the substantive components and the Department's leadership offices, the draft QFR responses must be sent to OMB for clearance, which involves OMB's circulation of the QFR responses to other parts of the Executive Branch. These other Executive Branch components often submit comments and questions on the draft QFR Responses, which are passed back to the Department by OMB. This pass-back process often involves numerous exchanges, the timing of which are not subject to any one entity's control and often require input from attorneys and other professional staff with primary litigation, law enforcement, and intelligence responsibilities.

The Department recognizes the importance of managing this process in the most efficient and effective way possible in order to provide information responsive to the Committee's oversight interests. We are committed to improving the timeliness of our responses to the Committee and will work with Committee staff to accomplish this goal.

DOJ Role in the Termination of Inspector General Gerald Walpin:

2. **On June 10th the White House notified Inspector General Gerald Walpin, the Inspector General for the Corporation for National and Community Service (CNCS), that he had one hour to resign his position or he would be fired. Since that day, I've been asking a number of questions to the White House and CNCS regarding the motive for this ultimatum and the subsequent termination of Inspector General Walpin. In the course of reviewing this suspicious termination, I have learned that the acting United States Attorney for the Eastern District of California, Lawrence D. Brown, wrote on behalf of his office on April 29, 2009, to Kenneth Kaiser, the Chair of the Integrity Committee of the Council of the Inspectors General on Integrity and**

Efficiency (CIGIE) raising concerns about the conduct of Mr. Walpin stating that "Mr. Walpin overstepped his authority" and "tarnished the reputation" of CNCS.

I am interested in learning more about the role Justice Department officials played in the events that led to the termination of Mr. Walpin. Accordingly, please answer the following questions.

(a) **Mr. Brown's April 29, 2009 letter led the Integrity Committee of the CIGIE to open an inquiry into Mr. Walpin. It appears acting-U.S. Attorney Brown's purpose behind the letter was to initiate an inquiry into Inspector General Walpin. This type of referral is similar to an ethics referral or complaint against an attorney or judge that is involved in litigation matters with U.S. Attorneys. The U.S. Attorney's Manual, Section1-4.150 "Reporting Allegations of Misconduct Concerning Non-Department of Justice Attorneys or Judges" states that, "Allegations of misconduct by non-DOJ attorneys or judges shall be reported to OPR for a determination of whether to report the allegation to appropriate disciplinary officials."**

- **Did acting-U.S. Attorney Brown consult with OPR prior to sending his April 29, 2009 letter? If so, who was aware of that referral and what was the response? (Please provide all relevant supporting documents and emails).**
- **If OPR was not consulted, why not?**
- **Are there any DOJ regulations or rules regarding the referral of allegations of misconduct by investigations, Inspectors Generals, or other non-DOJ investigators? If so, please provide a list. If not, why not?**

(b) **With whom did Acting U.S. Attorney Lawrence D. Brown consult in determining whether or not to file a complaint against Corporation for National and Community Service (CNCS) Inspector General Gerald Walpin with Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE)?**

(c) **Did anyone at the White House communicate concerns or recommend that Brown file a complaint with CIGIE's Integrity Committee? If so, who and when? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(d) **Did any CNCS employee or member of the Board of Directors communicate concerns or recommend that Brown file a complaint with CIGIE's Integrity Committee? If so, who and when? Please describe any such communications in detail and produce to the Senate**

Judiciary Committee any and all records related to such communications.

(e) **Did any OIG staff member communicate concerns to Brown or recommend he file a complaint with CIGIE's Integrity committee? If so, who and when? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(f) **Did any other person communicate concerns to Brown regarding Mr. Walpin's conduct as CNCS IG? If so, who and when? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(g) **Did Brown consult Integrity Committee Chairman Kenneth W. Kaiser prior to filing his compliant? If so, when did he communicate with Mr. Kaiser? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(h) **Please identify and produce any communications between Brown's office and the Integrity Committee regarding Mr. Walpin.**

(i) **Was Brown contacted by any member of the White House staff as part of its evaluation of Mr. Walpin's performance as IG? If so, who contacted Brown, and when did he have communication with White House staff? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(j) **Did Brown recommend to the White House or to CNCS that Mr. Walpin should be removed from his post as IG? Please describe any such communications in details produce to the Senate Judiciary Committee any and all records related to such communications.**

(k) **Has Brown ever previously filed a complaint with CIGIE (or its predecessor organizations)? If such a complaint has been filed, please describe the circumstances of the complaint.**

(l) **Has a United States Attorney in the Eastern District of California ever previously filed a complaint with CIGIE or its predecessor organization? If such a complaint has been filed, please describe the circumstances of the complaint.**

(m) **Is there statutory or other authority upon which Brown bases his claim that Mr. Walpin's communication with the *Sacramento Bee* or other media outlets was inappropriate? If so, what?**

(n) **In his complaint, Brown states that he "understand[s] . . . the Inspector General is not intended to act as an advocate for suspension or debarment." What is the basis for this understanding?**

(o) **In his complaint, Brown states that "we considered the IG referral somewhat unusual in that it was accompanied by a letter from Mr. Walpin explaining that he viewed the conduct in this case as egregious and warranted our pursuing the matter criminally and civilly." Why is Mr. Walpin's letter unusual?**

(p) **In what specific ways did Mr. Walpin's public comments interfere with the United States Attorney's investigation of the Respondents?**

(q) **In what specific ways did Mr. Walpin's referral cover letter interfere with the United States Attorney's investigation of the Respondents?**

(r) **Mr. Walpin was instructed by then United States Attorney McGregor Scott that he was not "to communicate with the media about a matter under investigation." Which of Mr. Walpin's subsequent communications with the media refer to material facts of a criminal investigation or civil monetary recovery or settlement (as opposed to describing the process of such recoveries)?**

(s) **Has Brown had any communications about the possibility of being nominated by the President to be the United States Attorney for the Eastern District of California (U.S. Attorney)? If so, when and with whom did he have such communications? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(t) **Have you or anyone in your office had any communications about Brown's complaint to CIGIE's Integrity Committee? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(u) **Have you or anyone in your office had any communications about the removal of Gerald Walpin? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(v) **Have you or anyone in your office had any communications about the resignation, retirement, removal, or transfer of any other Inspector General? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.**

(w) **When did the FBI begin its investigation of the destruction of Kevin Johnson's emails under subpoena by the Inspector General and other potential obstructions of the IG's investigation?**

(x) **The FBI, under your ultimate supervision, has a representative on CIGIE's Integrity Committee. Please describe in detail the nature and extent of the Integrity Committee's investigative activities related to Brown's complaint against IG Walpin. What investigative steps did the Committee have an opportunity to take before process was essentially mooted by the President's decision to remove Walpin? What is the current status of the investigation and will the Committee provide a non-partisan assessment of Brown's allegations for consideration by Congress and the American People?**

Response: In August 2008, Mr. Gerald Walpin, the Inspector General for the Corporation for National and Community Service (CNCS), referred a case to the United States Attorney for the Eastern District of California regarding the alleged misuse of AmeriCorps grant funds by St. HOPE Academy and its then-Chief Executive Officer, Kevin Johnson. Mr. Johnson was a candidate for Mayor of Sacramento and subsequently was elected Mayor.

During the period when the United States Attorney's Office was reviewing evidence presented by the OIG to determine the appropriate and just course under the circumstances of this particular case, Mr. Walpin and his Public Information Officer made numerous public comments regarding the St. HOPE Academy matter at a time when no charges had been brought. The United States Attorney believed this conduct to be inconsistent with the established law enforcement policy that public comments should not be made while a criminal investigation is pending given the potential to greatly harm a target's reputation, even if a case ultimately is not filed, and to endanger the right to a fair trial if criminal charges are filed.

Mr. Walpin's actions caused personnel in the United States Attorney's Office to lose confidence in the objectivity of the OIG's investigation. For example, the OIG's referral to the United States Attorney contained the conclusion that "AmeriCorps members performed no tutoring." The United States Attorney's Office learned of a witness, a school principal, who stated that the AmeriCorps students had performed tutoring at his school. When asked, the OIG staff stated that they had been aware of this information but did not further investigate this exculpatory information or disclose the information to the United States Attorney.

On April 29, 2009, then-Acting United States Attorney Lawrence G. Brown[1] wrote a letter to Kenneth Kaiser, the Chair of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency, expressing his concerns about Mr. Walpin's conduct. Mr. Brown had no outside contact regarding the letter before it was sent, and the only outside consultation the United States Attorney's Office had regarding the letter was with the general counsel's office of the CNCS and was for the limited purpose of determining where to send the letter. Following that consultation, Mr. Brown submitted the letter to the Integrity Committee and provided a copy to the CNCS Board of Directors. The only response from the Integrity Committee has been a letter from Mr. Kaiser to Mr. Brown, dated May 6, 2009, confirming receipt of the letter.

The Office of the Attorney General (OAG) had no involvement in the decision to remove Mr. Walpin, and was not informed of the decision beforehand. Nor has OAG had any communications about the resignation, retirement, removal, or transfer of any other Inspector General.

The Department will respond under separate cover to the document requests contained in this Question.

Title 21 Memorandum of Understanding:

3. **In May of this year, the Government Accountability Office (GAO) released a report that I requested analyzing cooperation between DEA and other law enforcement agencies. Chief among the findings was that the outdated Memorandums of Understanding (MOU) threatened to hinder the mission of DEA and other law enforcement agencies ability to investigation narcotics and money laundering. The MOU on narcotics investigative authority (known as Title 21) represented a particular problem for law enforcement. The GAO report confirmed that the longstanding turf battles over Title 21 cases between DEA and ICE has created an environment that is dangerous to our own agents. I find this unacceptable.**

   The GAO ultimately made three (3) major recommendations:

   - **That the Secretary of DHS and the Attorney General should jointly and expeditiously develop a new updated MOU for narcotics investigations.**

[1] Mr. Brown became First Assistant United States Attorney on March 24, 2003. On January 5, 2009, he became Acting United States Attorney following the resignation of Presidentially-appointed United States Attorney McGregor W. Scott. On August 3, 2009, upon expiration of the time period in the Vacancies Reform Act, Mr. Brown became United States Attorney by virtue of an interim appointment by the Attorney General. Mr. Brown submitted a letter to United States Senator Diane Feinstein in December 2008 expressing interest in being nominated to be the Presidentially-appointed United States Attorney. Subsequently, on February 12, 2009, he was interviewed for the position before a local five-person vetting committee appointed by the Senator. The February 12, 2009 interview constituted his last communication with the local committee regarding such an appointment. On August 6, 2009, the President nominated Benjamin Wagner to be United States Attorney for the Eastern District of California.

- **That the Secretary of DHS and the Attorney General develop processes for periodically monitoring the implementation of the new MOU.**

- **That the Secretary of DHS direct ICE to participate in the OCDETF Fusion Center.**

Just last week, the Department of Justice and Department of Homeland Security announced that a new MOU had been agreed upon for Title 21 investigations. I am glad to see that the new MOU addressed the issues pointed out by GAO and appears to implement the recommendations. However, I am concerned that the agreement fails to address the issue of bulk cash smuggling and money laundering which is governed by another outdated MOU. In fact, this new MOU seems to go above and beyond to avoid dealing with the issue of bulk cash smuggling and money laundering investigative authority. It does this by creating a term that only a bureaucrat could love, "nondrug-related international illicit financial schemes." I feel that this new MOU may simply kick the can down the road for problems with asset forfeitures resulted from bulk cash smuggling and money laundering investigations.

(a) Please define what "nondrug-related international illicit financial schemes" are. Provide explicit examples of what would qualify under this definition.

Response: The phrase "nondrug-related international illicit financial schemes" refers to those offenses which fall within ICE's inherent jurisdiction. The language was suggested by ICE to make it clear that the parties to the Interagency Cooperation Agreement did not intend to alter the allocation of investigative responsibilities in the MOUs. DEA will continue to conduct money laundering investigations where the predicate offense is related to drug trafficking. ICE will continue to investigate money laundering unrelated to drug trafficking, within the parameters of its inherent jurisdiction. Examples of such schemes would include violations of 18 U.S.C. § 2332 (financial transactions relating to terrorism); 19 U.S.C. § 1590 (aviation smuggling); 31 U.S.C. §§ 5313-16 (currency/monetary transaction reporting requirements); and 31 U.S.C. § 5332 (bulk cash smuggling into or out of the United States).

(b) Do you anticipate updating the MOU related to money laundering investigations? If so, when can I expect to see that completed?

Response: DEA and ICE are currently implementing the June 18, 2009, Interagency Cooperation Agreement (ICA) which addresses the concerns stated in the GAO Report. In reaching the ICA, it was the intent of the agencies to leave the essential terms of the existing money laundering MOUs in place.

The basic premise of the MOU relating to money laundering investigations 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. 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 function to that agency.

While it may be advisable to update the MOU to reflect the changes that have taken place since the Money Laundering MOU was signed in 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 preserved DHS' interests in the agreement.

(c) Will any effort to update the money laundering MOU clarify the jurisdictional authority of investigative agencies for bulk cash smuggling? If not, why not?

Response: The agencies believe that there is no need at the present time to clarify further jurisdictional authority over bulk cash smuggling. ICE has investigative jurisdiction over 31 U.S.C. § 5332 (bulk cash smuggling into or out of the United States). DEA investigates the transport of currency and makes cash seizures only when the currency is related to drug trafficking offenses under Title 21; in the absence of a drug trafficking nexus, DEA does not have authority to investigate bulk cash smuggling. If, during a bulk cash smuggling investigation, ICE develops evidence of a drug nexus, the information sharing and deconfliction provisions of the ICA apply.

The Department believes that the same premise that underlies the Money Laundering MOU should apply to investigations for bulk cash smuggling, *i.e.*, that the Federal agency with historical jurisdiction over the SUA that generated the proceeds of the bulk cash smuggling offense would have jurisdiction over the bulk cash smuggling violations involving those proceeds. We must use the most aggressive efforts to stop drug dealers, terrorists, and tax evaders from moving bulk amounts of cash and cash equivalents out of the country. For that reason, it is, and should remain, within the jurisdiction of the broadest range of law enforcement agencies to provide the most comprehensive response to bulk cash smuggling.

(d) Do you believe this matter can be worked out administratively as the Title 21 MOU was, or do you believe legislation is necessary?

Response: Any update that is necessary to the MOUs is best made by agreement between the agencies. The Department does not believe legislation is warranted to address the issues of investigative jurisdiction in bulk cash smuggling investigations.

False Claims Act:

4. Attorney General Holder, no provision in the False Claims Act has generated more litigation than the so called "public disclosure bar" found in Section 3730(e)(4). Indeed, the Supreme Court has asked to review this provision a second time in as many years.

Existing case law has grossly misinterpreted this provision I drafted in 1986, allowing countless defendants to have meritorious cases dismissed by misusing the provision in ways we did not contemplate. Moreover, the confusing legal patchwork has increasingly deterred whistleblowers from even filing suit, fearful that their courageous actions will be silenced at the hands of defendants wrongfully wielding the public disclosure bar.

Attorney General Holder, when we added this provision in 1986, we intended to bar only "parasitic" lawsuits, such as ones brought by individuals who did no more than copy a Government indictment. We expressly stated that we did not intend to bar suits solely because the Government already knew of the fraud or could have learned of the fraud from information in the public domain.

However, previous Justice Department administrations have advocated a reading of the Act that precludes qui tam suits that are "substantially similar to" public disclosures, even when the relator's knowledge was not derived from the public disclosure.

In last term's Department of Justice's Views Letter, in response to S. 2041, the Department argued that the public disclosure bar should apply when the Government is on the trail of a fraud, regardless of whether or not the relator is actually aware of the government investigation. This reading of the Act resurrects the so-called "government knowledge bar," which we explicitly replaced with the public disclosure bar in 1986.

(a) Do you agree that the False Claims Act public disclosure bar is fraught with circuit court splits, generating confusion and uncertainly in this area of the law?

(b) Do you agree that potentially meritorious qui tam suits are regularly silenced by defendants utilizing the False Claims Act public disclosure bar?

(c) Do I have your commitment that this Justice Department will now correctly read the Act to only bar parasitic relators who actually derive their knowledge of the fraud from a statutorily enumerated public disclosure? If not, why not?

Response: We appreciate the Committee's concerns regarding the public disclosure bar found in Section 3730(e)(4) of the False Claims Act and the various interpretations of this provision by the courts. The Department has stated its views on many of these issues consistent with the intent of the 1986 amendments, namely, to "further the twin goals of rejecting suits which the government is capable of pursuing itself, while promoting those which the government is not equipped to bring on its own." *United States ex rel. Springfield Terminal Ry. v. Quinn*, 14 F. 3d 645, 649, 651 (D.C. Cir. 1994). Thus, for example, the Department has filed as amicus curiae a brief urging the Supreme Court to grant certiorari in *Graham County Soil & Water Conservation District, et al. v. United States ex rel. Wilson*, No. 08-304, in order to resolve a split among the circuits on the issue of whether a public disclosure in a state issued audit bars jurisdiction under the statute. The Department took the position that because those audits are unlikely to alert the federal government to allegations of fraud, barring a qui tam suit based on those reports would frustrate Congress's intent to encourage private actions the government is not capable of pursuing on its own. The Court recently granted certiorari.

We are committed to enforcing the statute to further these goals. To that end, we are happy to work with the Committee and staff to discuss its concerns and any proposed changes to the statute.

Working Capital Fund:

5. **In 2002, Congress authorized the Attorney General to collect "up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities of the Department of Justice." This authorization allows the Attorney General to retain 3% of all civil debt collections and place those funds in the Department's Working Capital Fund. These funds may be used to further civil debt collection activities in the future and are disbursed by the Civil Recoveries Administrative Board. As civil settlements by the Department of Justice continue to grow in size, especially under the False Claims Act, I'd like to know how much money is returned to the Working Capital Fund on a yearly basis. Further, I'd like a break down on how those funds are expended. Please provide responses to the following:**

   (a) **How much money has the 3% authorization (28 U.S.C. § 527 note) returned to the Working Capital Fund from FY 2004-2009? Please provide a comprehensive breakdown outlining all monies collected by the authorization and how those monies were expended from FY [sic].**

   (b) **The statutory authorization for the fund requires that the funds are available until expended and "shall be used first, for paying the costs of processing and tracking civil and criminal debt-collection litigation, and thereafter for financial systems and for debt-collection-related personnel, administrative, and litigation expenses." Please provide a breakdown of how much money was required, each year from 2004-2009, to pay the cost of processing and tracking civil and criminal**

debt-collection litigation. Provide a full breakdown of how the money was used.

(c) Please provide a breakdown of all monies expended from the Working Capital Fund for "financial systems" in FY2004-2009.

(d) Provide a comprehensive breakdown of FTEs that were funded by this 3 percent authorization from the Working Capital Fund, including attorneys, investigators, and administrative personnel from FY2004-2009.

(e) Please provide a detailed breakdown of all unobligated financial balances for FY2004-2009.

Response: The below chart provides information on monies collected and monies expended over the FY 2004 through FY 2009 timeframe. The chart also shows unobligated balances. The monies collected as a result of the 3% authorization are labeled "DCM Collections." "DCM Operations" is the central office under the Justice Management Division responsible for processing and tracking civil and criminal debt collection litigation. Each year, the Department has also used the 3% monies to invest in debt collection personnel and litigation expenses, primarily for the U.S. Attorneys for Affirmative Civil Enforcement efforts and the Civil Division for Automated Litigation Support. None of the 3% funds have been used for financial systems; however, the monies have been used to invest in a new consolidated debt collection tracking system.

ACCOUNT	AS OF JUNE 2009: COLLECTIONS	OBLIGATIONS	UNOBLIGATED BALANCE
DCM PRIOR YEAR CARRYOVER			$70,757,075
FY 2004:			
DCM COLLECTIONS	$93,541,106		
DCM OPERATIONS		$12,865,657	
US ATTORNEYS		27,565,307	
TAX DIVISION		1,114,760	
CIVIL DIVISION		34,565,888	
ENR DIVISION		4,383,103	
US MARSHALS SERVICE		328,000	
CRIMINAL DIVISION		3,300,000	
FY 2004 TOTALS	$93,541,106	$84,122,715	$80,175,466
FY 2005:			
DCM COLLECTIONS	$84,635,046		
DCM OPERATIONS		$10,964,831	
US ATTORNEYS		27,102,673	
TAX DIVISION		1,591,200	
CIVIL DIVISION		30,306,036	
ENR DIVISION		4,724,064	
CRIMINAL DIVISION		1,425,000	
FY 2005 TOTALS	$84,635,046	$76,113,804	$88,696,708
FY 2006:			
DCM COLLECTIONS	$107,426,424		
DCM OPERATIONS		$10,612,177	
US ATTORNEYS		27,399,924	
TAX DIVISION		1,557,000	
CIVIL DIVISION		8,754,658	
ENR DIVISION		5,222,293	
CRIMINAL DIVISION		1,100,000	
CONSOLIDATED DEBT COLLECTION SYSTEM		12,444,153	
FY 2006 TOTALS	$107,426,424	$67,090,205	$129,032,926

ACCOUNT	AS OF JUNE 2009: COLLECTIONS	OBLIGATIONS	UNOBLIGATED BALANCE
FY 2007:			
DCM COLLECTIONS	$57,226,003		
DCM OPERATIONS		$10,769,471	
US ATTORNEYS		31,857,775	
TAX DIVISION		1,418,971	
CIVIL DIVISION		15,256,769	
ENR DIVISION		2,155,350	
CRIMINAL DIVISION		1,000,000	
FY 2007 TOTALS	$57,226,003	$62,458,336	$123,800,593
FY 2008:			
DCM COLLECTIONS	$80,100,624		
DCM OPERATIONS		10,093,722	
US ATTORNEYS		30,618,036	
TAX DIVISION		2,096,102	
CIVIL DIVISION		10,838,876	
ENR DIVISION		2,770,981	
CRIMINAL DIVISION		2,000,000	
CONSOLIDATED DEBT COLLECTION SYSTEM		5,021,740	
FY 2008 TOTALS	$80,100,624	$63,439,456	$140,461,760
FY 2009:			
DCM COLLECTIONS	$64,142,358		
DCM OPERATIONS		$8,696,631	
US ATTORNEYS		38,042,602	
TAX DIVISION		2,185,408	
CIVIL DIVISION		23,101,000	
ENR DIVISION		4,640,000	
CRIMINAL DIVISION		3,476,000	
CONSOLIDATED DEBT COLLECTION SYSTEM		6,552,912	
FY 2009 TOTALS	$64,142,358	$86,694,553	$117,909,565
GRAND TOTALS	$487,071,561	$439,919,071	$117,909,565

The 3% collections pay for the salaries of over 225 Department employees. Since the collections can vary from year to year, the Department maintains carryover balances to ensure adequate funding is available to pay for salaries and other recurring operational expenses. The chart below provides information on FTE funded by the 3% authorization.

	ATTORNEYS	INVESTIGATORS	ADMIN PERS	TOTAL
FY 2004				
DCM Operations	0	0	27	27
US Attorneys	53	0	103	156
Civil Division	9	3	8	20
Total	62	3	138	203
FY 2005				
DCM Operations	0	0	27	27
US Attorneys	55	0	96	151
Civil Division	9	3	8	20
Total	64	3	131	198
FY 2006				
DCM Operations	0	0	27	27
US Attorneys	55	0	106	161
Civil Division	7	2	7	16
Total	62	2	140	204
FY 2007				
DCM Operations	0	0	27	27
US Attorneys	55	0	106	161
Civil Division	7	2	7	16
Total	62	2	140	204
FY 2008				
DCM Operations	0	0	27	27
US Attorneys	68	0	106	174
Civil Division	15	2	9	26
Total	83	2	142	227
FY 2009				
DCM Operations	0	0	27	27
US Attorneys	68	0	107	175
Civil Division	15	2	9	26
Total	83	2	143	228

OLC Opinion on Privacy Act:

6. **As part of your confirmation hearing, I asked you a question regarding a 2001 letter opinion issued by the Office of Legal Counsel (OLC) regarding the Congressional disclosure exception of the privacy act. That letter opinion titled, "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members" concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Nowhere in the statute does it define "committee" to mean only the Chairman and not the Ranking Member.**

I asked you about this opinion because I believe that courts have held a contrary view of the privacy act and wanted your opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have "constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information." *Murphy v. Dep't of the Army,* 613 F.2d 1151, 1157 (D.C. Cir. 1979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell "squarely within the ambit of § 552a(b)(9)". *See Devine v. United States,* 202 F.3d 547, 551 (2nd Cir. 2000).

Unfortunately, you did not answer my question stating that you "have not had an opportunity to study this issue of interpretation with the care that it warrants." In follow-up questions you also added that, "Prior to confirmation, it would be inappropriate for me to provide a definitive view on the correctness of the opinion's interpretation of the statute in question." Now that you have been confirmed and in charge of the Department for nearly five months, I'd like to know your views on this letter opinion.

(a) Do you support the position taken by DOJ in this OLC Letter Opinion?

(b) Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

(c) In your opinion, couldn't the wording of the Privacy Act that allows disclosure "to either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof" be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

Response: Consistent with long-standing Executive Branch policy and practice, the Department's accommodation of congressional oversight requests can include the provision of information that is subject to the Privacy Act. *See* 5 U.S.C. § 552a(b)(9) (authorizing disclosures under the Privacy Act "to either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee."). The Executive Branch generally discloses such information only when requested by a committee on matters within its jurisdiction. We recognize that congressional oversight is conducted by duly authorized committees, as directed by their chairpersons. Accordingly, the Executive Branch obligation to seek to accommodate committee oversight needs for information is generally triggered only by requests from committee chairpersons.

Danger Pay:

7. **Recent initiatives, including the National Southwest Border Counternarcotics Strategy and the Merida Initiative, have caused the reallocation of an extraordinary number of DOJ employees to be detailed to the Southwest Border and throughout Mexico. Unfortunately, the Government of Mexico's crackdown on the drug cartels has resulted in a shocking rise in violence across Mexico—including assassinations, kidnappings, and murders. According to analysis conducted by the University of San Diego Trans-Border Institute, over 9,700 people have been killed in drug related violence since war against the cartels began in January 2007. In the midst of this violence, our government employees are working shoulder to shoulder with their Mexican counterparts to stamp out the dangerous drug cartels once and for all.**

   Currently, despite the daily threat of harm, the Department of State does not consider Mexico a danger pay location. In fact, the request for danger pay allowance submitted by the Regional Security Officer in Mexico City was recently denied by the State Department. However, due to a statutory exemption, employees of the FBI and DEA are receiving danger pay. I understand that other DOJ employees from ATF and the U.S. Marshal detailed to post in Mexico may be receiving danger pay. I don't want any misunderstand on this issue. I believe every U.S. employee working in Mexico who is entitled to danger pay should get it. However, until the State Department changes its policy or Congress amends the law, only FBI and DEA can legally get it.

   (a) Are ATF and USMS employees stationed in Mexico currently receiving danger pay? If so, under what authorization or arrangement are they receiving this benefit?

Response: No, ATF and USMS employees currently stationed in Mexico do not receive danger pay.

(b) Do you believe Mexico should be considered a danger pay location?

Response: According to the State Department's (State) Office of Allowances, entire countries are not designated as danger posts. When considering requests for establishment of danger posts, State's Office of Allowances makes determinations on specific duty stations. The Department supports designation of the following locations within Mexico as danger posts: Mexico City, Monterrey, Ciudad Juarez, Tijuana, Guadalajara, Hermosillo, Merida, and Matamoros.

(c) Has DOJ informally or formally discussed with the State Department the issue of danger pay in Mexico? If so, for what was the reason and what was the result?

Response: Yes. Chapter 650 of the Department of State (DOS) Standardized Regulations (DSSR) states that "the danger pay allowance is designed to provide additional compensation above basic compensation to all U.S. Government civilian employees, including Chiefs of Mission, for service at places in foreign areas where there exist conditions of civil insurrection, civil war, terrorism or wartime conditions which threaten physical harm or imminent danger to the health or well-being of an employee."

Section 653.1 of Chapter 650 of the DSSR states that "A danger pay allowance is established by the Secretary of State when, and only when, civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well being of a majority of employees officially stationed or detailed at a post or country/area in a foreign area. To determine whether the situation meets the danger pay criteria, a post usually must submit the Danger Pay Factors Form (FS-578) along with pertinent supporting information to the Department of State's Office of Allowances for review. The Director of the Office of Allowances will chair a working group which will make a recommendation to the Assistant Secretary of State for Administration concerning a danger pay designation."

On March 19, 2009, the Department of Justice requested an informal review from the Department of State for approval of danger pay in various locations within Mexico, including Mexico City. DOS responded by saying that it does not conduct informal reviews of danger pay requests. On April 30, 2009, DOJ's Assistant Attorney General for Administration sent a letter to DOS requesting a formal review for danger pay on behalf of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Marshals Service (USMS) employees in Mexico City and several other locations within Mexico. DOS acknowledged receipt of the letter and responded that State's process for approving danger pay requires that a particular duty post forward supporting data (proposed Danger Pay Factors) to DOS on behalf of the agencies represented in that particular location.

In compliance with that process, the U.S. Embassy in Mexico forwarded a package to DOS requesting danger pay in Mexico City and other locations in Mexico.

Both ATF and USMS endorsed the request and provided supporting justification. DOS reviewed and denied the request.

However, the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI) have been granted a unique authority which allows for danger pay compensation to be provided when stationed in overseas posts, regardless of whether or not a post has been designated by DOS as a danger pay location. Under Section 5928 of Title 5, U.S.C., "The Secretary of State may not deny a request by the Drug Enforcement Administration or Federal Bureau of Investigation to authorize a danger pay allowance for any employee of such agency (P.L. 101-246, Title I, Sec. 151, Feb. 16, 1990, 104 Stat. 42, as amended by P.L. 107-273, div. C, Title I, Sec. 11005, Nov. 2, 2002, 116 Stat. 1817)." This causes disparity between FBI or DEA employees and any other U.S. Government civilian employee, including the employees of other DOJ components such as ATF and USMS, serving in Mexico or in other posts overseas. DOS informed the Department of Justice that it does not have authority to broaden the DEA and FBI agency-specific authorizations to include ATF and USMS.

DOJ Cooperation with Government Accountability Office:

8. **It's come to my attention that the Department of Justice has recently restricted GAO's access to certain information related to staffing vacancies within the FBI's counter-terrorism division, work that the GAO is doing at the request of this Committee. DOJ's position essentially is that the FBI's CT work is part of the intelligence community and therefore outside the purview of GAO review. As you know, the GAO is an important instrument for the independent, congressional oversight conducted by this and other Committees.**

   (a) What does this mean for the role of this Committee in conducting oversight at the FBI?

Response: The Department of Justice has worked closely with the GAO to provide the maximum amount of information possible for this GAO review, consistent with GAO's statutory jurisdiction. In sum, the FBI will provide the GAO with information regarding as many as 30,000 of the 35,013 current positions at the FBI. The GAO's review is now underway. Interviews are proceeding and documents have been and are being provided. The Department of Justice believes the GAO will be able to complete a meaningful review that will meet the GAO's objectives.

   (b) What does this mean for the role of the GAO in conducting oversight at the FBI?

Response: The GAO has dozens of ongoing matters which involve oversight of the FBI, very few of which are impacted by the limits on GAO's statutory jurisdiction. The Department of Justice expects that the GAO will continue these reviews at the FBI.

(c) Will you commit to facilitating GAO's ability to conduct this review?

Response: The Department of Justice has worked closely with the GAO to facilitate this review. Going forward, the Department of Justice will continue to facilitate the GAO's ability to conduct this review.

QUESTIONS POSED BY SENATOR KYL

1. **On May 29th, I sent you a letter asking you to provide the factual justification for the President's statement in his May 21st speech at the National Archives when he said: "Our federal 'supermax' prisons...hold hundreds of convicted terrorists."**

   a. **As requested in the letter, please provide the names of the terrorists currently held in federal prisons and the details of their crimes.**

Response: Pursuant to governing policies and regulations (see 28 C.F.R. § 513.34(b)) the Department cannot provide you with a list of Bureau of Prisons inmates. However, the Department can provide you with briefings about terrorism suspects housed in Federal prisons generally and about the types of crimes committed by those prisoners.

   b. **Do you assess that their crimes are comparable to that of the high-value detainees at GTMO?**

Response: A number of individuals with a history of, or nexus to, international or domestic terrorism are currently being held in federal prisons, each of whom was tried and convicted in an Article III court. The Attorney General considers all crimes of terrorism to be serious.

2. **How would the Bureau of Prisons make space for the GTMO detainees?**

   a. **If using existing maximum security facilities (which are already overcrowded by almost 7,000 inmates) what would happen to the inmates that are there now?**

   b. **If opening a new facility or re-opening a closed facility, how would this facility be made ready in seven months or less in order to accommodate President Obama's Executive Order deadline of January 22, 2010?**

Response: We are currently examining a number of different options for housing Guantanamo detainees. We can assure you that we will not move any detainees into the United States unless and until we are convinced that the detainees will be held safely and securely in a facility that satisfies all of our security concerns.

3. **On what legal basis would you prevent a GTMO detainee from being released into the United States if found not guilty in a federal court? What if a case is thrown out for procedural reasons?**

Response: Where we have legal detention authority, as the President has stated, we will not release anyone into the United States if doing so would endanger our national security or the American people. There are a number of tools at the government's disposal to

ensure that no such detainee is released into the United States, all of which are currently being reviewed by the Special Interagency Task Force on Detention Policy that was created pursuant to Executive Order 13493.

4. If GTMO is closed, where will the U.S. hold and try newly captured enemy combatants in the future?

Response: Pursuant to Executive Order 13493, the Special Interagency Task Force on Detention Policy is currently conducting a comprehensive review of the United States' detention policy. It would be premature to characterize the Task Force's conclusions on this issue while its review is ongoing.

a. Would they be brought to the U.S. for legal proceedings? If that is not the plan, are you concerned that trying some of the GTMO detainees in a U.S. court will set a precedent that can be cited by future detainees?

Response: Please see the response to Question 4, above.

5. How soon after the closure of GTMO should we expect to see a notable and measurable decrease in terrorist recruiting?

Response: On January 22, 2009, the President issued Executive Order 13492, which, among other things, required the closure of the detention facility at Guantánamo Bay "as soon as practicable, and no later than 1 year" after he signed it into effect. The President ordered its closure because of the Administration's strong belief that doing so will actually enhance our national security in a number of ways. This view is shared by military, intelligence, and foreign policy experts on both sides of the aisle. Among other things, the President has said, "instead of serving as a tool to counter terrorism, Guantanamo became a symbol that helped al Qaeda recruit terrorists to its cause." For example, the current Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, recently said, "The concern I've had about Guantanamo in these wars is it has been a symbol, and one which has been a recruiting symbol for those extremists and jihadists who would fight us." When GTMO is closed, it will no longer be a current and effective tool for terrorist recruitment.

This, of course, is not the only reason to close GTMO. Last year, for example, five former Secretaries of State expressed the view that closing the detention facility there would improve our standing in the world "immediately."

QUESTIONS POSED BY SENATOR COBURN

Emmett Till Unsolved Civil Rights Crimes:

1. **At last week's oversight hearing, we discussed how you committed to me at your confirmation hearing that you would "figure out ways to try to move money around" to fund the Emmett Till Unsolved Civil Rights Crime Act. You testified that you would get back to me once you had confirmed whether any money had been provided by the Department of Justice to fund that initiative.**

    a. **Now that you have had time to look into it, please describe what resources (if any) DOJ has devoted to the Emmett Till Unsolved Civil Rights Crime Act.**

Response: A fact sheet detailing all resources dedicated to the Emmett Till Unsolved Civil Rights Crime Act is attached.

I was pleased by your commitment to meet with members of the Emmett Till Campaign for Justice, especially its President, Mr. Alvin Sykes.

    b. **Has that meeting been scheduled? If so, when will it take place? (I would be happy to help facilitate, if needed.)**

Response: The Attorney General met with Mr. Alvin Sykes on July 27, 2009.

"Assault Weapons" Ban:

2. **At the oversight hearing, you testified that: "I don't think I have in fact said that we need a new assault weapons ban."**

    a. **Do you now acknowledge having called for a reinstatement of that ban at a February 25, 2009 press conference?**

Response: At a February 25, 2009, press conference regarding U.S efforts against Mexican drug cartels, the Attorney General was asked by a reporter whether he was reviewing "the enforcement of the assault weapons regulation in the U.S." He replied: "Well, as President Obama indicated during the campaign, there are just a few gun-related changes that we would like to make, and among them would be to reinstitute the ban on the sale of assault weapons." The Attorney General did not regard that response as "call[ing] for" a new assault weapons ban, but rather restating the previously expressed campaign position on this issue.

    b. **Is it still your intent to seek a reinstitution of the "assault weapons" ban?**

Response: The Department is currently reviewing existing gun laws to determine how best to combat gun violence and keep guns out of the hands of criminals and others prohibited from possessing them.

Grant Management

3. What specific steps have you taken to improve grant management at DOJ? In your confirmation hearing, you recognized that it must be treated as a "consistent priority" to prevent problems.

a. Have you been in contact with the Inspector General about grant management? Now that you have had time to review the various DOJ grant programs, what problems have you seen, and how do you propose to address them?

Response: The U.S. Department of Justice Office of Inspector General issued a report in February 2009 entitled "Improving the Grant Management Process." All three grant-making components have embraced the recommendations in the OIG report. Each of the Department's grant-making components has implemented the OIG's recommendations related to Grant Program Development, Grant Applications, and the Award Process. Each component has a plan in place to implement the OIG's recommendations relating to Monitoring, Performance and Training.

President Obama promised to conduct "an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy." You said you would begin these efforts at DOJ "soon after you took office as Attorney General."

b. Have you begun these efforts? If so, what specific steps have you taken?

Response: The Department is committed to identifying savings and efficiencies, including those that involve administrative consolidation to avoid redundancy of effort. Senior leadership of the Department is considering proposals for organizational change that will reduce costs and improve operational effectiveness. The results of this process will be announced once we have made final decisions about implementation of particular cost-saving measures.

Prolonged Detention

4. Last week, the Senate Judiciary Subcommittee on the Constitution held a hearing on prolonged detention.

a. Do you agree with the President that there are some detainees who cannot be prosecuted?

Response: Yes.

b. Do you agree with the President that there are some detainee terrorists who "pose a clear danger" to the American people and who "remain at war with the United States"?

Response: Yes.

c. Is the United States under any international obligation to either "try or release" those detainees?

Response: No.

Earmark Investigation

5. On June 6, 2008, the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244) was signed into law. That bill included a provision which reads as follows:

> **"SEC. 502. DEPARTMENT OF JUSTICE REVIEW. Consistent with applicable standards and procedures, the Department of Justice shall review allegations of impropriety regarding item 462 in section 1934(c) of Public Law 109-59 to ascertain if a violation of Federal criminal law has occurred."**

As you may recall, this provision referred to the $10 million "Coconut Road" earmark that was inserted into the transportation bill after it passed both the House and Senate. A $10 million earmark for "Widening and Improvements for I-75 in Collier and Lee County" was in the bill that passed both houses of Congress, but was not in the version of the bill signed by President Bush. That earmark was deleted and one appeared that was for a $10 million earmark for the "Coconut Rd. interchange I-75/Lee County[.]" An effort I undertook to have the House and Senate investigate this was modified by my colleague, Senator Boxer, to have DOJ investigate the matter instead.

a. What is the status of this review?

b. Has the Department reached any conclusions?

c. If it has been determined that a violation of federal criminal law has occurred, what will be the next step for DOJ?

Response to subparts a, b, and c: Consistent with Department policy, we can neither confirm nor deny the existence of an ongoing investigation.

Attachment A

Sen. Hatch 1

Department of Justice

Letter to Chairman

Leahy

(dated September 14, 2009)

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 14, 2009

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

Dear Mr. Chairman:

Thank you for your letter requesting our recommendations on the three provisions of the Foreign Intelligence Surveillance Act ("FISA") currently scheduled to expire on December 31, 2009. We believe that the best legislation will emerge from a careful examination of these matters. In this letter, we provide our recommendations for each provision, along with a summary of the supporting facts and rationale. We have discussed these issues with the Office of the Director of National Intelligence, which concurs with the views expressed in this letter.

We also are aware that Members of Congress may propose modifications to provide additional protection for the privacy of law abiding Americans. As President Obama said in his speech at the National Archives on May 21, 2009, "We are indeed at war with al Qaeda and its affiliates. We do need to update our institutions to deal with this threat. But we must do so with an abiding confidence in the rule of law and due process; in checks and balances and accountability." Therefore, the Administration is willing to consider such ideas, provided that they do not undermine the effectiveness of these important authorities.

1. Roving Wiretaps, USA PATRIOT Act Section 206 (codified at 50 U.S.C. § 1805(c)(2))

We recommend reauthorizing section 206 of the USA PATRIOT Act, which provides for roving surveillance of targets who take measures to thwart FISA surveillance. It has proven an important intelligence-gathering tool in a small but significant subset of FISA electronic surveillance orders.

This provision states that where the Government sets forth in its application for a surveillance order "specific facts" indicating that the actions of the target of the order "may have the effect of thwarting" the identification, at the time of the application, of third parties necessary to accomplish the ordered surveillance, the order shall direct such third parties, when identified to furnish the Government with all assistance necessary to accomplish surveillance of the target identified in the order. In other words, the "roving" authority is only available when the Government is able to provide specific information that the target may engage in counter-surveillance activity (such as rapidly switching cell phone numbers. The language of the statute does not allow the Government to make a general, "boilerplate" allegation that the target may

engage in such activities; rather, the Government must provide specific facts to support its allegation.

There are at least two scenarios in which the Government's ability to obtain a roving wiretap may be critical to effective surveillance of a target. The first is where the surveillance targets a traditional foreign intelligence officer. In these cases, the Government often has years of experience maintaining surveillance of officers of a particular foreign intelligence service who are posted to locations within the United States. The FBI will have extensive information documenting the tactics and tradecraft practiced by officers of the particular intelligence service, and may even have information about the training provided to those officers in their home country. Under these circumstances, the Government can represent that an individual who has been identified as an officer of that intelligence service is likely to engage in counter-surveillance activity.

The second scenario in which the ability to obtain a roving wiretap may be critical to effective surveillance is the case of an individual who actually has engaged in counter-surveillance activities or in preparations for such activities. In some cases, individuals already subject to FISA surveillance are found to be making preparations for counter-surveillance activities or instructing associates on how to communicate with them through more secure means. In other cases, non-FISA investigative techniques have revealed counter-surveillance preparations (such as buying "throwaway" cell phones or multiple calling cards). The Government then offers these specific facts to the FISA court as justification for a grant of roving authority.

Since the roving authority was added to FISA in 2001, the Government has sought to use it in a relatively small number of cases (on average, twenty-two applications a year). We would be pleased to brief Members or staff regarding actual numbers, along with specific case examples, in a classified setting. The FBI uses the granted authority only when the target actually begins to engage in counter-surveillance activity that thwarts the already authorized surveillance, and does so in a way that renders the use of roving authority feasible.

Roving authority is subject to the same court-approved minimization rules that govern other electronic surveillance under FISA and that protect against the unjustified acquisition or retention of non-pertinent information. The statute generally requires the Government to notify the FISA court within 10 days of the date upon which surveillance begins to be directed at any new facility. Over the past seven years, this process has functioned well and has provided effective oversight for this investigative technique.

We believe that the basic justification offered to Congress in 2001 for the roving authority remains valid today. Specifically, the ease with which individuals can rapidly shift between communications providers, and the proliferation of both those providers and the services they offer, almost certainly will increase as technology continues to develop. International terrorists, foreign intelligence officers, and espionage suspects — like ordinary

criminals — have learned to use these numerous and diverse communications options to their advantage. Any effective surveillance mechanism must incorporate the ability to rapidly address an unanticipated change in the target's communications behavior. The roving electronic surveillance provision has functioned as intended and has addressed an investigative requirement that will continue to be critical to national security operations. Accordingly, we recommend reauthorizing this feature of FISA.

2. "Business Records," USA PATRIOT Act Section 215 (codified at 50 U.S.C. § 1861-62)

We also recommend reauthorizing section 215 of the USA PATRIOT Act, which allows the FISA court to compel the production of "business records." The business records provision addresses a gap in intelligence collection authorities and has proven valuable in a number of contexts.

The USA PATRIOT Act made the FISA authority relating to business records roughly analogous to that available to FBI agents investigating criminal matters through the use of grand jury subpoenas. The original FISA language, added in 1998, limited the business records authority to four specific types of records, and required the Government to demonstrate "specific and articulable facts" supporting a reason to believe that the target was an agent of a foreign power. In the USA PATRIOT Act, the authority was changed to encompass the production of "any tangible things" and the legal standard was changed to one of simple relevance to an authorized investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

The Government first used the USA PATRIOT Act business records authority in 2004 after extensive internal discussions over its proper implementation. The Department's inspector general evaluated the Department's implementation of this new authority at length, in reports that are now publicly available. Other parts of the USA PATRIOT Act, specifically those eliminating the "wall" separating intelligence operations and criminal investigations, also had an effect on the operational environment. The greater access that intelligence investigators now have to criminal tools (such as grand jury subpoenas) reduces but does not eliminate the need for intelligence tools such as the business records authority. The operational security requirements of most intelligence investigations still require the secrecy afforded by the FISA authority.

For the period 2004-2007, the FISA court has issued about 220 orders to produce business records. Of these, 173 orders were issued in 2004-06 in combination with FISA pen register orders to address an anomaly in the statutory language that prevented the acquisition of subscriber identification information ordinarily associated with pen register information. Congress corrected this deficiency in the pen register provision in 2006 with language in the USA PATRIOT Improvement and Reauthorization Act. Thus, this use of the business records authority became unnecessary.

The remaining business records orders issued between 2004 and 2007 were used to obtain transactional information that did not fall within the scope of any other national security investigative authority (such as a national security letter). Some of these orders were used to support important and highly sensitive intelligence collection operations, of which both Members of the Intelligence Committee and their staffs are aware. The Department can provide additional information to Members or their staff in a classified setting.

It is noteworthy that no recipient of a FISA business records order has ever challenged the validity of the order, despite the availability, since 2006, of a clear statutory mechanism to do so. At the time of the USA PATRIOT Act, there was concern that the FBI would exploit the broad scope of the business records authority to collect sensitive personal information on constitutionally protected activities, such as the use of public libraries. This simply has not occurred, even in the environment of heightened terrorist threat activity. The oversight provided by Congress since 2001 and the specific oversight provisions added to the statute in 2006 have helped to ensure that the authority is being used as intended.

Based upon this operational experience, we believe that the FISA business records authority should be reauthorized. There will continue to be instances in which FBI investigators need to obtain transactional information that does not fall within the scope of authorities relating to national security letters and are operating in an environment that precludes the use of less secure criminal authorities. Many of these instances will be mundane (as they have been in the past), such as the need to obtain driver's license information that is protected by State law. Others will be more complex, such as the need to track the activities of intelligence officers through their use of certain business services. In all these cases, the availability of a generic, court-supervised FISA business records authority is the best option for advancing national security investigations in a manner consistent with civil liberties. The absence of such an authority could force the FBI to sacrifice key intelligence opportunities.

3. "Lone Wolf," Intelligence Reform and Terrorism Prevention Act of 2004 Section 6001 (codified at 50 U.S.C. § 1801(b)(1)(C))

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 defines a "lone wolf" agent of a foreign power and allows a non-United States person who "engages in international terrorism activities" to be considered an agent of a foreign power under FISA even though the specific foreign power (*i.e.*, the international terrorist group) remains unidentified. We also recommend reauthorizing this provision.

Enacted in 2004, this provision arose from discussions inspired by the Zacarias Moussaoui case. The basic idea behind the authority was to cover situations in which information linking the target of an investigation to an international group was absent or insufficient, although the target's engagement in "international terrorism" was sufficiently established. The definition is quite narrow: it applies only to non-United States persons; the activities of the person must meet the FISA definition of "international terrorism;" and the

information likely to be obtained must be foreign intelligence information. What this means, in practice, is that the Government must know a great deal about the target, including the target's purpose and plans for terrorist activity (in order to satisfy the definition of "international terrorism"), but still be unable to connect the individual to any group that meets the FISA definition of a foreign power.

To date, the Government has not encountered a case in which this definition was both necessary and available, *i.e.*, the target was a non-United States person. Thus, the definition has never been used in a FISA application. However, we do not believe that this means the authority is now unnecessary. Subsection 101(b) of FISA provides ten separate definitions for the term "agent of a foreign power" (five applicable only to non-United States persons, and five applicable to all persons). Some of these definitions cover the most common fact patterns; others describe narrow categories that may be encountered rarely. However, this latter group includes legitimate targets that could not be accommodated under the more generic definitions and would escape surveillance but for the more specific definitions.

We believe that the "lone wolf" provision falls squarely within this class. While we cannot predict the frequency with which it may be used, we can foresee situations in which it would be the only avenue to effective surveillance. For example, we could have a case in which a known international terrorist affirmatively severed his connection with his group, perhaps following some internal dispute. The target still would be an international terrorist, and an appropriate target for intelligence surveillance. However, the Government could no longer represent to the FISA court that he was currently a member of an international terrorist group or acting on its behalf. Lacking the "lone wolf" definition, the Government could have to postpone FISA surveillance until the target could be linked to another group. Another scenario is the prospect of a terrorist who "self-radicalizes" by means of information and training provided by a variety of international terrorist groups via the Internet. Although this target would have adopted the aims and means of international terrorism, the target would not actually have contacted a terrorist group. Without the lone wolf definition, the Government might be unable to establish FISA surveillance.

These scenarios are not remote hypotheticals: they are based on trends we observe in current intelligence reporting. We cannot determine how common these fact patterns will be in the future or whether any of the targets will so completely lack connections to groups that they cannot be accommodated under other definitions. However, the continued availability of the lone wolf definition eliminates any gap. The statutory language of the existing provision ensures its narrow application, so the availability of this potentially useful tool carries little risk of overuse. We believe that it is essential to have the tool available for the rare situation in which it is necessary rather than to delay surveillance of a terrorist in the hopes that the necessary links are established.

Thank you for the opportunity to present our views. We would be happy to meet with your staff to discuss them. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Jeff Sessions
Ranking Minority Member

Attachment B

Sen. Grassley 1
Department of Justice
and Sen. Grassley
Correspondence Re:
Oversight Matters

Senator Charles E. Grassley Correspondence Re: Oversight Matters

Grassley Correspondence Addressed to the Department

Date	Addressed to:
January 16, 2007 (Answered 2/21/07)	The Honorable Alberto Gonzales Attorney General, U.S. Department of Justice (Subject: Antitrust Inquiry on Abbott Labs)
August 7, 2008 (Answered 3/5/09)	The Honorable Michael B. Mukasey Attorney General, U.S. Department of Justice (Subject: Amerithrax Investigation)
April 21, 2009 (Answered 7/27/09)	The Honorable Eric H. Holder Attorney General, U.S. Department of Justice The Honorable Janet Napolitano Secretary, U.S. Department of Homeland Security (Subject: Title 21 Investigative Authority)
May 20, 2009 (Answered 6/18/09)	The Honorable Eric H. Holder Attorney General, U.S. Department of Justice The Honorable Robert S. Mueller, III Director, Federal Bureau of Investigation (Subject: Heparin)
May 26, 2009 (Answered 6/29/09)	The Honorable Christine Varney Assistant Attorney General, Antitrust Division U.S. Department of Justice (Subject: Antitrust Enforcement in the Agricultural Sector)

Grassley Correspondence Addressed to the FBI

Date	Addressed to:
March 27, 2006 (FBI has no record of correspondence)	The Honorable Robert A. Mueller, III Director, Federal Bureau of Investigation (Subject: Cecilia Woods matter)
February 26, 2007 (Answered 3/15/07)	The Honorable Robert A. Mueller, III Director, Federal Bureau of Investigation (Subject: SA Jamie Turner matter/Discipline of Turners supervisors)
March 19, 2007 (Answered 3/26/07- cc: Sen. Grassley)	The Honorable Robert A. Mueller, III Director, Federal Bureau of Investigation (Subject: Use of Exigent letters)

January 10, 2008 (Answered 2/26/08)	The Honorable Robert A. Mueller, III Director, Federal Bureau of Investigation (Subject: Misuse of confidential case funds. Briefing also provided.)
June 25, 2008 (Answered 8/29/08- cc: Sen. Grassley)	The Honorable Robert A. Mueller, III Director, Federal Bureau of Investigation (Subject: Exigent letters)
October 22, 2008 (Answered 3/13/09)	Candice M. Will Assistant Director, Federal Bureau of Investigation (Subject: SA Elizabeth Morris matter)

Grassley Correspondence Addressed to the IG

Date	**Addressed to:**
March 16, 2007 (OIG responded via conversations with staff member Jason Foster during Spring 2007– complaint forwarded to OPR for handling)	The Honorable Glenn A. Fine Inspector General,U.S. Department of Justice (Subject: Agent Bassem Youssef matter)
June 4, 2008 (OIG responded via conversations with staff member Jason Foster)	The Honorable Glenn A. Fine Inspector General,U.S. Department of Justice (Subject: 7 ongoing OIG reviews)
April 22, 2009 (follow-up to 6/4/08) (OIG responded via conversations with staff member Jason Foster; additionally, IG Fine met with staff on 5/26/09 to discuss the issues in these letters)	The Honorable Glenn A. Fine Inspector General,U.S. Department of Justice (Subject: 7 Issues regarding OIG investigations)
October 22, 2008 (OIG answered first Morris letter in writing on 8/22/08. OIG answered the 10/22/08 letter in writing on 4/14/09)	The Honorable Glenn A. Fine Inspector General, U.S. Department of Justice (Subject: SA Elizabeth Morris matter)

Attachment C

Sen. Coburn 1

Fact Sheet: Emmett Till Unsolved Civil Rights Crime Act

U.S. Department of Justice

EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT OF 2007

Overview and Background

The Department of Justice fully supports the goals of the Emmett Till Unsolved Civil Rights Crime Act of 2007. For more than 50 years, the Department of Justice has been instrumental in bringing justice to some of the Nation's horrific civil rights era crimes. These crimes occurred during a terrible time in our nation's history when some people viewed their fellow Americans as inferior, and as threats, based only on the color of their skin. The Department of Justice believes that racially motivated murders from the civil rights era constitute some of the greatest blemishes upon our history. As such, the Department stands ready to lend our assistance, expertise, and resources to assist in the investigation and possible prosecution of these matters.

In October 2008, the Emmett Till Unsolved Civil Rights Crime Act of 2007 was signed into law, directing the Department to designate a Deputy Chief in the Civil Rights Division (CRT) to coordinate the investigation and prosecution of civil rights era homicides. CRT officially designated the Deputy Chief on March 1, 2009. In addition, the Act required the designation of a Supervisory Special Agent in the FBI's Civil Rights Unit to manage and provide oversight of these investigations. FBI designated a Supervisory Special Agent on October 12, 2008. The Civil Rights Division and the FBI were also given the authority to coordinate their activities with state and local law enforcement officials.

For fiscal years 2008 through 2017, the Act authorized to be appropriated $10,000,000 per year to the Attorney General, to be allocated as appropriate to the Department's Civil Rights Division and the FBI for the purpose of investigating and prosecuting criminal civil rights violations; $2,000,000 per year for grants to State or local law enforcement agencies for expenses associated with the investigation and prosecution by them of civil rights era homicides; and $1,500,000 per year to the Community Relations Service of the Department to bring together law enforcement agencies and communities in conflict, resulting from the investigation of these cases. However, funds authorized by this Act have not been appropriated.

The Act requires the Attorney General to annually conduct a study and report to Congress not later than 6 months after the date of enactment of this Act, and each year thereafter. Among other issues, the study and report is required to discuss the number of open

investigations within the Department for violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death. The Act also requires the report to discuss any applications submitted for grants under section 5, the award of any grants, and the purposes for which any grant amount was expended. Additionally, the Act requires the Attorney General to designate a Deputy Chief in the Criminal Section of the Civil Rights Division to coordinate the investigation and prosecution of these criminal cases, and authorizes the Deputy Chief to coordinate investigative activities with State and local law enforcement officials. The Department completed and submitted the first report to Congress on May 13, 2009.

The Department's efforts to investigate and prosecute unsolved civil rights era homicide cases predate the Emmett Till Unsolved Civil Rights Crime Act. During the course of the Department's focus on these matters, we have opened 107 matters for review. Eleven of those matters have been opened within the past six months. Of the 107 matters opened as part of the Department's review of civil rights era homicides, the Department has thus far made a decision to close 14 matters without federal prosecution. However, we are awaiting contact information for identifiable next-of-kin to the victims for 12 of those matters so that we may notify them of our decision. The following two matters were closed on April 3, 2009: *In re: Clarence Pershing Cloninger*; and *In re: William D. Owens*. In both matters, our review revealed no viable federal statutory basis for prosecution.

In addition, there are certain difficulties inherent in these cold cases: subjects die; witnesses die or can no longer be located; memories become clouded; evidence is destroyed. Even with our best efforts, investigations into historic cases are exceptionally difficult, and justice in many of these cases will never be reached inside of a courtroom. Notwithstanding these legal and factual limitations, the Department believes that the federal government can still play an important role in these cases.

To further the Department's commitment to investigating and prosecuting civil rights era homicides, the FBI in 2006 began its Cold Case Initiative (the Initiative) to identify and investigate the murders committed during the civil rights era. Each of the 56 field offices was directed to identify cases within its jurisdiction that might warrant inclusion on a list of cold cases meriting additional investigation. In 2007, the FBI announced the next phase of this initiative, which includes a partnership with the National Association for the Advancement of Colored People (NAACP), the Southern Poverty Law Center (SPLC), and the National Urban League to identify possible additional cases for investigation and to solicit their assistance with already identified matters.

Since January, 2007, at least 40 federal prosecutors have worked on cases under review as part of the Department's Cold Case Initiative and the Emmett Till Unsolved Civil Rights Crime Act of 2007. Although no matters are currently under federal indictment, several cases have been identified as potentially viable prosecutions at either the state or federal level. The resources involved in a viable prosecution are enormous.

New Investments

Civil Rights Division

The FY 2010 Budget requests **$1.6 million and 9 positions (6 attorneys)** to support the establishment of the Cold Case Unit in the Civil Rights Division, to comply with the recently enacted Emmett Till Unsolved Civil Rights Crime Act, passed by Congress in October 2008. This new unit will focus exclusively on the investigation and prosecution of civil rights era unsolved homicide cases. FY 2010 requested program increase will establish baseline funding for this initiative.

Emmett Till Act
Resource Summary
(Amount in $000)

DOJ Component	FY 2009 Pos	Agt/Atty	Amount	FY 2010 Pos	Agt/Atty	Amount
Civil Rights Division	14	3	600	9	6	1,645
United States Attorneys	Funded within base			Funded within base		
Federal Bureau of Investigation	20 field agents working on cold case era matters, funded within base			Funded within base		
Community Relations Service	Funded within base			Funded within base		
Office of Justice Programs-National Institute of Justice-DNA Initiative*	$14.5 million in grant requests were received for cold cases, but no requests for grant funding have been received to date associated with the Emmett Till Act					

* As part of the DNA Initiative, OJP/NIJ releases annual, competitive solicitations for grant applications to solve cold cases with DNA. Specifically, "... applications from States and units of local government for funding to identify, review, and investigate "violent crime cold cases" that have the potential to be solved using DNA analysis and to locate and analyze biological evidence associated with these cases." The period of award is a maximum of 18 months.

In FY2009, OJP/NIJ received requests for $14.5M in funding under this solicitation. OJP/NIJ will release another competitive solicitation in FY 2010.