EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

WEDNESDAY, JUNE 25, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:29 p.m., in room 2141, Rayburn House Office Building, the Honorable Linda Sánchez (Chairwoman of the Subcommittee) presiding.

Present: Representatives Sánchez, Johnson, Lofgren, Delahunt, Cohen, Jordan, and Franks.

Staff present: Eric Tamarkin, Majority Counsel; Daniel Flores, Minority Counsel; and Adam Russell, Majority Professional Staff Member.

Ms. SÁNCHEZ. This hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law will now come to order.

Without objection, the Chair will be authorized to declare a recess of a hearing at any point.

I would now like to recognize myself for an opening statement.

In the first session of the 110th Congress, we examined some aspects of the Executive Office for U.S. Attorneys, EOUSA, particularly in the context of the U.S. attorney firing scandal.

Today, the Subcommittee will exercise its oversight responsibilities and review the performance of the Justice Department. Specifically, we will scrutinize EOUSA and the work of the 94 U.S. attorney offices throughout the country. We hope to learn, among other things, what resources that these offices may need to effectively meet their responsibilities.

Much to my dismay and frustration, we have yet to obtain information from the White House to finally allow Congress and the public to learn the full extent of the politicization of the Justice Department. While I do not expect to learn those answers today, I do expect to find out how the controversy affected morale in the U.S. attorneys' offices, and what adjustments EOUSA has made in response to the issues raised during the controversy.

Separate and apart from the U.S. attorney firing scandal, I have a number of concerns about the operation of EOUSA and the U.S. attorneys' offices that I hope members of our panel will address, either in their statements or during questioning.

First, I am troubled by U.S. Attorney Thomas P. O'Brien's decision in March of 2008 to eliminate the Public Corruption and Environmental Crime Section in the Los Angeles office and transfer its 17 prosecutors to other units in the office. According to current and former prosecutors, the dissolution of the public corruption unit will severely limit the office's ability to file long-term, complex corruption cases involving elected officials and other high profile figures.

Furthermore, some prosecutors have alleged that this decision signifies an effort by Mr. O'Brien to drive up statistics in the office by requiring the prosecution of high-volume, low-quality cases.

I am also concerned about the apparent shift in focus toward immigration prosecutions to the detriment of other kinds of prosecution. Specifically, between 2000 and 2006, prosecutions for immigration violations increased by 36 percent. However, in the same time period there were significant declines in the number of prosecutions for environmental violations of 12 percent, organized crime of 38 percent, white-collar crime of 10 percent, bank robbery of 18 percent and bankruptcy fraud of 46 percent.

This recent surge of immigration cases has triggered concerns about the imbalanced use of resources. The department estimates that U.S. attorneys will file over 24,000 cases involving immigrants over the next 2 years. If both prosecutors and Federal defenders are spending most of their time and limited resources on misdemeanor border crossing cases, they are not able to work on more complex prosecution.

While I believe that immigration prosecution is certainly a priority, I think it is very important that Congress scrutinize the department's method of budgeting its limited resources to make certain that all areas of concern can be addressed.

Additionally, the expanded effort to prosecute immigration cases has raised concerns about whether due process rights, such as adequate access to counsel, are being sacrificed in the crush of bloated court dockets.

Next, I look forward to reviewing the department's record on terrorism prosecution. When the inspector general's report on the department's terrorism prosecution statistics was released last year, I was troubled by the I.G.'s finding that statistical data on terrorism prosecutions compiled by EOUSA was plagued by inaccuracies. I hope that EOUSA has since rectified how terrorism prosecution statistics are calculated.

Regardless of how terrorism prosecution statistics are tallied, Congress should probe whether the proportion of terrorism prosecutions is in line with the amount of resources devoted to those prosecutions.

I do agree with the Administration's view that prosecuting terrorists should be a top priority that warrants a significant appropriation of resources. And it is our duty in Congress to make sure those significant resources are being used effectively.

In the nearly 6,500 cases treated by the Justice Department as terrorism investigations between September 2001 and September of 2006, only about one in five defendants were convicted. Congress would be abdicating our oversight duties if we simply threw money

at terrorism prosecutions without examining just how that money is spent.

Because many of these questions have not recently been explored, I believe it is imperative that we ask them now. Accordingly, I look forward to hearing from the witnesses on these and other critical issues.

At this time, I would now like to recognize Mr. Franks, the acting Ranking Member, for his opening remarks.

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

And that is an emphasis on "acting." There is no one that can replace the very able Chris Cannon. And he certainly is much more familiar with the workings of this Committee than I am, but I will do my best.

Madam Chair, this hearing marks the first time during this 110th Congress that our Subcommittee has held an oversight hearing on the Executive Office for U.S. Attorneys, despite the fact that the office's mission is vital to the functioning of the department and its U.S. attorneys' offices. A quick look at the office's mission statement will help anyone to appreciate the enormous tasks the office performs, and a look at the small size of its personnel should leave doubts that the office can actually fulfill those tasks.

When Republicans held the Congress, we held earlier oversight hearings with EOUSA. Our regular oversight of the office helps us to understand the challenges the office faces and to assure that its staff has the well-calibrated resources and the congressional guidance that it needs to carry out its duties faithfully.

So, today, I would like to inquire into some of the most important of those issues.

For example, just this month the department announced the latest wave of nationwide arrests in its investigation of the mortgage crisis that has plagued our economy for much of this term. That investigation is known as the Operation Malicious Mortgage.

This operation has involved more than 50 U.S. attorneys' offices, Main Justice, the FBI and at least eight sister agencies. EOUSA must have been at the heart of this effort, supporting and facilitating coordination between the department, U.S. attorney's office and a host of other agencies who joined the department in this endeavor.

I would like to know what challenges EOUSA faced, what shortcomings it overcame or did not overcome, what lessons it learned and what that tells us about how we can help the office to build on this experience to meet the next crisis we face with even greater success.

I also want to know if Countrywide Financial's VIP mortgage program, also known as the "Friends of Angelo" program, came up in the department's investigation.

As many know, Countrywide's CEO, Angelo Mozilo, is reported to have given preferential loans to Senators Christopher Dodd and Kent Conrad. Others implicated are James Johnson, former member of Senator Barack Obama's vice presidential vetting team; former HHS Secretary Donna Shalala; and former U.N. Ambassador Richard Holbrooke. Indeed, there appears to be evidence that a number of prominent and powerful Democrats benefited from

sweetheart mortgage deals, while average Americans struggle in communities across the country.

Countrywide is reportedly under investigation for securities fraud, and Mr. Mozilo is being questioned about selling off nearly a half billion dollars worth of Countrywide shares between 2004 and 2007, when the subprime mortgage bubble burst.

Allegations that Mr. Mozilo and Countrywide bought favors from legislators will cast a shadow over the American people's trust in our government until the Democrat majority allows the Congress to investigate this matter, as it should have been, and as Republican leaders have demanded.

Let us all remember that when Democrats took the House in 2006, they pledged to do two things: drain the swamp of corruption and lower gas prices. Republicans and the Nation are still waiting for Democrats to honor those promises. If Democrats won't drill for oil, perhaps they should at least drill for corruption within their own ranks.

There are many other pressing law enforcement issues that we need to discuss with EOUSA, and I plan to address as many as I can. I expect, too, that some Members of the Committee will want to spend our time today revisiting issues already covered in last year's U.S. attorneys investigation.

I hope that does not unnecessarily prevent us from getting the most out of this hearing. We explored those overtrumped partisan issues in depth last year, while the majority neglected the need to pay attention to our regular oversight duties.

We need not rehash them today, while Democrats stonewall the investigation that Republicans have demanded into Countrywide VIP mortgage kickbacks. Today, we need to focus on the real issues that now stand front and center before our Nation.

And I yield back my time, Madam Chair.

Ms. SÁNCHEZ. The gentleman yields back the balance of his time.

Without objection, other Members' opening statements will be included in the record.

I am now pleased to introduce the witnesses on our panel for today's hearing.

Our first witness is Ken Melson. On May 14, 2007, Mr. Melson became the director of the EOUSA. EOUSA provides administrative oversight to the 94 U.S. attorneys' offices across the country. In addition, EOUSA also serves as a liaison between the U.S. attorneys and other Federal agencies and Department of Justice components.

Mr. Melson has served in the Department of Justice as a Federal prosecutor for nearly 24 years, joining the U.S. Attorney's Office for the Eastern District of Virginia in June 1983, as an assistant U.S. attorney, and in June 1986, becoming the first assistant U.S. attorney.

He has also served as the interim U.S. Attorney for the Eastern District of Virginia from July 1991 to October 1991, March 1993 to September 1993, and April 2001 to September 2001.

Welcome to you, Mr. Melson. Thank you for coming.

Our second witness is Heather Williams. Ms. Williams is the first assistant Federal public defender for Tucson, Arizona. Prior to her services as the first assistant, Ms. Williams was the immigra-

tion unit supervisor from 1999 to 2006, and has been with the Federal Public Defender's Office since 1994. From 1988 to 1994, she was an assistant public defender in the Pima County Public Defender's Office in Tucson.

Ms. Williams has over 70 jury trials and numerous appeals to her credit, covering the gamut of offenses. She has spoken at seminars across the United States and teaches at the National Criminal Defense College each summer, and legal ethics for the criminal practitioner at the University of Arizona Law School.

Welcome, Ms. Williams.

Our third witness is Richard Delonis, representing the National Association of Assistant U.S. Attorneys. Mr. Delonis is an assistant United States Attorney in the Detroit office of the United States Attorney's Office for the Eastern District of Michigan.

As an assistant U.S. attorney, Mr. Delonis has represented the United States before Federal grand juries in criminal trials and before the appellate courts. He has prosecuted criminal cases involving major fraud schemes, narcotics conspiracy, aircraft hijacking, murder, interstate theft and white-collar crime. Mr. Delonis is currently assigned to the prosecution of criminal tax cases and previously was a member of the Organized Crime Strike Force.

Mr. Delonis has served on the board of directors of the National Association of Assistant U.S. Attorneys since the organization's inception in 1993, and has served as the organization's national president since 1996.

We want to welcome you to our panel today.

Our final witness is Jonathan Turley. Professor Turley is a nationally recognized legal scholar who has written extensively in areas ranging from constitutional law to legal theory to tort law. After a stint at Tulane Law School, Professor Turley joined the George Washington University Law School faculty in 1990, and in 1998 became the youngest chaired professor in the school's history.

Professor Turley has served as counsel in some of the most notable cases in the last two decades, including his representation of the Area 51 workers at a secret airbase in Nevada, the nuclear couriers at Oak Ridge, Tennessee, the Rocky Flats grand jury in Colorado, Dr. Eric Foretich, the husband in the Elizabeth Morgan custody controversy, and four former U.S. attorney generals during the Clinton impeachment litigation.

He has served as a consultant on homeland security and constitutional issues, and is a frequent witness before the House and Senate on constitutional and statutory issues, as well as tort reform legislation.

I want to thank you all for your willingness to participate in today's hearing. Without objection, your written statements will be placed into the record in their entirety. And we are going to ask that you limit your oral testimony today to 5 minutes.

We have a lighting system here that you will note. When your time begins you will be given a green light. After 4 minutes the light will turn yellow, warning you that you have a minute left in your testimony. And of course, when the red light comes on, that lets you know your time has expired.

If you are mid-sentence or caught mid-thought when the red light comes on, we will, of course, allow you to finish that final thought before moving on to the next witness.

After each witness has presented her or his testimony, Subcommittee Members will be permitted to ask questions subject to the 5-minute limit.

So, with that, I am going to invite Mr. Melson to please begin his oral testimony.

TESTIMONY OF KENNETH E. MELSON, ESQ., DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. MELSON. Thank you, and good afternoon.

Chairman Sánchez, Acting Ranking Member Franks and Members of the Committee, I am Kenneth E. Melson, the director of the Executive Office for United States Attorneys. And I am very pleased to be here today to represent the outstanding men and women of the 94 United States attorneys' offices. And on their behalf, I thank you for your continuing support of their efforts.

I have been honored to serve as the director of EOUSA since May 2007, and I understand the significance of the position to the Administration of justice in this country.

When I came to EOUSA after a 20-year career as a first assistant U.S. attorney, appointed by both Democrats and Republicans, I told my staff when I first met them in the Great Hall of Justice, that we would make no personnel decisions based upon political considerations, and that we would treat every individual, regardless of whom they are or what they represent, with dignity and respect, and that we would not discriminate on any basis other than merit.

In that vein, I have committed EOUSA to become the center of excellence for the United States attorneys community. I believe we have accomplished that, and we will continue to pursue excellence based upon the experience and competence of career employees and prosecutors, who understand that the department's mission is to do justice, to follow the rule of law and to lead by example.

Let me tell you a little bit about the great work of the men and women in the U.S. attorneys' offices.

First, with regard to immigration, we continue to experience heavy workloads for the five U.S. attorneys' offices along the southwest border, where immigration issues pose a huge challenge. In 2007, these five offices alone filed almost 12,000 felony immigration cases, or 66 percent of the totals from all 94 offices. Those case totals do not include the tens of thousands of misdemeanor immigration cases prosecuted each year—again, principally by those five offices along the southwest border.

Given this heavy immigration workload, Congress' appropriation of $7 million last year for law enforcement along the southwest border was put to good use. In each of the districts, law enforcement prosecutors, the marshals, the courts and defense attorneys are working closely together to meet the challenges of a heavy caseload. EOUSA is there to assist in any capacity that it can.

But our work in the immigration area has not infringed on important work in other prosecution priority areas of the department.

For example, with regard to the department's top priority, prosecuting and preventing terrorism, the United States attorney's offices have continued to prosecute significant domestic and international terrorism and terrorism-related crimes.

However, we should not measure success in the counterterrorism area simply by counting cases or convictions. The department's mandate is not only to prosecute those who commit terrorist acts, but to disrupt and prevent terrorist acts. The latter activities do not necessarily result in charges or convictions.

In addition, our 94 offices are closely coordinating with the FBI and the State and local law enforcement to increase our intelligence sharing and emergency preparedness. My written submission illustrates the other great work and successes of the U.S. attorneys community.

But I want to stress that we are committed also to increasing the collection of debts owed to the Federal Government and to victims. In fiscal year 2007, the United States attorneys offices collected over $1.7 billion in criminal debts on behalf of victims of crime. And may I say with a note of pride, that we were awarded the Crime Victims Fund Award for 2007 by the Office of Victims of Crime for our creative implementation of the Treasury Offset Program.

In 2007 alone, almost $6 million in fines and restitutions was recovered in this program alone—money that otherwise would not have been recovered for the victims of crime.

One of the most disturbing things I have had to face as director is the number of urgent reports I receive concerning threats to AUSAs. Recently, two AUSAs have been assaulted in courthouses, and one AUSA has had to be relocated, because of a serious, credible threat on her life. Despite threats to them and their families, AUSAs continue to be dedicated to the mission of the department and the cause of justice.

And EOUSA has endeavored, within the current limitations, to fairly compensate our prosecutors for their outstanding performance by exploring ways to pay for performance through incentives, performance awards, bonuses and revision of the credible service calculations, and our work is ongoing.

Dedication, hard work and commitment by these individuals deserve recognition.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Melson follows:]

PREPARED STATEMENT OF KENNETH E. MELSON

Department of Justice

STATEMENT OF

KENNETH E. MELSON
DIRECTOR
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

CONCERNING

"OVERSIGHT OF THE EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS"

PRESENTED

JUNE 25, 2008

Chairman Sanchez, Ranking Member Cannon, and Members of the Subcommittee, I am Kenneth E. Melson, the Director of the Executive Office for United States Attorneys (EOUSA). I am very pleased to appear before you today to represent the outstanding men and women of the 94 United States Attorneys' Offices and I thank you on their behalf for your continuing support of their efforts.

EOUSA provides executive assistance and supervision to the 94 United States Attorneys' Offices (USAOs), which collectively employ over 5,500 Assistant United States Attorneys and over 5,000 support staff employees. United States Attorneys' Offices look to EOUSA to address and solve issues, large or small, dealing with budgets, operations, personnel, facilities, and information technology. EOUSA coordinates and directs the relationship between the USAOs and other components within the Department of Justice, allocates resources to the USAOs, and provides policy and program assistance in all prosecution and litigation areas.

What follows is an overview of highlights of the outstanding work being done by the United States Attorneys' Offices in priority program areas, as well as a short summary of EOUSA's 2009 budget request.

NATIONAL SECURITY

The first and foremost priority of the Justice Department since the horrific attacks of September 11, 2001, has been to prevent terrorism and protect the nation's security. EOUSA works with each and every one of the 94 U.S. Attorneys' Offices in ensuring the prominence of that strategic goal. The oversight, coordination, management assistance and guidance, and allocation of resources provided by EOUSA have contributed to a solid record for the Department and the U.S. Attorney's Offices in keeping our nation safe and secure.

Case data from EOUSA's case management system, known as the LIONS system, shows that since Fiscal Year (FY) 2002 the United States Attorneys' Offices have filed 493 international terrorism cases and 512 cases involving domestic terrorism. Our data shows that 376 defendants in the international terrorism cases have been convicted, and 437 defendants charged with domestic terrorism have been convicted. From FY 2002 to the present, United States Attorneys have also filed 161 cases involving terrorist financing and 261 cases involving terrorist hoaxes as well as many other cases designed to prevent or disrupt terrorist activity. There have also been significant achievements in implementing the Attorney General's Export Enforcement Initiative, launched in October 2007.

Among the many successes in our efforts to protect the nation's security are the following:

Southern District of Florida: On August 16, 2007, Jose Padilla, an American citizen, and two co-defendants were convicted of conspiracy to murder, kidnap and maim individuals in a foreign country, conspiracy to provide material support to terrorists, and providing material support to terrorists as part of a North American support cell designed to send money, physical assets, and terrorist recruits to overseas jihad conflicts. Padilla was sentenced to 17 years and four months of imprisonment; the two codefendants were sentenced to terms of imprisonment of 15 years 8 months, and 12 years 8 months.

District of Maryland: On May 10, 2007, Thirunavukarasu Varatharasa pled guilty to conspiracy to provide material support to a foreign terrorist organization and attempted export of arms and munitions. That defendant conspired with three others to provide surface-to-air missiles, machine guns, night vision devices, and other weapons to the Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers), a designated Foreign Terrorist Organization, in Sri Lanka. All four pled guilty in connection with the scheme. On January 3, 2008, Varatharasas was sentenced to 57 months in prison.

Western District of Texas: On July 27, 2007, Paul Ross Evans pled guilty to one count of using and attempting to use a weapon of mass destruction, with an agreed sentence of forty years' imprisonment and five years of supervised release. Evans was indicted May 15, 2007, on explosive charges for placing an armed, nail-laden, foot-long pipe bomb near the entrance of Austin Woman's Health Center, in Austin, Texas.

Southern District of Ohio: On July 31, 2007, Nuradin Abdi pled guilty to conspiracy to provide material support to terrorists. Abdi, an associate of Iyman Faris, was a U.S. citizen from Pakistan. Faris was tasked by al Qaeda operatives to assess the Brooklyn Bridge in New York City as a possible post-9/11 target of destruction. Abdi was sentenced to 10 years' imprisonment on November 27, 2007.

District of Massachusetts: On January 11, 2008, a jury returned guilty verdicts in *United States v. Muntasser, et al.*, against three defendants on tax, conspiracy to defraud, and false statements charges connected to their operation of Care International, a purported charity involved in financing overseas violent extremist activities.

Southern District of New York: Defendant Tarik Shah was sentenced on November 9, 2007, to 15 years in prison following his guilty plea to conspiring to provide material support to al Qaeda.

Northern District of Illinois: On November 28, 2007, Derrick Shareef pled guilty to attempted use of a weapon of mass destruction, a charge arising out of Shareef's plan to set off grenades at a shopping center in Rockford, Illinois.

Northern District of New York: On March 19, 2008, a defendant was sentenced to 30 months' imprisonment following a conviction under the hoax statute for making a threat to bomb a bus terminal in Binghamton, New York.

These are but a few examples of the successful investigations and prosecutions occurring in every region across the United States, and are presented to highlight how the critical national security mission is being pursued.

EOUSA SUPPORT FOR THE NATIONAL SECURITY MISSION: The Executive Office further supports the Justice Department's top priority by providing assistance to the Anti-Terrorism Advisory Councils (ATAC), maintained in each U.S. Attorney's Office, through the administration of the Intelligence Specialists (IS) program, the administration of special funding for terrorism cases, and through the EOUSA evaluation program.

The foundational component of the national security program in each U.S. Attorney's Office is the ATAC program. Founded at the direction of the Attorney General six days after the September 11, 2001, attacks, the ATAC is overseen by the United States Attorney and is managed by a senior Assistant U.S. Attorney in each district. Additionally, the United States Attorney and the ATAC Coordinator are assisted by an intelligence analyst in each district. EOUSA manages and coordinates the Intelligence Specialist program through a national Program Manager. The primary responsibilities of each ATAC are to 1) coordinate anti-terrorism initiatives; 2) provide training; and 3) facilitate information sharing among all levels of government, including not only law enforcement but also first responders, emergency and health care officials, and others. The ATACs, with a membership of up to 11,000 law enforcement officers, first responders, and private sector participants, work closely with the FBI Joint Terrorism Task Forces (JTTF), which have primary operational responsibilities in each district for the investigation of national security cases.

A major aspect of EOUSA support for the ATAC program is evidenced in the IS program. EOUSA manages and coordinates the IS program through a national Program Manager. The IS facilitates training and initiatives sponsored by the ATAC. In addition, the IS uses his or her access to classified criminal and law enforcement intelligence to coordinate intelligence activities between members of a district's ATAC. In many districts, the IS plays a critical role in information sharing, and many work with state fusion centers to ensure important federal-state-local linkages. Many districts operate or participate in financial Suspicious Activity Report (SAR) Review Teams formed to uncover suspicious money trails. A primary goal of these efforts is to identify individuals providing material support to terrorism.

In the realm of counterterrorism initiatives, each of the United States Attorneys' Offices have identified multiple specific initiatives to address unique vulnerabilities in each district to thwart terrorists who seek to exploit weaknesses in our identification, immigration, critical infrastructure, and financial systems to facilitate potential attacks. Moreover, several United States Attorneys' Offices have undertaken an Export Enforcement Initiative to address the threat posed by the illegal export of arms and sensitive technology to foreign governments and terrorist organizations.

EOUSA provides an extensive and robust program of national security training at the National Advocacy Center (NAC) through its Office of Legal Education (OLE). In cooperation with the National Security Division, OLE during Fiscal Year 2007 trained over 1,100 prosecutors, agents, officers, and intelligence analysts on topics such as the review of SARs; export controls and counter-proliferation; the Foreign Intelligence Surveillance Act (FISA); and basic international issues. OLE offered its Annual ATAC Coordinators' Conference, with helpful emphasis on best practices and ideas for training, and provided three sessions of National Security Training for Anti-Terrorism Prosecutors and FBI/JTTF Agents.

EOUSA also administers supplemental appropriated funds for terrorism cases and for training. The FY 2007 and 2008 budgets provided a $5.0 million fund for extraordinary expenses in terrorism cases. These cases can at times require unusually high costs for translation, travel, expert witnesses, and special equipment. To date, $3.1 million has been allocated for these cases, in over twenty districts. There is also an appropriation for training in the amount of $1.5 million. Although this fund is not limited to national security training, it is extremely important to the districts' ATAC programs. Many meritorious requests have been

received and approved, including programs on preventing suicide terrorism, investigating terror financing, port security, and homegrown terrorists/radicalization. These programs further facilitate a trained and alert law enforcement community.

Finally, EOUSA supports the national security mission through the office evaluation program operated by the Evaluation and Review Staff (EARS). Under this program, experienced Assistant U.S. Attorneys, and dedicated support professionals, evaluate our U.S. Attorney's Offices and offer helpful insights and guidance. The EARS program includes each district's anti-terrorism program, including the ATAC and IS functions, and helps ensure effective and comprehensive national security programs across the country. There were 20 evaluations conducted by EARS during FY 2007, and another nine to date in FY 2008.

VIOLENT CRIME

ANTI-GANG INITIATIVES: United States Attorneys have a strong focus on gang prosecutions. Every district has designated an Anti-Gang Coordinator who provides leadership and focus to each district's anti-gang effort. These Anti-Gang Coordinators, in consultation with their local partners, have developed comprehensive, district-wide strategies to address the gang problems unique to their areas.

The Comprehensive Anti-Gang Initiative boasts ten sites nationwide. In 2006, the initiative had originally provided a total of $15 million ($2.5 million per site) to six locations experiencing significant gang problems: Los Angeles, Tampa, Cleveland, Dallas/Ft. Worth, Milwaukee, and the "222 Corridor" in Pennsylvania which stretches from Easton to Lancaster. Since then four additional sites have also received $2.5 million each in targeted grant funding: Rochester, Oklahoma City, Indianapolis, and Raleigh-Durham. United States Attorneys in these

ten locations are responsible for coordinating federal, state and local efforts to incorporate 1) enforcement; 2) prevention and intervention programs targeting youth and 3) assistance for released prisoners as they re-enter society. By integrating these three components, the comprehensive initiative aims to address gang membership and gang violence at every stage.

Focused enforcement efforts under the Comprehensive Anti-Gang Initiative are showing strong early results. Some examples from among the ten sites include the following:

In the **Northern District of Ohio**, in Cleveland, each gang in the assigned area is targeted by a multi-agency partnership of county and federal prosecutors, and local, state, and federal law enforcement officers. These partners are fully identifying criminal gangs, including territory, structure, leadership, membership, associations, communications, financing and primary criminal activities. These directed patrols have resulted in over 168 federal and state convictions. By the end of 2007, homicides in the target area were down by approximately 39 percent and violent crimes were down by approximately 15 percent.

In the **Northern District of Texas**, in Dallas, 14 members of the Texas Syndicate prison gang were recently convicted of conspiring to participate in a violent Racketeer Influenced and Corrupt Organization enterprise responsible for murders, attempted murders, conspiracies to commit murder, robbery, drug trafficking, and other crimes in North Texas and beyond. Most of these 14 defendants face up to life in prison. Members of this prison gang are bound by a set of strict rules which ensure loyalty and participation in the enterprise's criminal activities and are subject to strict and harsh discipline, including death, for violating the rules. The rules require that a member continue his participation in the organization even after his release from prison. Membership is for life.

In the **Eastern District of Wisconsin**, in Milwaukee, a federal grand jury recently returned a 20-count indictment against 45 defendants connected to a north-side gang. This local gang had been involved in drug-trafficking, shootings, and acts of witness intimidation over the last two years, including an incident in which gang members beat a suspected cooperator and then lit him on fire. Since these arrests, the Milwaukee Police Department and community partners have established eight new neighborhood watch groups, called block-clubs, in the area, as citizens have stepped forward to work with the police to keep the neighborhood safe.

In the **Eastern District of Pennsylvania**, along the 222 Corridor, five indictments charging 26 people were recently returned by a federal grand jury charging drug-trafficking conspiracies, and eight additional defendants were charged by a local District Attorney's Office with related state controlled substances offenses. One federal indictment charged that a defendant ran the local drug operation and sold at least 15 kilograms of cocaine and crack cocaine to other drug dealers and gang members, including members of the "Bloods" gang.

Conservative estimates put the street value of the drugs that were distributed at more than a million dollars.

In addition to prosecutions by the USAOs, EOUSA participates in the Department's Anti-Gang Coordination Committee and facilitates coordination between the districts and the Department's other Anti-Gang related entities, such as the National Gang Intelligence Center, National Gang Targeting, Enforcement & Coordination Center, and Gang Squad. EOUSA also assists in promoting the Department's PSN Anti-Gang Training, which has recently completed 5 of 12 total conferences nationwide. Further, EOUSA sponsors training conferences for the Anti-Gang Coordinators and other relevant prosecutors at the NAC, during which the faculty and attendees share information, strategies, and best practices.

PROJECT SAFE NEIGHBORHOODS: Project Safe Neighborhoods (PSN) continues to be a top priority and one of the great success stories for the United States Attorneys' Offices and the Department of Justice. PSN began as the Department's program to fight gun violence. It has, as discussed further below, expanded to include efforts in each of the U.S. Attorney's Offices to combat gangs and gang violence. Since PSN's inception in 2001, the number of federal firearms prosecutions has increased significantly. From FY 2001 to 2007, the United States Attorneys filed 68,543 cases against 83,106 federal firearms offenders. That is more than a 100 percent increase over the seven year period prior to the initiation of PSN. In 2007 alone, the U.S. Attorneys' Offices prosecuted 12,087 defendants for federal gun crimes. The conviction rate in 2007 for firearms defendants is a record 92 percent. The percentage of those defendants sentenced to prison, nearly 94 percent, is also a record high. Over 50 percent of those offenders received prison terms of more than five years and nearly 75 percent received sentences

of more than three years. This is one indication that the United States Attorneys are appropriately prosecuting the most violent criminals in their districts.

A few examples of successful firearms prosecutions handled by the United States Attorneys during 2007 include:

In the **District of South Carolina**, a defendant who had previously been acquitted in state court was later convicted federally of possession of firearm by a felon. In March 2006, the defendant was charged in state court with kidnapping and criminal sexual conduct against two teenage girls whom he allegedly kidnapped, placed in an underground bunker and raped. After the acquittal in state court, but before the defendant was released from state custody, he was arrested on federal felon in possession charges. In November 2007 a federal jury convicted the defendant on these charges and he now faces a mandatory 15 years to life in prison.

In the **Central District of Illinois**, a defendant was convicted of firearms and other charges and sentenced to life in prison. The defendant, after stalking the victim and vandalizing her house, abducted her and bound her in chains and drove her across the country repeatedly threatening to shoot her. The victim escaped in South Dakota and the defendant was later arrested. He was charged with kidnapping and brandishing a firearm during a crime of violence and felon in possession of a firearm. In 2007, he was found guilty after a jury trial of all of the charges and sentenced to life plus 84 months in prison.

In the **Eastern District of Texas**, in November of 2006, officers with the Lewisville Police Department located a vehicle in a hotel parking lot that was associated with an individual who was wanted for aggravated kidnapping and aggravated sexual assault with a deadly weapon. The officers observed the defendant through the open curtains in one of the rooms in the hotel. Upon entering the room, they arrested the defendant and recovered a .380 caliber two-shot Derringer. The defendant later admitted that he used the Derringer to commit more than a dozen armed robberies in seven other Texas towns. Because the defendant had 7 prior convictions for aggravated robbery he was an Armed Career Criminal and was sentenced in December 2007 to 300 months in prison.

In the **District of Arizona**, three defendants were sentenced in April 2008 to between 70 and 87 months apiece for their possession of unregistered machine guns and destructive devices. The defendants had been indicted on 28 counts charging them with possession of 26 fully-automatic machine guns, three fragmentation grenades, and a 40 mm grenade launcher. The defendants were arrested in Tucson as part of a March 2006 undercover sting operation. According to evidence introduced at the sentencing hearings, the defendants came to Tucson to purchase these and other weapons on behalf of a major Mexican drug trafficking cartel. The defendants paid undercover law enforcement agents $194,000 for the weapons and were arrested after they attempted to take possession of the weapons, which were intended to be smuggled into Mexico.

In the **Southern District of California,** two defendants have pled guilty to felony firearms charges in cases involving the intended transportation of firearms to Mexico. In the first case the defendant directed a third party to purchase weapons that were intended for later sale in Mexico. In the second case the defendant acted as the straw purchaser of firearms that she distributed to others in Mexico. In both cases the defendants' conduct or intended conduct involved the distribution of firearms into Mexico

In 2006, the PSN program was expanded to combat gangs and gang violence in addition to combating gun violence. This was a perfect fit. Many gang members are involved in the drug trade and are responsible for a large share of the gun violence on the streets in our cities. Since 2001, PSN has committed approximately $2 billion to federal, state, and local efforts to fight gun and gang violence. This money has been used to hire over 700 federal, state and local prosecutors, provide training of over 33,000 PSN task force members, hire research and community outreach support, and develop and promote effective prevention and deterrence efforts. In 2007, the Department of Justice awarded over $50 million in grants to support PSN programs to combat gun and gang violence.

The enforcement efforts are enhanced by PSN deterrence and prevention efforts. The genius of PSN is that it is not only a prosecution program but that it also employs several other strategies including prevention efforts, community outreach, and re-entry programs to address the problems of gun and gang violence.

Across the nation, United States Attorney's offices are involved in numerous and varied violence prevention efforts focused on juveniles and adults. For example, one of the most successful PSN strategies was developed in the **Middle District of North Carolina** and is known by the name of city where it was first employed, the "High Point" strategy. Under the High Point strategy, the U.S Attorney partners with state and local law enforcement and community leaders

and social service providers to identify and work with the highest level of at-risk youth who are involved in drug dealing and violence in the community. These youth are offered an opportunity to enter into a contract with the High Point team according to which, if the youth agrees to stop dealing drugs and committing violence, the team members agree to work with him or her to support their lifestyle change. The results have been dramatic. Drug dealing and violence levels in entire neighborhoods have plummeted to new lows and most importantly have stayed low for years. In another successful program in the **District of the Virgin Islands** the PSN coordinator was instrumental in organizing an anti-violence rap contest among grade-school youth. The contest received widespread support from the Islands' leaders including a championship contest hosted by the Governor of the Islands.

Another essential strategy of PSN is community outreach. One aspect of that outreach is the aggressive use of Public Service Announcements (PSA). A new PSA this past year entitled "Babies" demonstrates how the loss of a child to gun violence, whether by injury, death, or arrest and jail time, deeply affects the family. Individual USAOs also work with local media outlets to produce public service announcements directed at their specific violence problems.

These are just a few of the hundreds of successful PSN anti-violence strategies that have been developed in U.S. Attorneys' Offices across the nation. One of the goals of EOUSA is the collections of all of the PSN strategies that have proven successful in reducing gun and gang violence and publishing them in a PSN Best Practices Desk Book (Desk Book) so that future U.S. Attorneys will have a resource of proven strategies when they need to fight future battles against violence in their districts. We plan to present the Desk Book and the successful strategies at the PSN National Conference scheduled for Spring 2009.

INTERNATIONAL ORGANIZED CRIME:

The Attorney General recently announced a new unified national *Law Enforcement Strategy to Combat International Organized Crime* and noted that international organized crime is a hybrid problem that cuts across three of the Department's top priorities: national security, violent crime, and corruption. The United States Attorneys play an essential role in combating organized crime in this country, most notably through prosecutions initiated by their Organized Crime Strike Force Units. The *Strategy* will increase the emphasis on the modern threat posed by international organized crime and promises to improve coordination across the Department as well as across other investigative agencies to address the problem in a better and more effective manner.

CYBERCRIME

CHILD EXPLOITATION AND OBSCENITY: The Department continues to have unprecedented success in combating criminals who prey on children, primarily over the internet. In 2006, the Attorney General announced Project Safe Childhood (PSC), a Justice Department-led initiative aimed at preventing the abuse and exploitation of children through the internet. PSC is a partnership between U.S. Attorneys' offices, the FBI, United States Marshals Service (USMS) Immigration and Customs Enforcement (ICE), United States Postal Inspection Service, the nationwide Internet Crimes Against Children Task Forces, state and local law enforcement, and the National Center for Missing and Exploited Children. Its goal is to maximize the number of

leads generated and investigated by law enforcement, and then funnel those cases to federal prosecution, where federal felony mandatory minimum sentences can be sought. PSC also places significant effort on training federal, state, and local law enforcement in the computer forensics and other techniques necessary to investigate internet child exploitation cases, and in community awareness and education programs designed to raise awareness of the threat of online sexual predators.

2007 marked the first full year of the Department's PSC efforts, which was extraordinarily successful. That year the United States Attorneys collectively filed a total of 2,118 child exploitation cases involving child pornography, coercion, and enticement offenses against 2,218 defendants, an increase of nearly 28 percent over the previous year. Further, despite the dramatic increase in prosecutions, the conviction rate for such offenses increased for the sixth consecutive year and now stands at nearly 95 percent. The great majority of these defendants are serving significant prison sentences, most serving terms of five years or greater, and some up to life.

We greatly appreciate the support Congress has shown in this area. EOUSA's Fiscal Year 2008 enacted budget included an enhancement specifically to prosecute offenses related to the sexual exploitation of children, as authorized by the Adam Walsh Child Protection and Safety Act of 2006. As a result of that enhancement, the Department recently allocated 43 new AUSA positions to the United States Attorneys so they can hire the prosecutors necessary to continue to address this growing problem. Some examples of child exploitation prosecutions during FY 2007 include:

In the **Western District of Louisiana**, the former head of anesthesiology at a hospital in New Orleans engaged in internet chat with an undercover ICAC officer pretending to be a 14-year-old girl. He sent explicit photographs of himself to the "girl," and a search warrant was obtained for his computer. The warrant revealed that the he had been chatting with hundreds of others including many children, asking for sexually explicit images. The defendant was

convicted after a jury trial of attempting to produce child pornography, and he was sentenced to 200 months.

In the **District of Montana**, the U.S. Attorney's Office prosecuted a man for abusing two young girls in his care, aged 4 to 12, for several years and broadcasting it over the internet. The case involved the investigative team of U.S. Immigration and Customs Enforcement in Montana and Florida, the Great Falls (Montana) Police Department, and the Palm Beach County Sheriff's Office, and prosecution teams from the U.S. Attorney's Offices in the District of Montana and the Southern District of Florida. The defendant was convicted and sentenced to 110 years in prison.

The Montana case led to a related prosecution in the **Southern District of Florida** in which another child exploiter who had been in touch by internet with the Montana defendant and was exchanging video of the Florida defendant sexually exploiting a six-year-old girl. Further investigation showed that the Florida defendant had sexually abused at least five other prepubescent girls, beginning in 1967, but had never been arrested. The Florida defendant was convicted and sentenced to 130 years in prison.

In the **District of Columbia**, a 64-year-old man was prosecuted for posting on an internet bulletin board a notice seeking a parent willing to share his daughter with a "horny old man." Undercover officers responded, and the man traveled from Arkansas to the District in order to have sex with what he believed to be a ten-year-old girl and a twelve-year-old girl. A subsequent search warrant determined that the defendant was in possession of hundreds of images of child pornography, including images of very young children being raped. A search of the man's car revealed a video camera and stuffed animals for his intended victims. He was convicted and sentenced to 30 years in prison.

In the **Northern District of New York**, a man was prosecuted for engaging in sexual intercourse with a ten-year-old child and videotaping it. He was convicted and sentenced to 300 months in prison. In that same district, numerous other pedophiles have been prosecuted and convicted of child pornography offenses within the past year, including a priest, a church youth choir director, an elementary school teacher, and the Chief Executive Officer of a local publishing company.

In the **Western District of Oklahoma**, a veteran deputy sheriff was prosecuted for transmitting images of child pornography and photographs of himself naked over the internet to a law enforcement officer whom he thought was a 14-year-old girl, trying to groom the "girl" for sexual contact. He was convicted and sentenced to 210 months in prison.

Also in the **Eastern District of Michigan**, a man was prosecuted for repeatedly raping his live-in girlfriend's eight-year-old daughter, forcing her to perform sex acts on the family dog, and then videotaping the abuse and distributing it on the internet. He was convicted and sentenced to 360 months in prison.

Sadly, as these few examples show, pedophilia and related crimes are widespread across all segments of society, making clear the importance of the PSC work done by the U.S. Attorneys Offices.

COMPUTER HACKING AND INTELLECTUAL PROPERTY CRIMES: The United States Attorneys Offices have responded strongly to the rise of intellectual property and computer hacking related crimes. Since 1995, each United States Attorney's Office has had at least one prosecutor available to work on computer related crimes. On July 20, 2001, Attorney General John Ashcroft announced the creation of Computer Hacking and Intellectual Property (CHIP) Units in ten U.S. Attorney's Offices. In the following years, 15 additional CHIP units have been established, and each U.S. Attorney's Office has designated one or more specialized CHIP AUSAs. These AUSAs, together with the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) prosecutors, comprise the Department's CHIP network. CHIP Coordinators, CHIP Unit AUSAs, and CCIPS attorneys, working with their international counterparts, together form a network of prosecutors poised to respond to the global threat of cybercrime and intellectual property theft. They also serve as legal counsel to other AUSAs and law enforcement in such cases, especially in the collection of electronic evidence in all sorts of cases.

The CHIP prosecutors focus on prosecuting intellectual property offenses such as trademark violations, copyright infringement, economic espionage, and thefts of trade secrets. In addition, they prosecute high-technology offenses including computer hacking, virus and worm proliferation, internet fraud, and other attacks on computer systems. CHIP prosecutors continue

to dismantle and prosecute multi-district and international criminal organizations that commit intellectual property crimes.

The number of defendants prosecuted for intellectual property offenses has increased dramatically in recent years. In fiscal year 2007, the Department filed 217 intellectual property cases -- a seven percent increase over fiscal year 2006, and 33 percent more than 2005.

An illustrative sample of some of the many successful prosecutions by United States Attorneys' Offices in the areas of computer intrusion and intellectual property include:

The **Northern District of Georgia** prosecuted an executive administrative assistant for the Coca-Cola Company for stealing the company's secret marketing plans and formulas and trying to sell them to rival PepsiCo. The woman and her two conspirators were convicted and received sentences ranging from three to eight years.

The **District of New Jersey** prosecuted the former systems administrator of a health care company for planting a "logic bomb" on the company's computer system, which was designed, but failed, to wipe out critical stored data on more than 70 servers. The man was sentenced to 30 months in prison and ordered to pay $81,000 in restitution.

The **Northern District of Georgia** successfully prosecuted the owners of a company called "Hi-Tech Pharmaceuticals, Inc." for conspiracy to defraud individuals seeking prescription drugs and to introduce unapproved drugs into interstate commerce. The two defendants are awaiting sentencing.

The **District of Kansas** prosecuted and obtained the conviction of a man for felony copyright infringement for pirating at least 1,800 DVDs, CDs, computer software and video games.

The **District of Maryland** obtained the conviction of a man for felony trafficking in counterfeit designer sunglasses and handbags and fake Rolex watches. The man is awaiting sentencing.

The **Western District of Washington** successfully obtained the conviction of a notorious internet "spammer" for multiple mail fraud counts, fraud in connection with email, and tax crimes. The man, dubbed the "Spam King" by investigators, is awaiting sentencing.

The **District of New Hampshire** obtained the conviction of a corporation for conspiring to traffic in counterfeit Cialis prescription pharmaceuticals. All of the assets of the company were forfeited, and the company also faced significant fines and penalties and was ultimately dissolved.

The **Eastern District of California** obtained a guilty plea from a man for stealing sophisticated trade secrets from his employer – hardware, designs, and software for military guidance and radar jamming technologies – which he intended to sell to foreign military governments and defense contractors. The man is awaiting sentencing.

IMMIGRATION

The prosecution of border related federal offenses is one of the top priorities of the Department of Justice. Illegal immigration occurs, of course, throughout the United States, but it is the Southern border that has generated the greatest public concern due to the extremely high number of crossings. The five United States Attorneys Offices along the Southwest Border (the Southern District of Texas, the Western District of Texas, the District of New Mexico, the District of Arizona, and the Southern District of California) are among the busiest of all 94 United States Attorneys' Offices. The following statistical information bears this out.

In Fiscal Year 2006, the five Southwest border districts alone filed 11,820 felony immigration cases, which was 66 percent of the total of all 94 districts. Those five districts also charged 12,910 felony immigration defendants in Fiscal Year 2006, which was 67 percent of the national total, with a 96.3 percent conviction rate. The vast majority of the sentenced defendants, 92.3 percent, received prison sentences. In Fiscal Year 2007 the five Southwest border districts filed 11,996 felony immigration cases, which was again 66 percent of national totals. Similarly, they charged 13,076 felony immigration defendants, which was likewise 66 percent of the national total. Over 96 percent were convicted and 93 percent of convicted defendants received prison sentences. It is important to note as well that the case and defendant counts above do not include the tens of thousands of misdemeanor immigration cases prosecuted each year, again principally by the five Southwest Border U.S. Attorneys Offices.

Given the heavy immigration workload, particularly along the Southwest border, Congress's appropriation in December 2007 of $7 million to the United States Attorneys for law enforcement along the Southwest border enforcement was greatly appreciated. EOUSA has acted quickly to effectively allocate that money. On January 31, 2008, EOUSA hosted a "Southwest Border Immigration Enforcement Summit" in Washington, DC. This meeting was attended by over 70 people, including the Attorney General, the five Southwest border United States Attorneys, officials from the U.S. Detention Trustee, the Bureau of Prisons (BOP), USMS, the Chief of the Border Patrol, and all key headquarters and field officials and other Department of Homeland Security officials, as well as the Administrative Office of the U.S. Courts (AOUSC). The meeting was designed to facilitate EOUSA's recommended allocation of the $7 million for border enforcement, to eliminate "stove-pipes" among the participants, and to think strategically about a coordinated response to the problems each component faces.

In February 2008, the five Southwest Border U.S. Attorneys submitted multi-year strategic plans which detailed their district specific approaches to the issues of border security, drugs trafficking, and illegal immigration. Also in February 2008, EOUSA designated a "National Immigration Coordinator" to maintain a high level of coordination and communication with U.S. Attorneys' Offices and their law enforcement partners investigating and prosecuting immigration and related crimes. I have also personally traveled to Yuma and Tucson, Arizona, and to Del Rio, Texas, to observe court proceedings and to talk to the U.S. Attorneys, Border Patrol, and Judges regarding criminal immigration enforcement and related topics.

In April, 2008 the Deputy Attorney General and I traveled to the Southwest border to announce the final allocations of the $7 million and, as a result, we anticipate that the Southwest

border USAOs will hire by the end of this year as many as 64 new two-year-term attorneys and more than 40 contract support personnel. Thanks to a separate appropriation, we understand that the USMS will also increase their presence in those districts.

As part of increased enforcement efforts along the Southwest border, USAOs are prosecuting large numbers of misdemeanor entry without inspection cases through programs such as Operation Streamline, in Del Rio, Texas. There are similar misdemeanor prosecution programs in Laredo, Texas, and Yuma, Arizona, and a similar program was recently started in Tucson. Brownsville, Texas, will be starting this program in the near future. The operations in Las Cruces, New Mexico (Operation Lockdown) and El Paso, Texas (Operation No Pass) are already underway, all with significant impact on USMS operations. As you can imagine, prosecuting 40, 50, or 100 illegal entry cases each day under initiatives, such as Operation Streamline, places high demands on the resources and physical capacities of the U.S. Attorneys' Office, the USMS, the Office of the Federal Detention Trustee, and the Federal courts, among others.

Immigration enforcement does not stop at the Southwest border. In the fall of 2007, EOUSA established the Border Operations Working Group. This group includes the five Southwest Border USAOs as well as the 18 Northern Border USAOs. These offices have shared detailed information regarding staffing, resources, and business practices of each district. United States Attorneys' Offices across the country are also seeking to prosecute more criminal immigration cases. The Criminal Alien Prosecution (CAP) initiative, which prosecutes criminal aliens through an innovative team approach with the Office of Detention and Removal Operations component of the ICE branch of DHS, has been put into effect in all Southwest Border districts.

Because the CAP initiative has been put in place in all Border districts, it has also affected the USMS workload. In addition, the U.S. Attorneys Offices are increasing civil fines on employers who knowingly hire illegal immigrants and are aggressively prosecuting the most egregious offenders in an effort to reduce further the incentive for illegal border entries.

A few examples of successful immigration prosecutions from the past fiscal year to the present include the following:

In the **Southern District of Texas** a defendant was convicted of eight counts of conspiring to hold victims in a condition of forced labor and of smuggling and harboring aliens. The defendant and her co-defendants smuggled female illegal aliens ranging in age from 16 to 38 from Central America to Houston, Texas, offering legitimate jobs in restaurant. However, once in Houston, the women and girls were held in a condition of servitude in bars owned by the conspirators until the women had paid their smuggling debts to the defendants. The defendants used threats of serious bodily injury or death to the women and their families to keep the women from escaping. Five other defendants were also convicted of conspiracy and/or harboring charges, as well as obstruction of justice.

In the **District of Arizona** a defendant was sentenced to 45 months imprisonment in March 2008 after pleading guilty to illegal reentry after deportation and admitting a violation of supervised release from a prior conviction for illegal reentry. The defendant had been convicted of six prior immigration offenses in just over four years. Each time, however, he promptly returned to the U.S. illegally after being released from custody. This time, the judge sentenced the defendant to 24 months in prison for illegally reentering the U.S. after deportation and 21 months in prison to be served consecutively for violating his supervised release term, which had been imposed in a prior illegal reentry prosecution in the District of Arizona.

In the **District of New Mexico**, the defendant, who had previously been twice deported from the United States and had previously been convicted of and served five years in prison for a drug offense in this country, was found in Las Vegas, New Mexico. He was charged with illegally re-entering the United States after deportation. After being convicted by a jury the defendant was sentenced, in light of his very extensive prior criminal record, to 120 months, which was the top of the sentencing guideline range. The conviction was recently affirmed on appeal and the sentence is one of the highest ever imposed for an illegal re-entry after deportation conviction.

In the **Western District of Texas**, a defendant was convicted of conspiring to transport hundreds of illegal aliens into the United States. The charges arose from the discovery of 32 undocumented aliens in a mobile home. The aliens had been detained at that location awaiting the payment of smuggling fees. One alien from among that original group had become sick during the crossing, was left behind and died of heatstroke. Over $700,000 in cash receipts were

recovered, representing smuggling fees for hundreds of aliens received by the defendant. He was sentenced to 120 months n prison.

In the **Southern District of California** the defendant was sentenced to 60 months following his conviction for transporting five illegal aliens. The five aliens were hidden in the bed of a pickup truck with a tarp over them with no seat belts or safety restraints. In response to attempts by Border Patrol agents to stop the truck, the defendant fled at extremely high rates of speed on a fully deflated tire, running through red lights and striking multiple civilian vehicles.

As the Department of Justice and its United States Attorneys Offices look to fiscal year 2009 and beyond, continued Congressional support will be critical to the further success of our border security and immigration enforcement efforts. New personnel must be hired and trained, and new courthouses, prison beds, holding cells, and office space must be constructed or procured. It is also important to ensure there are sufficient district and magistrate judges to handle the rising caseloads. These steps take time, require advance planning and cooperation between governmental departments and branches, and must be carefully coordinated to preserve the stability of the whole system. One current example of good cooperation is the use of Department of Homeland Security attorneys as Special Assistant United States Attorneys (SAUSAs) along the Southwest border to help prosecute border crimes. The services these attorneys provide are much appreciated by the Department of Justice.

DRUG TRAFFICKING

Controlled substances cases are the second largest category of cases prosecuted by United States Attorneys Offices after criminal immigration cases. The community of United States Attorneys' Offices continues to focus significant law enforcement efforts on reducing the availability of drugs by disrupting and dismantling the drug supply and related money laundering networks operating in the United States and abroad.

The Organized Crime Drug Enforcement Task Force (OCDETF) Program continues to be an integral part of this effort. The OCDETF Program combines the efforts and expertise of federal, state, and local law enforcement agencies, along with United States Attorneys' Offices across the country, to investigate and prosecute these major drug supply and money laundering organizations. The use of the Consolidated Priority Organization Target List, which represents the "most wanted" international drug and money laundering targets, and the Regional Priority Organization Target List, representing the most significant drug and money laundering organizations threatening the OCDETF Regions, forms the backbone of the OCDETF targeting matrix.

As a key part of the OCDETF Program, the United States Attorneys continue to emphasize investigations into drug traffickers' financial assets. The United States Attorneys' Offices are also working closely with the OCDETF program, the Criminal Division, and the Drug Enforcement Administration regarding internet pharmacies and illegal diversion of prescription drugs.

Data shows that in Fiscal Year 2006 there were 2,529 OCDETF drug cases filed, representing a slight increase of 0.6 percent from cases filed in the prior year. In Fiscal Year 2007 there were 2,560 OCDETF cases filed, representing a 1.2 percent increase over Fiscal Year 2006. Over 8,000 defendants were charged in both Fiscal Year 2006 and 2007. The conviction rate for OCDETF cases in both years was 89 percent, and in both years 90 percent of convicted defendants were sentenced to prison.

Non-OCDETF drug prosecutions also increased. In Fiscal Year 2006 there were 12,879 such drug cases filed. In Fiscal Year 2007 the number rose to 13,016, an increase of 1.1 percent.

In both Fiscal Year 2006 and 2007 the conviction rate for non-OCDETF cases was 92 percent, and in both years 92 percent of convicted defendants were sentenced to prison.

United States Attorneys remain focused on the danger posed by methamphetamine. In Fiscal Year 2007 the Department of Justice and each of the 94 United States Attorney's Offices sponsored a National Methamphetamine Awareness Day in order to generate awareness about the damaging effects of meth abuse on individuals, families and American communities. Each United States Attorney's Office sponsored events, and United States Attorneys made many public appearances regarding the dangers of methamphetamine.

We also note that on November 1, 2007, the United States Sentencing Commission passed an amendment to reduce penalties for crack cocaine offenses, which it later made retroactive effective March 3, 2008. The amendment could result in approximately 20,000 defendants receiving a reduction in their sentence, which is equivalent to more than 25 percent of all federal sentencings in 2006. The Department has worked very closely with the AOUSC, U.S. Probation, the BOP, USMS and the Federal Defenders in order to minimize any possible disruption to the courts caused by the high volume of motions filed. We have encouraged prosecutors throughout the country to work out arrangements with the other parties in their district to manage the sentence reductions without the need for hearings in most cases, which has greatly reduced the burden on the courts. Anecdotal evidence from around the country so far suggests that the amendment is being implemented in an orderly fashion.

Some examples of recent successful narcotics cases include the following:

In the **Eastern District of North Carolina**, as part of the "Operation Pincer" investigation, which began in 2003 and involved a multi-jurisdiction narcotic trafficking organization, a defendant was sentenced to 405 months incarceration for possession with intent to distribute and conspiring to distribute more than five kilograms of cocaine. Working with information received from a wiretap, approximately 100 individually wrapped bricks of cocaine,

weighted at approximately 100 kilograms, were seized during a traffic stop. Six co-conspirators have also previously been sentenced

In the **Western District of Washington**, a defendant was sentenced to ten years in prison for conspiring to distribute cocaine, methamphetamine and heroin. The defendant was one of 36 co-defendants charged in connection with "Operation Dry Ice." The two year wiretap investigation dismantled a drug dealing organization that imported drugs from Mexico and distributed them in Seattle, Tacoma and Yakima. When members of the drug ring were arrested on June 8, 2006, agents seized more than four pounds of heroin, six kilos of cocaine, two pounds of meth, eight guns and $300,000 in cash.

In the **Western District of Texas** five individuals were convicted for their roles in a drug trafficking organization based in Juarez, Mexico. This organization was responsible for importing and distributing to the upper mid-west, east and northeastern portions of the United States in excess of 48,000 kilograms of marijuana, 240 kilograms of cocaine and four kilograms of ecstasy. The defendants received sentences ranging between 140 months and 210 months. One defendant was a former Texas Alcohol Beverage Commission tax compliance officer.

In a non-OCDETF case in the **Western District of Kentucky** a defendant was convicted of conspiring with another member of the Iron Horsemen Motorcycle Club and others to distribute methamphetamine. The defendant was responsible for the distribution of between 50 and 200 grams of methamphetamine and was sentenced to five years incarceration. A co-defendant was previously sentenced to 10 years.

CRIME VICTIMS' RIGHTS

The Crime Victims' Rights Act (CVRA), passed on October 30, 2004, represents a huge step toward providing victims a greater role in the criminal justice process. The impact of the CVRA within the Justice Department has been immense; the impact on victims of federal crime has been immeasurable. Extensive training on the CVRA throughout the United States Attorneys' Offices has led to an increased awareness and a more energetic approach to affording victims their entitled rights and services. In the more than three years since the CVRA went into effect, there has been a dramatic change in the role of victims in federal criminal cases. Victims are taking part in cases in greater numbers than ever before, by attending proceedings, exercising their right to be heard, and receiving notification of every public court proceeding. The number

of identified victims in federal cases has more than doubled since the CVRA passed, from 496,473 in FY04, to 1,350,013 victims in FY07, representing a 172 percent increase. Victim notifications doubled in the first year after the CVRA passed to 5.7 million notices, and for FY07 were over 6.8 million.

EOUSA has been researching ways to lessen the time that victim notification currently requires. One way is through a data exchange with the AOUSC. The majority of notification events required under the CVRA involve notice of public court proceedings, which is provided through the Department's Victim Notification System (VNS). VNS depends on LIONS to docket information regarding those court events so that information can be passed to VNS. EOUSA and AOUSC have entered into an agreement to establish a connection whereby courts can provide to VNS electronic data regarding these hearings, from the courts' electronic case filing system directly to VNS. This initiative is widely considered by those familiar with the VNS design to be one of the most significant initiatives that could improve timely and accurate information to victims. In addition, United States District Courts would benefit from access to VNS through their probation offices and Clerks of Court, which need to contact victims for matters involving payment of restitution.

Finally, the United States Attorneys are committed to increasing the collection of debts owed to the federal government and to victims. The United States Attorneys' Offices' Financial Litigation Units (FLU) enforce all criminal monetary impositions (such as fines and restitution) as well as civil debts owed the United States. In Fiscal Year 2007, the FLUs collected over $1.7 billion in criminal debts on behalf of victims of crime. The FLUs utilize a variety of enforcement mechanisms and remedies in their efforts to collect criminal debts. For example, in the past

several years, the Treasury Offset Program (TOP) has become increasingly valuable in the FLUs' collection efforts. Approximately, $6 million of the total collected in FY 2007 was recovered through the TOP. This money was provided directly to victims of crime or deposited into the Crime Victims Fund. Another mechanism used by the USAOs to recover on behalf of victims is through the use of various asset forfeiture statutes to seize and forfeit criminal proceeds before they could be dissipated. In FY 2007, United States Attorneys returned $138 million to crime victims using this process. So far this year, $55 million has been returned to victims through asset forfeiture. Debt collection is a high priority, and the USAOs are firmly committed to continuously improving the process.

CIVIL RIGHTS PROSECUTIONS

The United States Attorneys handle civil rights prosecutions in their districts in consultation and coordination with the Department's Civil Rights Division. The Department's strategic goals are to uphold the civil rights of all Americans, reduce racial discrimination, and promote reconciliation through vigorous enforcement of civil rights laws. Among other civil rights violations, the United States Attorneys' offices prosecute incidents of violence or threats against individuals perceived to be of foreign origin, bias motivated crimes, trafficking in persons, police and other official misconduct, and violations of voting rights.

The United States Attorneys' offices also enforce federal statutes prohibiting discrimination in housing, consumer credit, and public accommodations. In addition to these traditional areas, the Department is increasing its efforts in protecting the growing number of elderly Americans. An increasing number of older adults residing in long-term care facilities are often particularly vulnerable to inadequate or failure of care and treatment. These efforts are very

important as elder abuse and neglect often go undetected and the medical community is rarely trained to diagnose or report it.

During Fiscal Year 2007, the United States Attorneys filed 102 criminal civil rights cases against 206 defendants. This represents a 21 percent increase in the number of cases filed and a 26 percent increase in the number of defendants prosecuted when compared with the prior year. The United States Attorneys also terminated a total of 74 cases against 137 defendants. Eighty-one percent of the defendants whose cases were terminated during the year were convicted, with 76 percent of the convicted defendants sentenced to prison.

Trafficking in persons is a significant problem in the United States and abroad. Victims are often lured from outside the United States with false promises of better economic opportunities and good jobs, and then are forced to work under inhumane conditions. Many trafficking victims are forced to work in the sex industry, in labor settings involving domestic servitude, or in prison-like factories.

Examples of such cases successfully prosecuted by United States Attorneys during Fiscal Year 2007 include the following:

In the **Southern District of Florida**, a defendant pled guilty to attempting to transport a minor for the purpose of engaging in prostitution and was sentenced to 10 years in prison. The defendant transported a 14 year old female throughout Florida, acting as a "pimp" as the female engaged in prostitution. The defendant also planned to transport the female victim to Georgia in order to continue in prostitution.

In the **Northern District of Georgia**, a defendant pled guilty to conspiracy to engage in sex trafficking and transportation of young women across state lines for prostitution purposes and was sentenced to 15 years in prison. The defendant lured and coerced 8 young women, 2 of whom were juveniles, into prostitution through promises of legitimate modeling or exotic dancing work. The defendant used physical violence, threats of violence, deception and other forms of coercion to compel the victims to work as prostitutes.

In the **Southern District of Texas**, 3 brothers, as well as 5 other members of a family based sex trafficking organization, were convicted of involuntary servitude and human trafficking offenses. The 3 brothers were sentenced to 23 years in prison, 10 years in prison, and 10 years in prison, respectively. Another member of the organization was sentenced to 14 years in prison, while several others were sentenced to prison terms ranging from 4 months in prison to 2 years and 3 months in prison. The organization smuggled and held captive Mexican and Central American women, forcing them to cook, clean, and submit to the sexual demands of organization members.

The United States Attorneys also continue in their efforts to ensure that bias motivated crimes in their districts are fully prosecuted. Examples of these cases successfully prosecuted by United States Attorneys during Fiscal Year 2007 include the following:

In the **Eastern District of California**, 2 defendants pled guilty to interference with housing rights and were sentenced to 2 years in prison and 1 year and 9 months in prison, respectively. The 2 defendants burned a cross outside the rectory of a Catholic church in Westport, California. The priest residing at the rectory is from the African country Rwanda, and the defendants admitted to burning the cross in order to intimidate the priest because of his race.

In the **District of Oregon**, a defendant pled guilty to conspiring to violate civil rights, damage religious property, and obstruct justice, as well as to solicitation to commit a violent crime and felon in possession of a firearm, and was sentenced to 11 years and 3 months in prison. The defendant and other members of a white supremacist group known as Volksfront threw rocks etched with Nazi swastikas at the Temple Beth Israel in Eugene, Oregon. The attack occurred during an evening worship service at the synagogue. The defendant also solicited one of his friends to murder potential witnesses and to call in a bomb threat at the location where the federal grand jury was sitting.

The conviction of law enforcement officers who deprive citizens of rights under color of law or use threat or force to injure or intimidate persons in their enjoyment of specific rights is an

important part of the Department's effort to keep our streets and neighborhoods safe for citizens across the country. An example of such a case is the following:

In the **Northern District of Georgia**, a defendant was sentenced to 2 years and 3 months in prison for depriving Hispanic motorists of their civil rights by taking money from them during traffic stops. The defendant was a member of the Cedartown Police Department who would stop Hispanic motorists and take money from them in lieu of issuing citations. He was caught in the course of taking money from an undercover police officer who was conducting an operation led by the Georgia Bureau of Investigation, which had received numerous complaints about the defendant's behavior.

HEALTH CARE FRAUD

The United States Attorneys' Offices recognize how critical it is to protect public health, the integrity of the Medicare trust fund, and the viability of other federal health care programs and private health care payers. We continue to do everything we can to ensure that the public health system and our public and private health care payers are not exploited by corrupt health care providers or fraudulent medical equipment and pharmaceutical suppliers and manufacturers.

As the nation's principal litigators and criminal prosecutors, USAOs play the lead role in the prosecution of health care crimes. In FY 2007, USAOs opened 878 new criminal health care fraud investigations involving 1,548 potential defendants. Federal prosecutors had 1,612 health care fraud criminal investigations pending, involving 2,603 potential defendants, and filed criminal charges in 434 cases involving 786 defendants. A total of 560 defendants were convicted for health care fraud-related crimes during the year.

Also in FY 2007, 776 new civil health care fraud investigations were opened, and 743 civil health care fraud investigations were pending at the end of the fiscal year. During FY 2007, the Department won approximately $1.8 billion in judgments and settlements. The Medicare

Trust Fund received transfers of approximately $797 million during this period as a result of these efforts, as well as those of preceding years, in addition to $266 million in Federal Medicaid money similarly transferred separately to the Treasury as a result of these efforts. The Health Care Fraud and Abuse Control account has returned over $11.2 billion to the Medicare Trust Fund since the inception of the program in 1997.

Every USAO has a criminal health care fraud coordinator and a civil health care fraud coordinator. The coordinators lead inter-agency health care fraud task forces that share information about trends in health care fraud, emerging investigative and prosecutorial techniques, and other information necessary to achieve the common goal of controlling health care fraud. Combating health care fraud continues to be a top priority for the United States Attorneys and is an integral part of the Department's efforts to address white collar crime. Currently, almost every USAO in the country is pursuing criminal health care fraud investigations.

Recent significant health care fraud successes include the following:

Medicare Fraud Strike Force

The DOJ and Health and Human Services launched a Medicare Fraud Strike Force in Miami, Florida. The DOJ Criminal Division, along with the USAO for the Southern District of Florida led the strike force and implemented a targeted criminal, civil and administrative effort against individuals and health care companies that fraudulently bill Medicare. As of September 30, 2007, there were 74 cases indicted, involving charges filed against 120 defendants who collectively billed the Medicare program more than $400 million. Thirty-Five guilty pleas were negotiated, and four jury trials litigated, winning guilty verdicts on all counts charged. The deterrent effect has been impressive as the Medicare claims data shows that during the active investigatory phase of the Medicare Fraud Strike Force, the Durable Medical Equipment Center submitted claim amounts decreased by more than $1.2 billion and paid amounts fell by $255 million over the same seven-month period of 2006.

Pharmaceutical Fraud

The Purdue Frederick Company, Inc., along with its President, Chief Legal Officer, and former Chief Medical Officer pled guilty to charges of misbranding Purdue's addictive and highly

abusable drug, OxyContin. As part of the global resolution, Purdue and the executives paid a total of $634.5 million to resolve their criminal and civil liabilities. Bristol-Myers Squibb Company (BMS) and its generic division, Apothecon, paid the United States $328 million to resolve a broad array of allegations involving illegal drug pricing and marketing activities. BMS and Apothecon agreed to pay an additional $187 million to state governments based on the same allegations.

Durable Medical Equipment Fraud

The SCOOTER Store Inc. paid the United States $4 million and gave up many millions more in pending claims for reimbursement to Medicare, to settle allegations that the company engaged in a multi-media advertising campaign to entice beneficiaries to obtain power scooters paid for by Medicare, Medicaid, and other insurer, and then sold the beneficiaries the more expensive power wheelchairs that were not medically necessary.

Fraud By Pharmacies

Omnicare, the largest provider of pharmacy services to skilled nursing facilities and assisted living communities in the United States, paid the United States more than $29 million and approximately $19.9 million to 43 states to settle allegations that it substituted different versions of prescribed drugs solely to significantly increase its profit rather than for any legitimate medical reason.

Fraud by Physicians

In Michigan, a physician was convicted of thirty one counts of health care fraud and sentenced to 126 months in prison. The physician's schemes to defraud included falsely diagnosing patients with a bacterial infection so that the physician could improperly charge for an office visit. The investigation revealed that the doctor commonly violated standard sterilization practices by using sterile sutures manufactured for one-time use, on multiple patients, and not using heat-based sterilization equipment for critical surgical instruments.

Fraud by Other Practitioners

In Kansas, a Wichita couple that operated a drug and alcohol counseling center was sentenced to 92 months in federal prison and ordered to pay $1.2 million in restitution. The couple engaged in a scheme to defraud Medicaid by submitting false claims for drug and alcohol counseling services allegedly provided to infants and children 12 years and younger.

Medicaid Fraud

Maximus, Inc., agreed to pay $42.7 million to settle allegations that it caused the District of Columba Child and Family Services Agency, to submit claims to Medicaid for case management services provided to children in its foster care program, whether or not the services had been provided.

Home Health Fraud

In Ohio, the former owner of a home health company was sentenced to 13 years incarceration and ordered to pay $564,000 in restitution for health care fraud, money laundering, and for drug and weapons charges. Investigation revealed that the man solicited a population of the immigrant community to provide unnecessary medical services and billed Medicaid for those services. In reality, patients had not been seen by the doctors. In addition, reimbursements from

claims submitted to Medicaid were diverted to support the owner's drug habit and to fund personal business ventures.

Other Fraud

In California, the operator of a company which purported to provide health care coverage to more than 20,000 people across the country was sentenced to 25 years in federal prison and ordered to pay more than $20 million in restitution for a scheme which bilked small businesses and their employees out of millions of dollars in health care premiums. Individual victims, who thought they were insured, were left facing more than $20 million in unpaid claims when the company was shut down.

PUBLIC AND CORPORATE CORRUPTION

CORPORATE FRAUD: The prosecution of corporate fraud continues to be a high priority for the United States Attorneys. In FY 2007, United States Attorneys' Offices filed 64 corporate fraud matters and charged 84 defendants. Since the creation of the Corporate Fraud Task Force by President Bush in July 2002, over 1,236 corporate fraud convictions have been obtained as of July 17, 2007. These convictions include 214 CEOs and corporate presidents, 53 CFOs, and 23 corporate counsel or attorneys, as well as 129 vice presidents. Additionally, in FY 2007, over 70 percent of all convicted defendants were sentenced to prison. The number of significant corporate fraud matters undertaken by the United States Attorneys continues to contribute substantially to restoring confidence in America's financial markets and reinvigorating corporate governance practices.

Examples of corporate fraud cases successfully prosecuted by the United States Attorneys' Offices during FY 2007 include the following:

In the **Southern District of New York**, a case was brought as a result of a wide-ranging criminal investigation into the United Nations Oil-for-Food Program (OFFP). In 2000, the former Government of Iraq, under Saddam Hussein, began conditioning the right to purchase Iraqi oil under the OFFP – a program intended to provide humanitarian aid to the Iraqi people – on the purchasers' willingness to return a portion of the profits secretly to Hussein's government. The government investigated and prosecuted several of the United States based individuals and

entities who agreed to pay the secret illegal surcharges to the Hussein regime in order to ensure continued access to the lucrative oil contracts from the Hussein regime. The Chief Executive Officer and sole owner of Bayoil (USA) and Bayoil Supply & Trade, pled guilty and was sentenced to 2 years in prison, followed by 3 years of supervised release. He agreed to forfeit more than $9 million. In addition, another defendant pled guilty and was sentenced to 1 year and 1 day in prison, followed by 3 years of supervised release. He also agreed to forfeit more than $11 million.

In the **Northern District of California**, a defendant, a corporate secretary at M&A West, was convicted of securities fraud and money laundering. The jury found that the defendant participated in a stock manipulation scheme in connection with the purchase and sale of shares of three publicly traded companies on the Over-the-Counter Bulletin Board between 1999 and 2000. The defendant devised a scheme to gain a controlling interest over three companies and concealed her interest by holding stock through multiple shell companies that she controlled. After manipulating demand for the stock, the defendant sold the securities and received approximately $14 million in net proceeds. The defendant was sentenced to 4 years and 3 months in prison, followed by 3 years of supervised release, forfeited $881,000, and ordered to pay $2.5 million in restitution. Additionally, the former Chief Executive Officer of M&A West was sentenced to 1 year and 2 months in prison, followed by 3 years of supervised release, forfeited $200,000, and ordered to pay $6.5 million in restitution.

In the **Northern District of Illinois**, Mercury Finance Company was doing business as a New York Stock Exchange-listed, sub-prime lending company. An extensive accounting fraud scheme was designed to inflate the company's revenues and understate its delinquencies and charge-offs over several years. As a result, the market capitalization of the company decreased by nearly $2 billion in one trading day, after the existence of the fraud was publicly announced. Commercial paper purchasers eventually lost approximately $40 million and longer term lenders lost another $40 million. The former Chief Financial Officer admitted his role in the fraudulent scheme and cooperated with the investigation, but died unexpectedly before charges were brought. The former Chief Executive Officer and Chairman of the Board of Directors of the company, pled guilty to wire fraud and conspiracy in connection with the scheme, and was sentenced to 10 years in prison. Previously, the former Treasurer and former Accounting Manager of the company pled guilty to related charges, agreed to cooperate, and were sentenced to 1 year and 8 months in prison and 1 year in prison, respectively.

PUBLIC CORRUPTION: Whether serving at the local, state, or federal level, no government official is above the law. The United States Attorneys are committed to doing everything they can to enforce this principle and to prosecute those who betray the public trust, thereby helping to ensure that the general public retains confidence in its government. In FY

2007, the United States Attorneys' Offices filed 474 public corruption cases against 740 defendants. Of the 738 defendants whose cases were closed during FY 2007, 675 were convicted, for a conviction rate of 90 percent.

Some examples of the success in public corruption cases undertaken by the United States Attorneys' Offices include the following:

In the **Western District of Tennessee**, "Operation Tennessee Waltz," one of the most significant public corruption cases ever developed in Tennessee, culminated in multiple high profile convictions. An undercover operation in the Western District of Tennessee was developed based upon information that significant corruption had infiltrated both the state and local government. During the course of this extensive operation, an undercover company was utilized to pay State Senators, State Representatives, and local officials to assist the undercover company in obtaining favorable legislation and governmental contracts. A total of 12 defendants were charged and all were convicted, including four State Senators, one State Representative, two County Officials, a Juvenile Court Official, two School Board members, and two "bag men." The defendants received prison terms ranging from 6 months home confinement with 2 years of probation to 5 years and 6 months in prison. "Operation Tennessee Waltz" has changed the way Tennessee State and local governments now conduct business.

In the **District of Alaska**, a defendant, a former member of the Alaska State House of Representatives, was sentenced to 5 years in prison followed by 2 years of supervised release. The defendant was found guilty of soliciting and receiving money from a Federal Bureau of Investigation confidential source in exchange for his agreement to perform official acts as a member of the Alaska State Legislature, to further the business interest represented by the confidential source. Evidence at trial showed that from July 2004 through March 2005, the defendant and a lobbyist solicited and received $24,000 in payments in exchange for these official acts, while the defendant received an additional payment of $2,000. The defendant and lobbyist participated in the creation of a sham corporation, Pacific Publications, to conceal the existence and true origins of the payments, and used the sham corporation to funnel a portion of the bribes to the defendant.

In the **District of Columbia**, a defendant used her position as Executive Director of the District of Columbia's Office of Charter School Oversight to funnel no-bid educational monitoring contracts to friends and family members with dubious qualifications, demanded and received a continuing stream of kickbacks from friends and family members who received school jobs or contracts, and embezzled No Child Left Behind and other funds by submitting false and fraudulent invoices in her own company's name. The funds she embezzled were intended to help raise the educational achievement levels of predominantly low-income, African-American children in underperforming schools. The defendant also failed to pay her full federal and District

of Columbia taxes. The defendant pled guilty to 2 counts of federal program theft, 1 count of federal tax evasion, and 1 count of evading District of Columbia taxes. The defendant was sentenced to 2 years and 11 months in prison and ordered to pay $383,910 in restitution.

FISCAL YEAR 2009 BUDGET REQUEST

EOUSA very much appreciates the support it received in the 2008 Fiscal Year budget process and the $100 million increase we received over FY 2007. This increase in funding has allowed USAOs throughout the country to implement aggressive hiring plans to fill vacancies caused by budget shortfalls from FY 2004 through FY 2006. The 2008 budget has, as indicated above, allowed EOUSA to allocate to the United States Attorneys 64 new prosecutors for immigration cases and 43 prosecutors for child exploitation cases.

In order to continue to carry out our mission in FY 2009, we are requesting a budget of $1.831 billion. This $76.5 million increase over our FY 2008 budget includes an $8.4 million enhancement to support the Southwest Border Enforcement Initiative.

> **Southwest Border Enforcement Initiative**: **$8.4 million** is requested to support prosecution efforts in order to keep pace with the growth in resources that have been received by other federal agencies. Federal prosecution of border crime is a critical part of our Nation's defense and gaining operational control of the border is essential. The January 31, 2008 Southwest border summit, discussed above, attended by all key stakeholders in border enforcement, opened lines of communication and developed channels of information sharing. The summit participants discussed consolidating and sharing resources, co-locating operations, and using technology to create efficiencies and to improve security. Going forward, the Department of Justice and EOUSA plan to utilize these requested resources to continue developing and implementing a flexible and coordinated border enforcement strategy.

We recognize that stewardship of appropriated funds is a serious responsibility. As the nation's principal litigators, the United States Attorneys are on the front lines to keep Americans

safe from terrorists and other violent criminals, as well as to assert and protect the interests of the United States. The United States Attorneys have taken on many new responsibilities over the past several years and remain committed to sound financial management to conserve funds and develop efficiencies in order to maximize the results of our efforts. We believe that our FY 2009 budget request is a responsible one that is designed to address key priorities of the Administration.

I look forward to answering any questions you may have.

Ms. SÁNCHEZ. Thank you for your testimony, Mr. Melson.

At this time, I would invite Ms. Williams to give her testimony.

TESTIMONY OF HEATHER E. WILLIAMS, ESQ., FIRST ASSISTANT, FEDERAL PUBLIC DEFENDER, DISTRICT OF ARIZONA, TUCSON, AZ

Ms. WILLIAMS. Thank you, Madam Chair.

Ms. SÁNCHEZ. Can you please turn your microphone on?

Ms. WILLIAMS. There we go.

Thank you, Madam Chairwoman, acting Ranking Member Franks and the other Members of this distinguished Committee. Thank you for inviting me here.

I am Heather Williams, and I am the first assistant for the Federal Public Defender's Office in the District of Arizona. And while I work out of the Tucson office, I help to supervise all the offices in the district.

Monday through Friday, in four to five Federal courtrooms along the southwest border, anywhere from 30 to 100 undocumented immigrants a day face criminal charges. These are misdemeanor or petty criminal charges. Most of these defendants speak Spanish, and there are a few who speak native dialects from where they are from.

Occasionally, we will find someone who is actually a United States citizen, or who might actually have permission to be in the United States. Sometimes we find defendants who are not mentally competent to participate in the criminal process. But given the fact that these cases are resolved all in a day, sometimes we are afraid that we missed some of the people in these categories.

The courtroom itself smells pungently, because the defendants are wearing the same clothes they were arrested in and had been walking through the desert in, for anywhere from 1 to 2 days to 3 days before.

We have anywhere from 3 to 30 minutes, depending on what courtroom you are in, for these clients to meet with a lawyer. And during that time, the defendants have to be advised of what they are being charged with. They have to be advised of their various constitutional rights and the penalties they face if they go to trial or if they plead guilty.

We have to also get from them information about their family, about any mental or medical conditions they may have, any education they may have that may affect their ability to understand the process. And we have to decide whether or not they want to plead guilty that day or if they want to insist on a trial.

Most of these defendants end up pleading guilty, and they end up being sentenced the very same day, as well. And that is why this program is called Operation Streamline—to stream them through the court system.

It is Border Patrol who decides who to charge and what charges they will face. In the courtroom is one prosecutor, and in the Tucson courtroom, that is an especially assigned assistant U.S. attorney, because we had not enough prosecutors to go ahead and prosecute these petty and misdemeanor offenses. And so, we have somebody who has been specially deputized from Immigration at

the Department of Homeland Security to handle Operation Streamline cases.

And during the court, they decide whether or not charges will be dismissed. They decide what sentences to ask for, and they decide what kind of plea agreements to give to those people who are charged with a combination felony and misdemeanor, but are pleading to a petty offense with a stipulated written plea agreement.

On Monday, before I came here, the "Tucson Citizen," which is considered Tucson's conservative newspaper, had an op-ed about Operation Streamline. They called the process a cattle call. They said, and correctly so, that the courts will pay about $2.5 million to criminal defense lawyers in Tucson alone to represent only Operation Streamline defendants.

They point out that Operation Streamline is not a deterrent to these immigrants coming across the border, and that instead, it may be more effective—the State of Arizona's immigration laws and employer sanction laws, and the downturn in our own economy and the reduction of housing construction in the area.

It has said that it would rather have assistant United States attorneys instead of prosecuting this cattle call prosecution of petty and of flip-flop immigration offenses, and have them devote themselves instead to prosecuting drug prosecutions, which are only one-fourth of the immigration felony prosecutions in Tucson, or white-collar crimes, which have been put on the back burner.

I want to thank you for inviting me to speak to you today.

[The prepared statement of Ms. Williams follows:]

PREPARED STATEMENT OF HEATHER E. WILLIAMS

Written Statement of

Heather E. Williams

First Assistant
Federal Public Defender
District of Arizona - Tucson

Before the

United States House of Representatives

Subcommittee of Commercial and Administrative Law

Oversight Hearing on

the "Executive Office for United States Attorneys"

Wednesday, 25 June, 2008

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Chairman Sánchez, Ranking Member Cannon, and Distinguished Members of the Subcommittee:

INTRODUCTION

Imagine a federal courtroom, rather large, several rows of pews. Two counsel tables, several chairs at each. A jury box which holds 16. Smaller tables throughout the well of the courtroom, a chair on each side. In the mornings, 5 days a week, working in 2 shifts each morning, 70 men and women dressed in dirty street clothes, most with brown skin reddened by the hours or days spent in the Arizona desert before arrest the previous day. They meet with one of the 10 to 16 lawyers present each day, 15 minutes to a half-hour each. Plain-clothed U.S. Marshals position themselves among the many; two Customs and Border Protection (CBP) agents lean at opposite ends of the courtroom. There is the smell of many who have not bathed in a while.

In the afternoon, most will admit they are not United States citizens and plead guilty to entering the United States without being inspected at a port of entry.[1] Those with minimal or no record will be sentenced at that same hearing to time served; others with multiple immigration contacts, criminal arrests or convictions will receive from days up to 6 months imprisonment.

Those who have previously been formally deported, excluded, or removed from the United States will be charged with a "flip-flop": Count 1: Unlawful re-entry after deportation,[2] a felony punishable by up to 2 years to 20 years in prison, depending on criminal history; and Count 2: Illegal entry, the petty offense. Most will accept the standard plea offer: plead guilty to the lesser illegal entry with a stipulated sentence of 30 days to 6 months and the felony charge will be dismissed.

This is Operation Streamline in Tucson, Arizona. A criminal case with prison and deportation consequences is resolved in 2 days or less.

EVOLUTION OF OPERATION STREAMLINE

In December 2005, CBP started Operation Streamline in Del Rio, Texas (Western District of Texas) and Yuma, Arizona. Streamline started in Laredo, Texas (Southern

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[1] Illegal entry, 8 U.S.C. § 1325(a). It is a petty offense with a maximum possible penalty of up to 6 months imprisonment.

[2] 8 U.S.C. § 1326(a). This includes re-entries after exclusion or removal also. If the formal removal happened after a felony conviction, the maximum possible penalty is 10 years in prison. If after an aggravated felony conviction defined under 8 U.S.C. § 1101(a)(43), up to 20 years in prison.

District of Texas), November 1, 2007.[3]

Del Rio, Texas

In Del Rio, the Federal Public Defender (FPD) initially refused to participate in Operation Streamline because of its "numbers for numbers' sake" rationale and the problems discussed below. The court used Criminal Justice Act (CJA) lawyers[4] to represent the 80 or more a day Operation Streamline defendants. To attract CJA lawyer participation, the court offered to pay these lawyers "$50 a head."[5] While at first, several lawyers were appointed each day, the lawyers suggested one or 2 lawyers a day could handle the 80 plus defendants. This attracted CJA lawyer participation from lawyers in San Antonio who find it cost effective to drive the almost 6 hour round trip to earn $2000 to $4000 a day.

Last year, the FPD was convinced to send Assistant FPDs every Monday to Del Rio Streamline Court after the court denied motions to continue hearings and trials, finding the FPD must have plenty of time to be ready for court since they did not have Streamline cases.

In Del Rio, lawyers have the one day between the defendant's initial appearance and their next court date to interview clients.

Yuma, Arizona

The FPD in Arizona opened its Yuma office with 2 lawyers the month before Streamline began there in December 2006. There were and are only 5 CJA lawyers there and they handle mostly conflict appointments. Streamline defendants number 30 to 50 a day in Yuma. In the past 2½ years, our Yuma office has grown to 5 lawyers and we hope to hire up to 2 more before the end of the year. This is a challenge because we require all Yuma employees to be Spanish speakers. Two to three Assistant FPDs handle Streamline each day, interviewing clients in the morning, with court in the afternoon.

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[3] Appendix 1 compares Streamline in each court is occurs.

[4] 18 U.S.C. § 3006A allows for private lawyers approved by the court to take federal court-appointed cases.

[5] At the time Streamline began in Del Rio, Congress had approved CJA payments of $94 per hour. We do not know by what authority the Del Rio court was able to pay "$50 a head," an obscene way to characterize representation of these poor defendants. The CJA rate is now $100 per hour.

Laredo, Texas

Streamline started last November 2007 in Laredo, Texas. Only the FPD handles Streamline cases. Two Assistant FPDs and an Office Investigator arrive at the courthouse between 6:30 a.m. and 8:00 a.m., depending on how many defendants are expected. The three then interview all the defendants (some then only very briefly talk with a lawyer before deciding whether or not to plead guilty). Court starts at 9:00 or 10:00 a.m. and is done by noon or 1:00 p.m.

Case load changes between FY 2007 and the first 4 months of FY 2008 are:

TO HAVE A KNOWING, INTELLIGENT AND VOLUNTARY PLEA

Rule 11 of the Federal Rules of Criminal Procedure requires a judge taking a guilty plea to make findings that the guilty plea is entered knowingly, voluntarily, and intelligently. To make these findings, the court:

1. Advises the defendant of his constitutional rights:
   a. to be presumed innocent unless and until the Government proves him guilty beyond a reasonable doubt;
   b. to a trial - if the offense is punishable by more than 6 months, that trial will be in front of a jury of 12 people from the community who will listen to the evidence and the law and decide if the Government has proven guilt beyond a reasonable doubt; if the punishment is 6 months or less, the trial is before the court;
   c. to confront and cross-examine the witnesses against him;
   d. to testify on his own behalf if he wishes; if he does not wish to testify, he does not have to testify and no one can assume he is guilty if he does not testify because he has the right to remain silent;
   e. to subpoena witnesses to testify on his behalf; and
   f. to be represented by a lawyer at his trial.
2. Finds out if the defendant understands these rights and wishes to give up his constitutional rights.
3. Reads the charge against the defendant, explaining each element of the offense.
4. Finds out if the defendant understands the possible punishment and other consequences if he pleads guilty and any other obligations he may have under a plea agreement (if there is one).
5. Asks the defendant to give a factual basis (to explain what he did) for his guilty plea.
6. Finds out if anyone has forced him or threatened him to induce him to plead guilty.

Knowing that the court will ask these questions should the defendant plead guilty, a defense lawyer must explain the constitutional rights to the Client, explain the charge,

explain all possible punishments if there is a guilty verdict after trial or if Client pleads guilty. The lawyer then asks the Client about how he got arrested, what led to the arrest, what he did and what law enforcement did. Then the lawyer explores the Client's personal history: family, medical problems, mental health issues, work and schooling, criminal and immigration record.

In Streamline, this usually needs to be done in another language, most often in Spanish. And in the brief 3 to 30 minutes (depending on which court) Streamline gives the defense lawyer to meet and educate the Client and herself, the lawyer must decide whether the Client is competent, whether there is a defense of citizenship or duress, a lack of intent, a pretrial motion to suppress evidence or statements due to constitutional violations. The lawyer must learn personal information which might mitigate a sentence. The lawyer must consider not just the options in the criminal case, but also any immigration consequences or opportunities the Client may have, such as asylum. And without any time to do investigation or research, with usually one CBP *Report of Removable Alien* as disclosure, the lawyer must advise the Client whether to plead guilty or go to trial, when either decision could result in the Client spending up to 6 months in prison and likely giving up the chance ever to be in the United States legally.

OPERATION STREAMLINE - TUCSON VERSION

Until October 1, 2007, five to 50 people a day were charged with entry without inspection or the "flip-flop" re-entry/illegal entry. The people who were charged with entry without inspection were rarely first-timers. Some would have multiple voluntary returns; others would have a criminal arrest or conviction; first-timers were charged if a CBP agent had to run after them or if they were found within 100 yards of marijuana bundles. Our Office, the FPD, represented most of these defendants.

As the immigration arrests increased as more CBP were sent to the Arizona border, the number of Assistant U.S. Attorneys in the Tucson U.S. Attorney's office did not commensurately increase. By 2006, marijuana cases involving less than 500 pounds (unless a gun was involved or the arrestee had a prior conviction) were prosecuted as misdemeanors or handed off to the state for prosecution because there were not enough prosecutors to handle all of the cases. Then-U.S. Attorney Paul Charlton said at a periodic meeting with the Tucson defense bar that white collar investigations and indictments were on the back burner due to the crush of immigration cases.[6]

In September 2007, five Assistant U.S. Attorneys in the Tucson Office announced they

[6] At this meeting in 2006, one defense lawyer asked about the status of a white collar case under investigation where he had been advising the possible defendants for several years. This case has just this month been filed. *United States v. Chris Reno and Roy Fife*, U.S. District Court (Arizona) Case № CR 08-***.

were leaving. Faced with already staggering caseloads, the Office determined that it lacked enough personnel to effectively to prosecute the petty offenses and flip-flops. As of October 1, 2007, they stopped, but other felonies continued to be charged, including many charged with re-entry after deportation.

The discontinuation of prosecutions of petty offenses seemed to upset CBP and, by the end of October, CBP was proposing Operation Streamline for Tucson.[7] CBP cited its supposed success in Yuma and Del Rio as the fourth prong to take operational control of the Border, after technology (e.g. sensors), infrastructure (e.g. fences), and manpower. CBP argued that, with almost 380,000 deportable aliens arrested in the Tucson Sector the previous fiscal year, it was time for "zero tolerance" and that charging 100 to 120 a day with simply being here illegally, first-timers or repeat violators, would work to discourage recidivism.[8] CBP asserted that sentencing defendants to 15 to 30 days in prison is the magic sentence to fully discourage repeated entries.[9]

After several meetings which included the CBP, district court judges and magistrates, the U.S. Attorney's Office, U.S. Marshal Service, FPD, CJA Panel Representative, Clerk's Office, and Bureau of Prisons (BOP), several hurdles to CBP's proposal became apparent. The U.S. Attorney's Office lacked prosecutors; CBP offered 5 Department of Homeland Security Immigration lawyers to be made Special Assistant U.S. Attorneys. The U.S. Marshal Service lacked deputies already spread thin with its various obligations, which include courtroom security for the 80 to 100 hearings held each day in Tucson's U.S. District Court; CBP offered 2 CBP agents to help with security in the Streamline courtroom. U.S. Marshal courthouse holding cells only hold a maximum of 140 people; there are 80 or more defendants and material witnesses every day without

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[7] See Appendix 2 - Tucson Sector PowerPoint presented at the first Operation Streamline meeting. Please excuse my notes.

[8] Brady McCombs, "BP May Have to Rein in Its Zero-Tolerance Plan," *Arizona Daily Star* (11/23/07). One hundred a day represents only 4% to 10% of those arrested by CBP each day.

[9] We are not sure how CBP studied this to reach its conclusion. We do not know what time period they considered for recidivist behavior or if they limited considering recidivist behavior to returns to the same sector. Two difficulties exist in trying to verify CBP's "statistics": CBP has all the information which cannot be verified easily by anyone, even with a FOIA request, and not everyone who comes across gets caught.

Also, despite CBP's assertion that Del Rio was handing out 15 day sentences regularly, our investigation showed otherwise.

the Streamline calendar.[10]

The FPD, my Office, asserted at first that it could not participate. Our lawyers' caseloads were at a maximum. As it is, we generally accept 60% of all cases, with 40% going to the CJA lawyers as conflict cases or for high caseloads within our Office. The CJA lawyers (Spanish speakers only), who felt they could devote an entire day periodically to Streamline, met to discuss concerns and minimum requirements. There were medical exposure concerns, as Streamline defendants do not get a medical screening before being brought to court. Where would lawyers privately meet with clients, as the U.S. Marshal had limited interview rooms? How many clients could each lawyer effectively represent? What was the schedule? Could they be paid the same as the CJA lawyers in Del Rio? What payment was acceptable to handle Streamline?

Eventually, Streamline was imminent. My Office was persuaded by the court to participate and we agreed to send 2 Assistant FPDs each day. This allowed each of the 20 Assistant FPDs doing Streamline to only be in court for Streamline every 2 weeks. We allowed lawyers who had medical concerns to opt out. CJA lawyers who were willing to participate in Streamline commit to regular days each week or every 2 weeks and we have set schedules of 10 to 14 CJA lawyers each day. The court has told them it cannot pay more than the Congressionally mandated $100 per hour, regardless of how many clients a lawyer represents each day. So far, every lawyer participating is fluent in Spanish, so the court has no extra cost for interpreters.

Further, participating lawyers asserted that they could not effectively represent any more than 6 defendants a day given the 3 hour morning interview time. This would mean spending only 20 to 30 minutes with each client. Fortunately, several magistrates who would be hearing the Streamline calendar are former criminal defense lawyers and agreed with the limitation. Since Streamline started, some lawyers have decided they can effectively represent only 4 defendants a day, others as many as 8, but most handle up to 6 cases a day.

Streamline court takes place in the Special Proceedings Courtroom, the largest in the courthouse. The court agreed to set up desks throughout the courtroom with 2 chairs for quasi-private attorney-client meetings. The court was able to have CBP agree that the following would not be charged for Streamline: juveniles, those who spoke no Spanish or English,[11] anyone exhibiting mental health problems or complaining of

[10] Letter from the Honorable Chief Judge John M. Roll to Senator Kyl and Representatives Culberson and Giffords, 3/4/2008.

[11] It is not uncommon for defendants to speak native Mexican Indian dialects or to be Brazilian speaking Portuguese.

serious medical problems.[12] Each week there may be several dismissals because defendants fall into any one of these categories.

Streamline began January 14, 2008, at 40 per day. Because it has been less than the 100 proposed by CBP, CBP calls what happens in Tucson "Arizona Denial Prosecution Initiative" (ADPI). Numbers increased to 50-a-day in mid-March, 60-a-day in mid-April, and 70-a-day in mid-May. When Streamline began, most cases were flip-flops.[13] Then there was a usually even mixture of petty offenses and flip-flops. Since April 1, there have been many more petties than flip-flops.[14] We believe this is to help the U.S. Marshal, the agency hardest hit fiscally by Streamline, especially when it pays for housing the stipulated flip-flop sentences until BOP takes over. We do not believe it is because Streamline is working, as we get reports from our clients that those with prior records are being bused to the Border without being charged.

As much as our lawyers disapprove of Streamline, compared with how it is being handled in the other courts, we feel it is a model for effective lawyering under these conditions and serves the clients and the court much better.

ETHICAL AND CONSTITUTIONAL CONCERNS

Defendant Concerns

The following are issues which can be and have been missed because of the rapid resolution of Streamline cases. They can result in additional costs of incarceration and, if a defendant returns, in possible habeas-type petitions.

- Incompetency due to:
  - Mental illness,
  - Lack of education,
  - Being under the influence (a day between arrest and court may not allow for withdrawal),
  - Physical illness(including dehydration from travel) and lack of medication,
  - Inadequate nourishment,
  - Not enough sleep;
- Actual or derivative citizenship;
- Asylum claims;
- Juveniles;

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[12] This does not mean they might not be charged as part of the court's other and more regular calendar.

[13] See Appendix 3.

[14] See Appendix 3.

- Primary language other than Spanish or English.

Private consultation between attorney and client

Confidentiality of information must be guaranteed between client and lawyer.[15]

Mass hearings

The problems with mass advising of rights and *en masse* requests for waivers of those rights include (a) the failure to obtain a "considered and intelligent" waiver, (b) the risk that individuals will feel pressured to keep silent because everyone else is, and (c) the stigma of speaking up or standing alone before the judge who conveys through such questioning disfavor and discourages further discussion.[16]

Adequate opportunity to prepare

Opportunity for adequate case preparation is an absolute prerequisite for counsel to fulfill his/her constitutionally assigned role.[17] There are concerns that the extremely high caseload adversely affects adequate preparation in other cases.[18]

Conflicts between current clients

Some defendants are arrested in groups walking or in a vehicle. One may be considered to be the "guide," a factor considered by the sentencing magistrate during sentencing.

Any lawyer who represents two or more clients in a criminal case cannot participate in making an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all of the claims or pleas involved and of the

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[15] Fed.R.Evid. 601; 17A A.R.S. Supreme Court Rules, Rule 42, Ethics Rule (ER) 1.6(a).

[16] United States v. Ahumada-Aguilar, 295 F.3d 943, 949-950 (9th Cir. 2002); United States v. Lopez-Vasquez, 1 F.3d 751, 754-755 (9th Cir. 1993).

[17] U.S. CONST., Am. VI; Powell v. Alabama, 287 U.S. 45, 68-69 (1932); Brescia v. New Jersey, 417 U.S. 921 (1974).

[18] 17A A.R.S. Supreme Court Rules, Rule 42, ER 1.8(g) Conflicts of Interest; Current Clients.

participation of each person in the settlement.[19]

Maintain Integrity of Adjudicative Process

Lawyers have special duties as officers of the court to avoid conduct that undermines the integrity of the adjudicative process.[20] Factory-like proceedings may do this.

Delay Before Being Brought to Court

Waiting more than 48 hours before bringing defendants to their initial court appearance may violate the 5th Amendment.[21]

Due Process and Burden of Proof

The 5th and 6th Amendments are potentially violated when issues of improper venue, lack of proof of entry, and no corroboration of the defendant's statements as to entry or alien citizenship are not raised.

High Caseload

"A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

> (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
> (b) representing the client is likely to result in an unreasonable financial burden on the lawyer . . ..
> Comment
> *Appointed Counsel*
> [2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see ER 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would

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[19] 17A A.R.S. Supreme Court Rules, Rule 42, ER 1.8(g) Conflicts of Interest; Current Clients.

[20] 17A A.R.S. Supreme Court Rules, Rule 42, ER 3.3, Comment [2].

[21] Riverside v. McLaughlin, 111 S.Ct. 1661 (1991).

impose a financial sacrifice so great as to be unjust.
[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules."[22]

Supervisors Assigning Cases

Any lawyer who supervises other lawyers "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct" and "shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. . . . [The supervisory lawyer] shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."[23]

The Court's Responsibilities[24]

Independent Judiciary

By the many meetings before Streamline began and possibly meetings since involving the many agencies involved in Streamline, the court's independence may be compromised.[25]

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[22] 17A A.R.S. Supreme Court Rules, Rule 42, ER 6.2 Accepting Appointments.

[23] ABA Formal Opinion 347 (12-1-81); I ABA Standards for Criminal Justice (3rd Ed. 1990), Providing Defense Services, Sec. 5-1.2(d); 17A A.R.S. Supreme Court Rules, Rule 42, ER 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers.

[24] Each of these sections cites to 17A A.R.S. Supreme Court Rules, Rule 81, *Code of Judicial Conduct* (AZ) and *Guide to Judiciary Policies and Procedures*, Chap. 1, Codes of Conduct for United States Judges (U.S.).

[25] AZ. and U.S. CANON I.A.

Impartiality

A judge cannot, with respect to cases, controversies, or issues likely to come before the court, make any pledges, promises, or commitments inconsistent with the impartial performance of the adjudicative duties of the office.[26]

A judge should avoid public comment on the merits of any pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of a judge's official duties, to explaining court procedures, or to a scholarly presentation made for legal education.[27]

Court administration

A judge must diligently discharge the judge's administrative responsibilities without bias or prejudice, must maintain professional competence in judicial administration, and should cooperate with other judges and court officials in administering court business.[28]

OTHER CONCERNS

Operation Streamline carries additional concerns for prosecution and defense lawyers, deputy U.S. Marshals, magistrates and court staff participating in it, includiingextra concerns about money, adequate staffing, and space.

For Defense Lawyers

- Health risks
  - TB
  - Hepatitis
  - Chicken Pox
  - Colds and flu
- Safety (if must talk with clients when seated in consecutive rows - concerns for female lawyers and overweight attorneys)
- Smell (inmates will not have bathed and will be in the clothing they were arrested in)
- Morale
  - *En Masse* representations/administrative flunkies
  - Lack of private consultations and individual representations

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[26] AZ. CANON 3.B (10).

[27] U.S. CANON 3.A (6).

[28] AZ. CANON 3.C(1) ADMINISTRATIVE RESPONSIBILITIES.

- Concerns over keeping Bar license

For Court, Court Staff, Deputy U.S. Marshals, and Assistant U.S. Attorneys

- Health risks
  - TB
  - Hepatitis
  - Chicken Pox
  - Colds and flu
- Safety due to large numbers
- Smell
- Morale
  - *En Masse* representations/administrative flunkies
  - Organization and paperwork
- Determining conflicts between defendants
- Having enough attorneys available to handle conflicts

Money, Staffing, and Space

The U.S. Attorney's Office in Tucson, in part due to the publicity surrounding Streamline, has within the past few months been authorized to backfill the resigned lawyer positions, backfill previous years losses, and hire additional lawyers, for a total of 16. We understand the U.S. Attorney's Office in Tucson sometimes is unable to find qualified, experienced applicants. Once the Office was a popular place for Assistant U.S. Attorneys to transfer to from other offices across the country, particularly those from the colder climes. That is not the case any longer because word of the very high caseloads discourages applicants.

Additionally, for years it has been said that the U.S. Attorney's Office in Tucson is running out of space in the courthouse or may be run out of their space due to the court's growth.

We are told, once the new Assistant U.S. Attorneys start, felony case filings likely will increase and the U.S. Attorney's Office will take over Streamline. Our FPD Office is concerned that once the felony filings increase and the CJA lawyers get assigned more felony cases, they will stop participating in Streamline. Should that happen, we anticipate the Court will look to our Office to handle more Streamline cases, which means we would handle fewer felonies. This will challenge the stewardship obligation each federal agency owes in managing the public's money. It also will challenge our Office's ability to prevent burn-out.

Our Office has been fortunate in the support it has received from our Federal Defender, Jon Sands, and the Office of Defender Services here in Washington, D.C. We are

presently hiring 3 additional lawyers for our Tucson Office. Even were we to increase the number of lawyers we have, we are always challenged in hiring experienced lawyers dedicated to public service who are fluent in Spanish.

Here is a chart citing the costs of CJA lawyers and Assistant FPDs in Streamline.

CJA ($100 an hour)		FPD
8:30-5 pm 8.5 hours a day	$ 800 a day	Considering FY 2008 Federal Public Defender, District of Arizona budget (District wide)
x 10 CJA lawyers a day	$ 8000	
x 5 days a week	$ 40,000	2 AFPDs day $ 543.87
x 52 weeks a year	$ 2,080,000	**Yearly $ 141,406.20**

Chief Judge Roll has requested that two additional magistrates be appointed to help with the already large caseloads.[29] This chart shows how §1325 and §1326 cases in Tucson changed between January 2007 and April 17, 2008.

		1/07	2/07	3/07	4/07	5/07	6/07	7/07	8/07	9/07	10/07	11/07	12/07	1/08	2/08	3/08	4/08
§1325	FPD	415	223	331	198	291	189	154	212	73	0	11	1	70	131	164	136
	CJA	0	15	19	75	78	21	4	4	4	0	0	0	178	401	730	552
	Total	415	238	350	273	369	220	158	216	77	0	11	1	248	532	894	688
§1326	FPD	18	18	30	33	19	18	18	28	14	30	30	30	24	18	13	15
	CJA	84	63	70	97	102	76	49	83	72	28	43	19	23	34	57	11
	Total	102	81	100	130	121	92	67	111	86	58	73	49	47	52	70	26

The Marshal Service has asked for additional deputies. It is continually looking for ways the courthouse can be modified to house more and more in-custody defendants. There has been talk of using some, if not all of the sub-courthouse parking lot for additional cells where, for now for security reasons, judges, magistrates, and certain court and U.S. Attorney personnel park.

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[29] Letter from the Honorable Chief Judge John M. Roll to Senator Kyl and Representatives Culberson and Giffords, 3/4/2008.

IS IT WORKING?

The stated goals of Streamline are to discourage first-time border crossers by returning them home where they will supposedly pass the word of "zero tolerance" and to prevent recidivism.

CBP Statistics

Before starting Streamline in Laredo and Tucson, CBP touted the following numbers as evidence of success:

> Relying primarily on statistics from the Del Rio Sector Streamline, since Streamline began in December 2005, CBP reported:
>
> 66.5% decrease total apprehensions
> 78.8% decrease OTM[30] apprehensions
> 329.9% increase in misdemeanor cases filed since 12/2005
> 25.2% decrease in felony cases filed since 12/2005
> 66.2% increase in narcotic seizures

By April 6, 2008, Tucson Sector CBP claimed, "Zero Tolerance Working."[31] The article claimed a "46% recidivism rate now," stating that it was 79% before Streamline started.

The problem with these statistics is (1) what we do not know:

- did CBP consider only those arrested since Streamline started in the Tucson Sector or people arrested at any time before;
- what time period did CBP consider for the recidivist behavior; and
- did CBP consider only those who returned and were arrested within the Tucson Sector or did they include returns to other Sectors;

(2) CBP has all of the information, which cannot be verified easily by anyone, even with a FOIA request, and (3) not everyone who comes without documents across the Border gets caught.

Further, the Department of Homeland Security's own statistics do not support Operation Streamline as the cause for reduced arrests of deportable aliens. As Thomas Hillier, Federal Public Defender, Western District of Washington, eloquently wrote April 22, 2008, to the Senate Judiciary Committee and the Senate Committee on Homeland

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[30] Other than Mexican.

[31] Brady McCombs, "Zero Tolerance Working, says Border Patrol," *Arizona Daily Star*, § A-1 (4/6/08).

Security & Governmental Affairs concerning the proposed Border Crossing Deterrence Act of 2008 (S 2709):[32]

> In urging the Senate to fund expansion of Operation Streamline to all border sectors, Senator Sessions stated that "[i]n just over a year," Operation Streamline "has resulted in a 50-percent decrease in the number of arrests in Del Rio and a 68-percent decrease in the arrests in Yuma, proving . . . with certainty that this kind of consistent prosecution and conviction is a critical factor in deterring illegal entry," and that "[i]f you reduce the number who attempt to come illegally, you reduce costs at the same time." [Table Endnote 1 replacing footnote 27 in the original]
>
> Assuming that these figures are correct, it does not follow that Operation Streamline is the cause. According to statistics published by the Office of Immigration Statistics of the Department of Homeland Security for 1997-2006, the number of deportable aliens located by the Border Patrol and Detention and Removal Operations has steadily declined over the past several years in most sectors that do not have Operation Streamline. *See* Exhibit 11, *Deportable Aliens Located By Border Patrol and Detention and Removal Operations Fiscal Years 1997-2006*. In those sectors that do have Operation Streamline, the number was declining well before it went into effect. In Yuma, where Streamline went into effect in December 2006, the number dropped from 138,438 in 2005 to 118,537 in 2006. *Id.* In Tucson, where it went into effect in January 2008, the number dropped from 491,771 in 2004 to 439,090 in 2005 to 392,104 in 2006. [Table Endnote 2 replacing footnote 28 in the original] *Id.* In Laredo, where Streamline went into effect November 1, 2007, the number dropped from 75,342 in 2005 to 74,843 in 2006. *Id.*
>
> In Del Rio, after a large and steady decline from 2000 through 2003 (from 157,178 to 50,145), there was a slight increase to 53,794 in 2004, a larger increase to 68,510 in 2005, then a decline to 42,634 in 2006. *Id.* Operation Streamline went into effect in mid-December 2005, but the apparent decline in 2006 was due to inflated numbers in 2004-2005 resulting from the practice at Eagle Pass of allowing immigrants from countries other than Mexico to continue on their way into the U.S. after giving them a notice to return for removal or deportation on a certain date. Word quickly spread, and immigrants from every country, including Mexico, flocked to Eagle Pass and were allowed in at a rate of 200 or more a day. [Table Endnote 3 replacing footnote 29 in the original] This practice ended in November/December 2005, and explains the decline in 2006.
>
> In Las Cruces, Operation Lockdown went into effect four months ago. Statistics for apprehensions are not available, but the Defender reports that the Border Patrol had planned on 170 petty misdemeanor cases per week, but the most they have had is 150 and the number is now at 120. Crossings have slowed because of the deployment of the National Guard, the addition of 300 agents, and the construction of fences and barriers.
>
> If arrests have decreased this dramatically in Del Rio and Yuma, petty misdemeanor prosecutions should have decreased at the same rate (if this is truly a "zero tolerance" program), or at least should show a downward trend (if the deterrence theory is correct).

[32] The exhibits in the letters are attached as follows: Exhibit 1 = Appendix 4; Exhibit 2 = Appendix 5; Exhibit 3 = Appendix 6; Exhibit 4 = Appendix 7; Exhibit 11 = Appendix 8.

Instead, the caseload grows with no end in sight. In Del Rio, the number of petty cases has steadily increased since Operation Streamline began in December 2005, from approximately 3495 cases in 2005 to 15,428 cases projected for 2008. *See* Exhibit 1. In Yuma, there were 3664 cases the first year and a projected 8563 cases for 2008 based on the number to date. *See* Exhibit 2. In Laredo, a conservative estimate is 170% growth in the first year, and in Tucson, a conservative estimate of 243% growth in the first year. *See* Exhibits 3 and 4.

Further, if Operation Streamline deters illegal immigration, one would expect to see a marked decrease in felony re-entry cases after it went into effect. But there has been an increase in felony re-entry cases in all sectors except Tucson. *See* Exhibits 1-4. The decline in felonies in Tucson is likely explained by a shortage of prosecutors there, which we understand will soon be remedied, at which time the number of both felonies and petty misdemeanors is likely to increase.

Endnotes

1. Statement of Senator Session in support of SA 4231 to S. Con. Res. 70, March 18, 2008.
2. A Border Patrol supervisor told the Arizona Star that illegal entrants are being sentenced to an average of 30 days in Tucson, and that the "number of people who repeat their attempt to enter the United States more than once dropped from 79% to 46% since the program started in January." Brady McCombs, *Zero tolerance working, says Border Patrol*, April 6, 2008. This claim is unsupported because those picked up since January are still in jail or recently released.
3. James C. McKinley Jr., *Tougher Tactics Deter Migrants at U.S. Border*, New York Times, Feb. 21, 2007.

Immigrant Property

How CBP and the Marshal Service deal with defendant property not only encourages recidivism, but creates potential other criminal problems.

Many undocumented immigrants carry with them not only what they need for their journey, but also what they want to remember from what they left behind. CBP has said it will keep defendant property for 30 days after arrest. Those sentenced to time served are reunited with their property before being returned to the Border. Few defendants have anyone in the United States, let alone in the Tucson area, who can pick up their property for them. Property not claimed is supposedly destroyed.

The Marshal Service limits what defendant property it will accept to follow the defendant: $50 U.S. currency, a plain watch and a plain wedding ring.

Streamline defendants will eventually be deported to their countries of origin and, without identification, money, phone numbers, or addresses, most will be unable to

easily return to their homes further from the ports of entry.[33] Many do not know how to contact family or friends. They cannot pick up wired money without ID. Many lose irreplaceable birth certificates and photographs. Our lawyers have heard many a client, when asked, "Why did you come here?" say, "After I was dropped at the Border, I did not have any money, so I thought I would come back across just for a day and do some yardwork to get some money so I could start home."

Our Office retrieves client property from CBP, though we are not supposed to do so by our own *Policies and Procedures*. From their backpacks, we take IDs, birth certificates, phone cards, addresses, phone numbers, and photographs and make copies of them and send them to our clients (the prison will not let them have the originals because that is "property."). Any money we find, no matter the currency, office volunteers will take to a bank or *casa de cambio*, exchange and receive back in a money order or cashier's check and deposit it in the client's prison account. If there is family to whom we can send other personal property, we do so. The lawyers send it using their own money because we cannot use Office postage to send personal property. Any remaining property we throw out.

Most defendants represented by CJA lawyers do not get their property back - the court does not pay CJA lawyers for the hours it can take to locate, retrieve, inventory, copy, exchange, and send client personal property.

The opportunity to destroy unclaimed money, jewelry, and identification is also an opportunity and a temptation to pocket the same for profit. The black market for identification is a market that caters not only to those seeking work in the United States, but those seeking to harm the United States and other countries.

Immigrant Treatment

We have received complaints from clients about their treatment before coming to court. Some with medical problems, including high blood pressure and diabetes, are not getting the medication they brought with them. After hours to days in the desert, there is inadequate access to water and minimal food. As the numbers increase, the space for holding them at the CBP station decreases per person and now many sleep sitting up on the floors of the holding cells without blankets or pillows. No one gets a shower; they stay days in the same clothes. Some are waiting up to 3 days before being brought to court, rather than the Streamlined next day hearings originally proposed. Those who have money are being told to sign a document abandoning the right to have that money returned under a pretense of it being returned or without explanation of what the paper truly says.

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[33] See Appendix 9 - Letter from Juan Manuel Calderón-Jaimes, Cónsul of México, letter to the Honorable Magistrate Charles M. Pyle, 2/15/2008.

Reality

It is CBP that decides who gets charged in Operation Streamline and who does not. It is CBP that decides whether Streamline defendants are charged with a § 1325 petty illegal entry or a flip-flop felony re-entry/petty illegal entry combination.

One day in court, the following exchange occurred between a lawyer and his Streamline client who had never before been arrested:

LAWYER: You face a maximum of 6 months.
CLIENT: That can't be! I have 3 children who need me, please!
LAWYER: The judge may give you much less than that because we can tell her you have never been deported, never been voluntarily returned, nothing.
CLIENT: No, no! Please tell her I have been deported and convicted before - I want to go home.
LAWYER: You have no priors, right? It says here you have never been deported, right? Why would I tell her you have been?
CLIENT: **Because yesterday, in the little jail,[34] they took everyone who had a prior conviction and put them on a bus to go home, but only kept us who swore we had never been arrested before. And that's why they brought us here and the others got to go home. . . . Only this time they bring me here, and next time they will let me go too!**

Congressman Duncan Hunter, Representative for the 52nd district of California, the area bordering Mexico and Arizona, said:

> The effectiveness of border fencing is not only seen in San Diego County but also in Yuma, Arizona, where more than 30 miles of fencing has been built over the last year and a half. In fact, since the start of fence construction in the Yuma sector, there has been a 73% reduction in apprehensions.[35]

Last year, the Arizona State Legislature passed its own laws to remove business licenses of employers knowingly employing undocumented immigrants. In November and December 2007, Arizona saw many Hispanic residents packing up and moving to other states or to Mexico, not wanting to get swept up in enforcement of the new state

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[34] CBP Station.

[35] Rep. Duncan Hunter press release, *Hunter Joins House Committee Field Hearing on Border Fence Waiver* (4/28/08).

law.[36]

The weaker economy in the United States can also discourage people from unlawfully coming to the United States to look for work to support a family back home.

There are many reasons why people may stop entering the United States without permission. Operation Streamline may well be one of the least successful, but most costly and time-consuming ways of discouraging entries and re-entries.

Thank you for giving me this opportunity to talk with you.

---

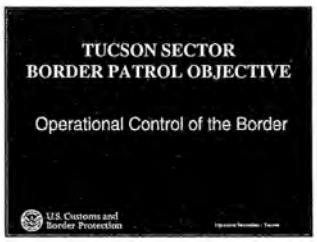
[36] Miriam Jordan, "AZ squeeze on immigration angers business," *Tucson Citizen* (12/14/07).

OPERATION STREAMLINE DIVISIONS COMPARISONS
June 2008

District	Western District Texas	Southern District Texas	District of Arizona	
Division	Del Rio	Laredo	Yuma	Tucson
District Ct judges	1	2	–	5
Magistrates	2	2	1	6
Jails	(4) 30 min-4 hr RT	(3) 20 min-1 hr RT	(1) 1 hr RT	(2) 40 min-3 hrs RT
Panel members	20-25	25-30	5 (3 OS)	127 (34 OS volunteers)
FPD attorneys	10	17	5	23
Division population	145,789	256,994	187,555	1,117,199
Division Counties	Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, Zavala	Jim Hogg, La Salle, McMullen, Webb, Zapata	Yuma	Pima, Santa Cruz, Cochise
Port of Entry	Ciudad Acuna	Nuevo Laredo	San Luis	Agua Prieta, Naco, Nogales, Sasabe
Schedule	▸ D arrested & booked into nearest jail to Ct ▸ appted p.m. when BP swears in complaints ▸ Ct set 2 ct days later ▸ D atty gets complaints & I-213s that or next day ▸ Visit D at jail day between ▸ Ct 9-11:30 am	▸ D arrested & held @ BP ▸ Attys meet Ds at Ct beginning 6:30 am or 8 am, depending ▸ Paperwork at Ct ▸ 2 attys + investigator interview after mass advisals ▸ Ct 9 or 10 am, depending ▸ Done by noon or 1 pm	▸ D arrested & held @ BP ▸ Paperwork faxed to FPD overnight - 10:30 am ▸ Once paperwork received, 2-3 attys meet with Ds in interview rms (3) ▸ Ct 1 pm	▸ D arrested and held @ BP ▸ 8 am: Ds brought to cthouse & booked ▸ Paperwork given to JA; BP IDs conflicts ▸ 9 am: JA assigns cases ▸ 9:30 am: Attys meet with Ds ▸ 1:30 pm: Ct ▸ done by 4:30-5 pm

District	Western District Texas	Southern District Texas	District of Arizona	
Division	Del Rio	Laredo	Yuma	Tucson
Ds & cases	Includes females & juveniles Primarily Central Americans Occasional other languages §1325 only	No seriously ill or pregnant Juveniles get dismissed Occasional other languages §1325 & A&A §1325	Includes females Juveniles are dismissed Occasional other languages §1325 & Flip-Flops	Includes females Juveniles are dismissed §1325 & Flip-Flops
Attys	FPD Mondays, CJA other days	2 FPD on mag duty	2 FPD assigned to petties; if few felonies, atty assigned to felonies will help CJA attys for conflicts	FPD: 2 a day, all Spanish speakers; CJA Panel: Spanish speakers, 35 volunteered for Op Streamline
How long?	2.5 yrs (FPD only recently)	since 11/1/07	2.5 yrs	since mid-1/08
D meeting	Visit D at jail day between	In ctrm - can take aside	In ctrm - can sometimes meet in USM holding	In ctrm
How many?	≤ 80	≤ 80	≤15 per atty, most 35 in a day	≤ 70 Plan to gradually increase to 100 by October

BG Del Rio Sector



Remote Video System

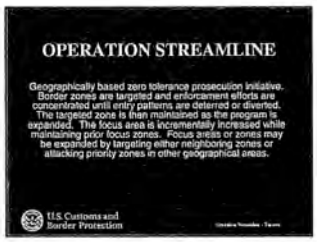
All Weather Road

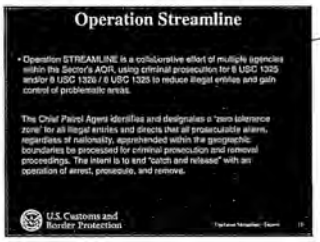
Permanent Vehicle Barriers

Temporary Vehicle Barriers

Why criminal prosecution only?

Why ø just remove everyone rather than criminally prosecute?

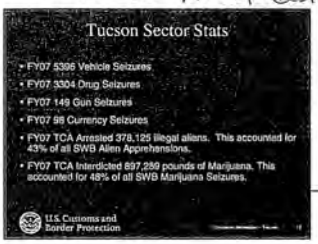




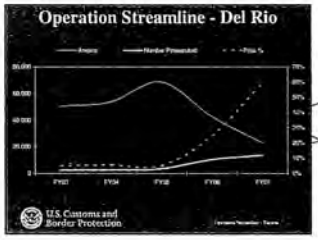
Area of Operation

1030 a day
7233 a wk
100 OSL ΔS = 97% of arrestees

10% = 140 a day
1441
5 | 7232
52 | 376,125
364
121
104
171
156
152
104
95
4



South West Border



We have 4X apprehensions Del Rio did

Red = Apprehensions
Yellow = prosecutions
Green - % of UAIs prosecuted

OPERATION STREAMLINE – DEL RIO

Rate of Recidivism by Criminal Sentence

Optimum Sentence to Restore Deterrence Appears to be 30 Days

- Recidivism rates roughly doubled as criminal sentences dropped from 30 to 15 days, however little change was seen between 30 and 90 days
- Sentences of "Time Served" (2-6 days) have produced recidivism in as little as 24 hours after repatriation

Sentence	Recidivism
15 Days	40.00%
30 Days	19.00%
90 Days	12.00%

U.S. Customs and Border Protection

OPERATION STREAMLINE - DEL RIO

Streamline Recidivism

Nearly two years later, only 360 of 24,880 aliens prosecuted pursuant to Operation Streamline – Del Rio have been identified as having re-entered the United States illegally.

U.S. Customs and Border Protection

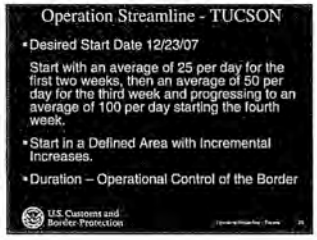
Benefits Realized

- Proven Deterrence of illegal entries in target zones due to zero tolerance for all prosecutable aliens.
- Significant ground gained toward achieving operational control of the Nation's border.
- Reduces numbers of smugglers and smuggling organizations by reducing overall number of illegal entries in target areas.
- Reduced entries have allowed greater situational awareness toward apprehending terrorists, terrorist weapons, detection, apprehension, & deterrence of smugglers of humans, drugs, and other contraband illegally entering the United States.
- Reduced entries in urban areas have improved the quality of life in surrounding communities.

U.S. Customs and Border Protection

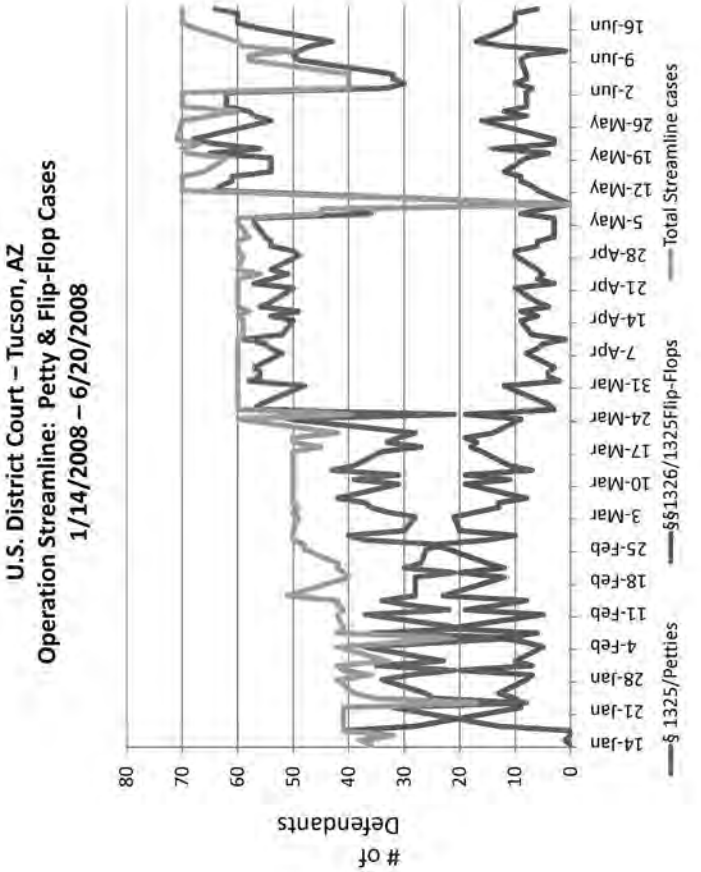
How much $ Natl Gd presence or Border?

Prisoner Xfer Service @ talk w/ JABS



cor want to make impact

Golf Links Holding facility
24


U.S. District Court – Tucson, AZ
Operation Streamline: Petty & Flip-Flop Cases
1/14/2008 – 6/20/2008
# of Defendants
80
70
60
50
40
30
20
10
0
14-Jan
21-Jan
28-Jan
4-Feb
11-Feb
18-Feb
25-Feb
3-Mar
10-Mar
17-Mar
24-Mar
31-Mar
7-Apr
14-Apr
21-Apr
28-Apr
5-May
12-May
19-May
26-May
2-Jun
9-Jun
16-Jun
§ 1325/Petties
§§1326/1325Flip-Flops
Total Streamline cases

APPENDIX 3 - 1

U.S. District Court – Tucson, AZ
Operation Streamline: Petty Flip-Flop Cases, 1/14/2008 – 6/20/2008

	§ 1325/Petties	§§1326/1325Flip-Flops	Total Streamline cases
14-Jan	0	36	36
15-Jan	1	37	38
16-Jan	0	32	32
17-Jan	0	41	41
18-Jan	13	28	41
22-Jan	32	9	41
23-Jan	8	9	17
24-Jan	25	10	35
25-Jan	26	13	39
28-Jan	34	8	42
29-Jan	29	7	36
30-Jan	21	20	41
31-Jan	35	7	42
1-Feb	23	10	33
4-Feb	37	5	42
5-Feb	23	8	31
6-Feb	9	13	22
7-Feb	36	6	42
8-Feb	19	22	41
11-Feb	37	5	42
12-Feb	22	19	41
13-Feb	29	13	42
14-Feb	34	8	42
15-Feb	28	23	51
19-Feb	28	12	40
20-Feb	21	20	41
21-Feb	30	12	42
22-Feb	27	15	42
25-Feb	26	22	48
26-Feb	23	25	48
27-Feb	37	15	50
28-Feb	40	10	50
29-Feb	30	20	50
3-Mar	28	21	49
4-Mar	33	17	50
5-Mar	36	13	49
6-Mar	37	13	50
7-Mar	42	8	50
10-Mar	31	19	50
11-Mar	39	11	50
12-Mar	31	19	50
13-Mar	43	7	50
14-Mar	39	11	50
17-Mar	34	16	50
18-Mar	27	18	45

APPENDIX 3 - 2

U.S. District Court – Tucson, AZ
Operation Streamline: Petty Flip-Flop Cases, 1/14/2008 – 6/20/2008

19-Mar	33	17	50
20-Mar	31	19	50
21-Mar	28	14	42
24-Mar	51	9	60
25-Mar	21	19	40
26-Mar	57	3	60
27-Mar	56	4	60
28-Mar	54	6	60
31-Mar	48	12	60
1-Apr	58	2	60
2-Apr	56	4	60
3-Apr	56	4	60
4-Apr	57	3	60
7-Apr	52	8	60
8-Apr	54	6	60
9-Apr	55	5	60
10-Apr	59	1	60
11-Apr	52	7	59
14-Apr	50	9	59
15-Apr	54	6	60
16-Apr	49	9	58
17-Apr	56	4	60
18-Apr	54	6	60
21-Apr	50	10	60
22-Apr	57	3	60
23-Apr	54	6	60
24-Apr	51	5	56
25-Apr	54	6	60
28-Apr	49	10	59
29-Apr	50	10	60
30-Apr	54	6	60
1-May	54	6	60
2-May	55	3	58
5-May	57	3	60
6-May	57	3	60
7-May	36	9	45
8-May	40	5	45
9-May	0	0	0
12-May	64	6	70
13-May	63	7	70
14-May	61	9	70
15-May	61	9	70
16-May	54	12	66
19-May	54	8	62
20-May	65	4	69
21-May	56	14	70

APPENDIX 3 - 3

U.S. District Court – Tucson, AZ
Operation Streamline: Petty Flip-Flop Cases, 1/14/2008 – 6/20/2008

22-May	64	3	67
23-May	68	3	71
27-May	54	16	70
28-May	57	8	65
29-May	58	12	60
30-May	62	8	70
2-Jun	62	8	70
3-Jun	33	7	40
4-Jun	30	10	40
5-Jun	32	8	40
6-Jun	32	8	40
9-Jun	49	9	58
10-Jun	50	8	58
11-Jun	49	1	50
12-Jun	47	12	59
13-Jun	43	17	60
16-Jun	57	11	68
17-Jun	60	10	70
19-Jun	60	10	70
20-Jun	64	6	70

Exhibit 1

Del Rio–Petty Misdemeanor Cases Closed; Felony Immigration Cases Filed		
OS in effect 12/15/05	**All Petty Cases Closed (99% of which are§ 1325(a))[1]**	**Felony Immigration Cases Filed (under§ 1325(a) and 1326)[2]**
Jan-Mar 2005	1000	
Apr-June 2005	801	
July-Sept 2005	761	
Oct-Dec 2005	933	
Total 2005	**3495**	**706**
Jan-Mar 2006	2482	
Apr-June 2006	2749	
July-Sept 2006	3499	
Oct-Dec 2006	3056	
Total 2006	**11786**	**582**
Jan-Mar 2007	4618	
Apr-June 2007	3315	
July-Sept 2007	2788	
Oct-Dec 2007	1879	
Total 2007	**12,600**	**628**
2008	3857 (1/1/08-3/31/08)	301 (1/1/08-4/21/08)
Projected Total 2008	**15,428** (+341%)	**980** (+39%)

1 Source: Western District of Texas, Magistrate Judge Statistics, http://156.124.10.198/chambers/index.asp. Defender reports that 99% of all petty offenses in Del Rio are immigration offenses under 8 U.S.C. § 1325(a).
2 Source: PACER system.

Exhibit 2

Yuma–Petty Misdemeanor and Felony Immigration Cases			
OS in effect 12/4/06 (no FPD office in Yuma until then)	**FY 2006**	**FY 2007**	**Projected FY 2008 (based on numbers as of 4/15/08)**
Opened as Misdemeanor	0	1832	4281 (+134%)
Opened as Felony or Felony/Misdemeanor	0	2583	4748 (+84%)
TOTAL OPENINGS	0	4415	9029 (+105%)
Closed as Misdemeanor	0	3664	8563 (+134%)
Closed as Felony	0	751	466 (-38%)
TOTAL CLOSINGS		4415	9029 (+105%)

Source: Federal Public Defender, District of Arizona
Approx. half §1325 misdemeanor cases are charged as §1326 felony/§1325 misdemeanor, closed with §1326 felony dismissed.
All Yuma felonies sent to U.S. District Court in Phoenix because no Article III judge in Yuma

Exhibit 3

Laredo–Felony and Petty Misdemeanor Immigration Cases Closed by Federal Public Defender				
OS in effect 11/1/07	**Closed Cases–FY 2007**		**Closed Cases–FY 2008**	
Month	Misdemeanors	Felonies	Misdemeanors	Felonies
OCT	286	108	420 (+47%)	106 (-1.9%)
NOV	322	123	955 (+197%)	227 (+85%)
DEC	248	71	648 (+161%)	90 (+27%)
JAN	283	124	1165 (+311%)	167 (+35%)
FEB	378	146	1148 (+204%)	148 (+1.4%)
MAR	388	138	1285 (+231%)	108 (-22%)
APR	415	120	-	-
MAY	268	138	-	-
JUNE	488	91	-	-
JULY	393	89	-	-
AUG	418	133	-	-
SEPT	277	140	-	-
Total	4164	1421	11242* (+170%)	1692* (+19%)

*Projected total based on first half of FY 2008; conservative estimate because OS not in effect in October 2007.
Source: Federal Public Defender, Southern District of Texas.
FPD handles all immigration petty offense cases and most immigration felony cases.

Exhibit 4

Tucson–Petty Misdemeanor and Felony Immigration Cases				
OS in effect 1/14/08	**2007**		**2008**	
	Petty Misdemeanors	Felonies	Petty Misdemeanors	Felonies
Jan	415	102	248	47
Feb	238	81	532	52
Mar	350	100	894	70
Apr	273	130	688 as of 4/17/08	26 as of 4/17/08
May	369	121	-	-
June	220	92	-	-
July	158	67	-	-
Aug	216	111	-	-
Sept	77	86	-	-
Oct	0	58	-	-
Nov	11	73	-	-
Dec	1	49	-	-
Total	2328	1070	7983* (+243%)	659* (-38%)

*Projected total based on first 108 days of 2008. Estimates are conservative because the number of petty cases is planned to increase from 60 to 100 per day by September 2008 with the hiring of several new prosecutors.
Source: Federal Public Defender, District of Arizona.
Numbers include FPD and CJA appointments; FPD handles 25% of petty cases and most felonies, CJA handles 75% of petty cases and few felonies.

Exhibit 11

Deportable Aliens Located By Border Patrol and Detention and Removal Operations Fiscal Years 1997-2006										
BORDER PATROL SECTOR	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
Total	1,412,953	1,555,776	1,579,010	1,676,438	1,266,214	955,310	931,557	1,160,395	1,189,108	1,089,136
Southwest sectors	1,368,707	1,516,680	1,537,000	1,643,679	1,235,716	929,809	905,065	1,139,282	1,171,428	1,072,018
San Diego, CA	283,889	248,092	182,287	151,681	110,075	100,681	111,515	138,606	126,909	142,122
EL Centro, CA	146,210	226,695	225,279	238,126	172,852	108,273	92,099	74,467	55,726	61,468
Yuma, AZ	30,177	76,195	93,388	106,747	78,385	42,654	56,636	98,060	136,438	118,537
Tucson, AZ	272,397	387,406	470,449	618,346	449,675	333,648	347,263	491,771	439,090	392,104
EL Paso, TX	124,376	125,035	110,857	115,696	112,857	94,154	86,616	104,399	122,889	122,261
Marfa, TX	12,682	14,509	14,952	13,689	12,087	11,392	10,319	10,530	10,536	7,517
Del Rio, TX	113,280	131,058	156,653	157,178	104,875	66,985	50,145	53,794	88,510	42,634
Laredo, TX	141,893	103,433	114,004	106,973	67,068	82,095	70,521	74,706	75,342	74,843
Rio Grande Valley, TX	243,793	204,257	169,151	133,243	107,844	89,927	77,749	92,947	134,188	110,531
Other sectors	44,246	39,096	42,010	32,759	30,496	25,501	26,492	21,113	17,680	17,118
Blaine, WA	2,684	2,403	2,421	2,581	2,069	1,732	1,380	1,354	1,001	809
Buffalo, NY	2,065	1,640	1,666	1,570	1,434	1,102	564	671	400	1,517
Detroit, MI	1,500	1,766	1,838	2,057	2,106	1,511	2,345	1,912	1,792	1,282
Grand Forks, ND	1,978	905	656	562	921	1,389	1,223	1,225	754	517
Havre, MT	2,813	1,145	1,448	1,568	1,305	1,463	1,406	986	949	567
Houlton, ME	309	307	461	489	685	432	292	263	233	175
Livermore, CA (closed 8/31/04)	10,807	11,633	11,198	6,205	5,211	4,371	3,585	1,850	117	-
Miami, FL	8,305	8,065	8,961	8,237	5,962	5,143	5,931	4,602	7,243	6,032
New Orleans, LA	9,094	8,008	10,777	6,478	5,033	4,665	5,151	2,889	1,358	3,054
Ramey, PR	896	1,244	1,405	1,731	1,952	835	1,688	1,813	1,619	1,436
Spokane, WA	2,331	2,176	1,308	1,324	1,335	1,142	992	847	279	185
Swanton, VT	1,864	1,802	1,871	1,957	2,463	1,736	1,955	2,701	1,995	1,544

Source: Office of Immigration Statistics, Department of Homeland Security, *2006 Yearbook of Immigration Statistics*, Table 36, http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/Table36.xls

Consulate of México in Tucson

Number: TUC-392
Subject: Operation Streamline

February 15th, 2008

SECRETARÍA DE RELACIONES EXTERIORES

SRE

HONORABLE CHARLES R. PYLE
United States District Court
Evo A. DeConcini U.S. Courthouse
405 West Congress Street, Suite 5660
Tucson, AZ 85701

Al contestar, cite oficio, clave y los datos contenidos en el ángulo superior izquierdo.

The purpose of this letter is to address you a delicate matter where your cooperation and support would be greatly appreciated.

Operation Streamline was launched in the month of January in the state of Arizona where the Department of Homeland Security (DHS), Department of Justice (DOJ) and numerous local law enforcement organizations are working to expedite prosecution of undocuments nationals for illegal entry in conjunction with removal proceedings.

This Prosecution Initiative has caused that when mexican nationals are apprehended by immigration authorities, their properties are removed and kept at the Border Patrol Tucson Station. When defendants receive time served as a sentence, they are taken directly back to Border Patrol station from court, where they get their properties before BEEN removed to Mexico, but, if they get more than one day of sentence they have to be under Federal Bureau of Prisons (BOP) custody, therefore, when they are released from the custody of the (BOP) they are taken directly to the border back to México without their belongings, which includes money and ID's.

As a consequence, they are entering into Mexico without their identifications and money. This has originated an unsettling situation, these people are having problems to identify themselves as mexicans when going back to México. With no picture identifications or birth certificates, Mexican Immigration Authorities have been having trouble to identify them as mexicans and not as central americans.

Please be assured that this Consulate appreciates your assistance to the preceding, and would like to extend our unbending support to you and your staff. The undersigned appreciates your attention to the previous and looks forward to receiving your valuable response.

Respectfully,

Juan Manuel Calderón Jaimes
Cónsul of México
ARC/EMC/DLON

343 South Stone Avenue, Tucson, Arizona 85701 tel.: 520-882-5595 fax: 520-882-5959
correo electrónico: contucmx@sre.gob.mx http://portal.sre.gob.mx/tucson

APPENDIX 9

Ms. SÁNCHEZ. Thank you, Ms. Williams. We certainly appreciate your testimony.

At this time, I would ask Mr. Delonis to begin his testimony.

TESTIMONY OF RICHARD L. DELONIS, ESQ., PRESIDENT, NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS, LAKE RIDGE, VA

Mr. DELONIS. Madam Chairwoman, Ranking Member, Mr. Franks, and distinguished Members of the Subcommittee, my name is Richard Delonis. I am an assistant United States attorney in Detroit, Michigan, and I have served in that capacity for a little over 38 years at this point.

However, I am not here today as a representative of the Department of Justice, but here in my capacity as the president of the National Association of Assistant United States Attorneys, a professional association that has been in existence approximately a dozen years now.

I would like to start my remarks by perhaps looking at some good news. And that is that in the past year or so, since Attorney General Mukasey took the helm of the department, there has been a discernible increase in the morale of the employees at the department, both at Main Justice and in the field. And there is a feeling that the affairs of the department and the cause of justice is being pursued in a professional manner and without any notion that partisanship considerations play a role.

In other words, the troops in the field have a renewed sense of confidence and a strong feeling that things are moving in the right direction.

Additionally, I would like to take a moment to commend the Executive Office for United States Attorneys. Under the able leadership of Mr. Melson, that office has been performing well. We have noticed that since Mr. Melson has arrived on the scene, there has been an improved sense of collegiality and cordiality between our association and the executive office as we work together toward the solution of problems and challenges that concern both the executive office and the membership of our organization.

Now, having made mention of the good news, I want to turn our attention collectively to something that is a matter of grave concern to us, and that is the issue of the physical security of assistant United States attorneys.

The recent brutal attack on a female Federal prosecutor in a Brooklyn courtroom by a criminal defendant awaiting sentencing sadly illustrates the vicious harm that awaits assistant United States attorneys inside and outside the courtroom.

In recent years, the potential for violence and retaliation has increased, and the number of threats made on Federal prosecutors has tripled between the years 2002 and 2007.

The assault in the Federal courtroom in Brooklyn was captured on the security camera, and a film clip of that was later posted on the Internet, and we have that for the Subcommittee at this point. It will only take a moment, and I would ask that we run that film clip at this point.

[Begin video clip.]

Mr. GRACIA. At the beginning of March, this dramatic scene was captured by a security camera in a New York City courtroom. Video of the attack was widely circulated on the Internet. And now, the man seen here has been sentenced to life in prison.

Thirty-seven-year-old Victor Wright dealt massive amounts of cocaine as part of a murderous drug gang. This was at his original sentencing, when he pounced on a prosecutor, trying to cut her with a razor. As a precaution, Wright appeared Wednesday from jail via closed-circuit monitor. He declined to speak.

Mike Gracia, the Associated Press.

[End video clip.]

Mr. DELONIS. I think what that illustrates is that criminal defendants today are increasingly bold and willing to attack the prosecutor, not just on the outside, but even inside the confines of a courtroom where there is security present. Thankfully, in this particular case, the prosecutor was not seriously injured, but she was pretty badly shaken up by the experience.

The matter of safety is very important to us. We find ourselves at the front line as prosecutors—in court, going before the jury, dealing with some of the most violent, vicious people who are part of our society.

And it is our task to present the evidence to a jury and at the conclusion of a trial, stand there and call for the conviction of these individuals. And upon conviction, we stand before a judge and argue for the incarceration of these dangerous people. It is no wonder that, in many cases, they take it very personally and seek to get revenge in whatever fashion.

The types of revenge that we sometimes see vary. And one that is particularly troubling to me is a recent event within about a month or so in my own office. A friend of mine, who had a person under criminal investigation on a drug offense, had an incident where he found out that this particular subject wanted to take vengeance on him, but he had a different approach. He was not going to come after the prosecutor. The plan was to murder one of his children.

And as the prosecutor put it to me, he said, you know, there is nothing more difficult as a dad than to sit down at your kitchen table with your children and try to explain to them that someone wants to kill them.

So, that is what we are facing today. Assaults have increased, threats have increased. And in the good fortune of this particular case, that plan was discovered, and the plot that the person had been hatching was thwarted.

Security is a grave concern. We are thankful to the Congress for the Court Security Act, but that is just the first step. We feel there is more that needs to be done.

I thank the Subcommittee for its time.

[The prepared statement of Mr. Delonis follows:]

STATEMENT OF

RICHARD L. DELONIS

PRESIDENT
NATIONAL ASSOCIATION OF ASSISTANT
UNITED STATES ATTORNEYS

HEARING ON
THE EXECUTIVE OFFICE FOR U.S. ATTORNEYS

BEFORE THE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 25, 2008

Madame Chairman and Members of the Subcommittee. On behalf of the National Association of Assistant United States Attorneys (NAAUSA), thank you for holding today's oversight hearing on the nation's United States Attorney Offices. As the nation's principal litigators, the 93 United States Attorneys and 5,600 Assistant United States Attorneys serve on the frontline of our justice system. They are integrally involved in the ongoing efforts to fight terrorism, gangs, drug trafficking and other crimes. They also vigorously defend the nation's interests in civil litigation where the United States is a party.

My testimony today focuses on three points: first, the distinct improvements that have occurred in the management and funding of the United States Attorney's Offices over the past year; second, the need for improvements in the compensation of Assistant United States Attorneys, both in their pay and retirement benefits; and thirdly, the collateral need for improving the safety and security of Assistant United States Attorneys.

The Role of United States Attorney's Offices

I'd like to first step back for a moment and underscore the critical role that these extraordinary men and women called United States Attorneys and Assistant United States Attorneys play in the nation's law enforcement system. Each United States Attorney is the chief federal law enforcement officer within his or her particular jurisdiction. United States Attorneys conduct most of the trial work in which the United States is a party. According to the United States Attorneys Annual Statistical Report for 2006, Assistant

United States Attorneys constituted 56 percent of all DOJ attorneys and 70 percent of DOJ attorneys with prosecution or litigation responsibilities.

The United States Attorneys have three statutory responsibilities under Title 28, Section 547 of the United States Code:

- The prosecution of criminal cases brought by the Federal government;
- The prosecution and defense of civil cases in which the United States is a party; and
- The collection of debts owed the Federal government which are administratively uncollectible.

Recent Management and Funding of United States Attorneys Offices

Since his arrival at the Department last November, Attorney General Mukasey has done a commendable job in restoring relations with the United States Attorneys' offices around the country and improving morale, both at Department of Justice headquarters and in the field. Recent appointments to senior-level positions within the Department have also helped to reestablish credibility and a sense that the department and its prosecutorial operations are once again being run fairly and professionally, without suggestion of partisanship.

The management and administration of the Executive Office for United States Attorneys deserves special mention. The leadership of EOUSA by Kenneth Melson, a 25-year veteran of the Department and a seasoned prosecutor, has provided widely-

respected stability and evenhandedness to the Office's administrative oversight of the U.S. Attorneys' offices across the country. Our Association has been appreciative of the consultative relationship that it has maintained with Mr. Melson and EOUSA since he assumed the directorship of EOUSA a year ago.

Progress has been achieved in the funding and budget situation of many United States Attorney offices. As you know, budget constraints over the past several years severely affected operations in the U.S. Attorneys' offices and had diminished the numbers of cases brought. Funding and staffing shortages in United States Attorney offices had meant that there were not enough Assistant United States Attorneys to prosecute wrongdoers, despite significant parallel increases in federal law enforcement funding. As one United States Attorney noted, "Fewer cases were getting charged and bigger investigations were taking longer because there weren't enough prosecutors to do them."

Over the past year, however, the situation has improved markedly, due largely to a six percent increase in the Fiscal Year 2008 appropriation for United States Attorneys offices. This infusion of new funding has helped to restore some of these earlier cuts, provide for the filling of vacancies through new hiring, and pay for basic litigation requirements, such as photocopying documents and obtaining deposition transcripts.

Improving the Pay and Retirement Benefits of Assistant U.S. Attorneys

With regard to morale, inequity in compensation undermines the morale of Assistant United States Attorneys more than any other factor. The lack of equity in the pay and retirement benefits of our nation's top litigators should not be tolerated by Congress and should be cured.

The pay levels of Assistant United States Attorneys is set and constrained by statutory limits that prevent the pay of AUSAs from staying even with other attorneys with litigation responsibilities in the Department of Justice, as well as their private sector counterparts, especially in high-cost metropolitan areas of the country. Under current law, the salary of Assistant United States Attorneys cannot be higher than the United States Attorneys to whom they report, creating a growing pay compression problem within the ranks of Assistant U.S. Attorneys. United States Attorney salaries are set by the Executive Schedule under law, while the pay of Assistant United States Attorneys is statutorily guided and administratively determined under a pay plan shaped and administered by the Department of Justice.

The statutory barrier that keeps Assistant U.S. Attorney salaries from rising above those of U.S. Attorneys prevents a growing numbers of Assistant U.S Attorneys from receiving their full annual cost-of-living adjustment, as well as the full locality pay increase to which they would otherwise be entitled. This is especially detrimental to the morale of AUSAs in high-cost metropolitan areas. A letter I recently received from a 26-year veteran Assistant United States Attorney in Los Angeles underscores the frustration

of the pay compression problem and its impact upon morale. She pointed out that this year, for the first time, she will not receive a full cost-of-living increase in pay nor receive the full locality pay increase for her geographic area, despite living in Los Angeles, one of the highest cost-of-living areas in the country. She also noted that last November, while serving as a judge at the University of Davis law school moot court competition, she learned from one of the law students that the student would be earning more than $160,000 as a first-year associate at a San Francisco law firm. That salary is on par with the starting salaries of major firms and far above the salaries of our government's best litigators, like her, possessing as much as three decades of litigation experience, most of it as an Assistant U.S. Attorney.

As if there were any doubt as to the impact of this situation upon morale, she added:

> "I can speak for others in my office who feel the same way. The morale among the older experienced attorneys is at an all-time low. I have friends in the USA offices in San Francisco and San Diego and those AUSA's feel the same. The cynics among us wonder whether DOJ secretly hopes we will all quit and DOJ can then replace us with $80,000/year newbie's.
>
> I would quit if I could—but I am 55 and have two kids in college (both private…$$$) and I am the primary breadwinner in the family. So I will stay until I can retire-all the while wondering why I didn't leave years ago. I enjoy my work but I can't afford the pleasure."

What should Congress do? Congress should relieve the salary compression problem affecting the salaries of Assistant United States Attorneys and repeal the salary cap. This is same approach that Congress has provided on various occasions to alleviate

salary inequity afflicting other attorneys and professionals in the federal government, including lawyers at the federal financial regulatory agencies and physicians at the National Institutes of Health.

Low morale among AUSAs is triggered not only by an inequity in pay. It also is prompted by inequity in their retirement benefits, which contributes to the inability of the Department to retain some of its finest litigators. As you know, Madame Chairman, the retirement benefits of AUSAs are significantly lower than the law enforcement officers with whom AUSAs work.[1] The average AUSA remains with DOJ for only eight years, and these early departures cause a critical loss of litigation skill and experience to the Government. The retention problem varies from district to district, and is most dramatic in higher-cost districts. In the larger offices and in the metropolitan areas, USAOs have become training grounds for the litigation divisions of private law firms, the very same law firms that utilize their trained former AUSAs in litigation against the government.

DOJ internal studies and surveys have identified the AUSA retention rate as a significant problem and the enhancement of the AUSA retirement benefit as the foremost remedy. A 1989 report of the Attorney General's Advisory Committee concluded: "Clearly, career AUSAs should be authorized to receive retirement benefits afforded all of the other members of the federal law enforcement community since the majority of

[1] These include Special Agents of the FBI, Secret Service, IRS and DEA, deputy U.S. Marshals, U.S. Postal Inspectors, probation and pretrial service officers and all Bureau of Prison employees.

AUSA responsibilities relate to the investigation, apprehension or detention of individuals suspected or convicted of criminal laws of the United States." The original reason for the disparity between law enforcement officer and AUSA retirement benefits – the status of AUSAs as political appointees -- has long been superceded by the hiring of AUSAs under a merit-based appointment process.

Pending legislation -- "The Assistant United States Attorney Retirement Benefit Equity Act," H.R. 2878 – would equitably provide AUSAs with the same retirement benefits enjoyed by all other federal law enforcement officers.[2] Bringing the pension benefits of Assistant United States Attorneys into line with the retirement benefit package received by the other tens of thousands of federal law enforcement employees, would prompt significant numbers of younger AUSAs to remain with the Department for a career. This process would help assure the government's retention of a greater number of skilled litigators to handle increasingly complex cases. Numerous United States Attorneys informally have praised the legislation. We are confident that the costs of the legislation will be offset by the collections reform proposals formulated by the National Association of Assistant United States Attorneys and will, additionally, improve the

[2] The legislation provides to AUSAs the same retirement benefit that law enforcement officers receive: for those under FERS, a basic annuity of 34% of salary after 20 years of service at age 50; and for those under CSRS, an annuity of 50% of salary, with no social security benefits, after 20 years of service at age 50. AUSAs under FERS currently receive a basic annuity of 20% of salary after 20 years of service at age 60; those under CSRS receive an annuity of 36.25% of salary, with no social security benefits, after 20 years of service at age 60.

Department of Justice's capacity to collect restitution and civil and criminal judgments and increase federal revenues.

Improving the Safety of Assistant United States Attorneys

We also are concerned about the adequacy of safeguards to protect Assistant United States Attorneys and their families. As the Government's principal litigators, the 93 United States Attorneys and 5,600 Assistant United States Attorneys risk their lives every day in their service on the front lines of the justice system. Federal prosecutors increasingly are high-profile targets because of the persons they bring to justice. AUSAs zealously prosecute the most dangerous criminals in our society, including terrorists, gang and organized crime members, violent gun offenders, international drug traffickers and major white collar criminals. Some AUSAs handling civil matters also encounter threats of reprisal and assaults from defendants, especially in bankruptcy and other property-taking actions. In addition, Federal prosecutors, as part of their duties and responsibilities, are often called upon to work in high-crime areas, visiting crime scenes, interviewing witnesses and otherwise aiding in the investigation of criminal acts, where they can encounter threats and assaults upon their lives.

The administration of justice requires that prosecutors discharge their responsibilities without fear of violence or reprisal. Yet he unsolved murders of Tom Wales, an Assistant United States Attorney in Seattle Washington in 2001, and Jonathan Luna, a federal prosecutor in Baltimore, Maryland in 2005, underscore the potential for

reprisal. Tom Wales was shot to death as he sat in front of a computer in the basement office in his home. Jonathan Luna was stabbed 36 times and then drowned, according to local authorities in Lancaster County, Pennsylvania who ruled it a homicide.

Sadly, death threats and assaults against AUSAs are far too common, not only upon AUSAs, but their families as well. And these threats are skyrocketing. According to the Department of Justice Executive Office of United States Attorneys, threats against United States Attorneys and Assistant United States Attorneys tripled between 2002 and 2007.

Department of Justice statistics demonstrate that AUSAs are among the most frequently assaulted and threatened group of employees within the Department. If anyone harbors any doubt of the seriousness of the threats and assaults against AUSAs, they should review the Appendix attached to this statement, which presents a sampling of the personal, first-person accounts of the serious threats and assaults that AUSAs have encountered. Upon reading these accounts, one cannot but be impressed by the deep courage and dedication that AUSAs bring to their jobs, as well as the unrelenting need for decisive and expanded action by the Congress and the Department of Justice to improve the safety of federal prosecutors.

A survey of the AUSA workforce, conducted by NAAUSA earlier this spring, documented the broad concern by AUSAs regarding their safety and their widespread desire for improvements. The survey registered these important findings:

- At least one out of every two Assistant U.S. Attorneys (55 %) have been threatened or assaulted at some point during their tenure as an AUSA.
- Over 80 percent of the AUSAs reported that at least one AUSA in their office had been threatened or assaulted.
- Over ninety-percent of AUSAs believe that the Department of Justice should make training available to all AUSAs on personal security issues (including issues like home security measures, family safety, mail handling, counter-surveillance and self-defense tactics). Three-quarters believe this should be required on an annual basis, with the same regularity as is applied to training on computer security.
- Nearly sixty percent of AUSAs believe that the Department of Justice should provide secure parking to every AUSA carrying a high vulnerability caseload, regardless of the existence of a pre-existing threat.
- Eighty percent of AUSAs believe that AUSAs who carry high vulnerability caseloads should be authorized by DOJ to carry firearms, if they so choose, if they are trained and demonstrate a proficiency in the use of firearms.

A summary of the survey results is attached as an appendix to this statement.

We believe that the solutions to the security problems that threaten the lives and safety of Assistant U.S. Attorneys lie in a variety of measures, including:

- Annual delivery of personal security training to all AUSAs, with the same frequency and attention that is applied to computer security training

- Availability of financial assistance in the installation of home alarm systems in the homes of AUSAs, under the same approach that made such systems available to federal judges
- Secure parking for AUSAs, especially those carrying high-vulnerability caseloads
- Improvement in the Marshals Service threat assessment process, both in quality and timeliness
- Broader DOJ deputization of Assistant United States Attorneys to carry firearms, especially those carrying high-vulnerability caseloads, with necessary training and certification in the carrying and use of firearms.

We look forward to working with the Department of Justice in securing these improvements, with the ongoing concern and support of this Subcommittee.

Madame Chairman, thank you for your leadership and concern for the challenges facing federal prosecutors. The National Association of Assistant United States Attorneys is deeply appreciative of your efforts and pledges its continued support of to work with you and other members of the Subcommittee to address the matters outlined in my statement.

I will be happy to answer any questions you have.

NAAUSA Security Survey

1. How would you rate the importance of each of the following AUSA security improvements.

	Very important	Somewhat important	Not too important	Not at all important	Response Count
Secure parking	**78.6% (988)**	16.5% (207)	4.1% (52)	0.8% (10)	1257
Home alarm systems	**42.2% (530)**	37.8% (475)	17.3% (218)	2.7% (34)	1257
Deputization to carry firearms	**35.3% (444)**	28.3% (356)	23.8% (299)	12.6% (158)	1257
Annual personal security training	**43.2% (543)**	40.1% (504)	13.1% (165)	3.6% (45)	1257
				Other security improvement (please specify)	124
				answered question	**1257**
				skipped question	**3**

2. Have you, or a member of your immediate family, ever been threatened or assualted because of your job as an AUSA?

	Response Percent	Response Count
Yes	45.5%	572
No	**54.5%**	685
answered question		**1257**
skipped question		**3**

3. Has any other AUSA in your office been threatened or assaulted because of their job?

	Response Percent	Response Count
Yes	**81.1%**	1020
No	2.2%	28
Don't Know	16.6%	209
answered question		**1257**
skipped question		**3**

4. Should the Department of Justice make training on personal security issues (including issues like home security measures, family safety, mail handling, counter-surveillance and self-defense tactics) available to all AUSAs?

	Response Percent	Response Count
Yes	**91.2%**	1147
No	2.0%	25
No opinion	6.8%	85
answered question		**1257**
skipped question		**3**

5. If you answered "yes" to question 4, how often should the Department of Justice require personal security training (as is currently done for sexual harrassment)?

	Response Percent	Response Count
Annually	**74.8%**	889
Twice a year	10.4%	124
More than twice a year	0.8%	9
Never	5.3%	63
No opinion	8.7%	103
answered question		**1188**
skipped question		**72**

6. Considering cost and other factors which impact the likelihood of implementation, how much of a priority should it be to make:

	Absolute top priority	High priority	Priority, but not a high priority	Not really a priority	Not a priority at all	Rating Average	Response Count
Make home alarm systems available to every AUSA carrying a high vulnerability caseload regardless of the existence of a pre-existing threat	22.2% (271)	**36.5% (445)**	26.3% (321)	12.4% (151)	2.5% (31)	2.37	1219
Make home alarm systems available to all AUSAs	8.5% (104)	22.3% (272)	**33.4% (408)**	26.7% (326)	9.0% (110)	3.05	1220
Authorize AUSAs to carry firearms for personal protection if they carry high vulnerability case loads and have obtained the requisite training to carry firearms	**31.0% (383)**	23.8% (295)	20.0% (247)	15.2% (188)	10.0% (124)	2.49	1237
Provide secure parking to every AUSA carrying a high vulnerability caseload regardless of the existence of pre-existing threat	**57.3% (692)**	27.5% (332)	11.3% (136)	2.7% (32)	1.2% (15)	1.63	1207
Provide secure parking to all AUSAs	**38.7% (475)**	31.5% (386)	19.3% (237)	7.3% (90)	3.1% (38)	2.05	1226
Provide personal security training to all AUSAs	32.6% (398)	**34.8% (425)**	23.4% (286)	7.3% (89)	1.8% (22)	2.11	1220
					answered question		**1249**
					skipped question		**11**

7. Have you ever been deputized by DOJ to carry a firearm?

	Response Percent	Response Count
Yes	7.0%	88
No	**93.0%**	1169
	answered question	**1257**
	skipped question	**3**

8. Have you ever made a request to the Department of Justice to be deputized to carry a firearm and had the request turned down?

	Response Percent	Response Count
Yes	4.2%	53
No	**79.9%**	1004
Not applicable	15.9%	200
answered question		**1257**
skipped question		**3**

9. Are you currently deputized by the Department of Justice to carry a firearm?

	Response Percent	Response Count
Yes	1.8%	22
No	**98.2%**	1235
answered question		**1257**
skipped question		**3**

10. Should AUSAs, who carry high vulnerability caseloads and are trained and demonstrate proficiency in the use of firearms, be authorized by the Department of Justice to carry a firearms for personal and family protection - if they so choose?

	Response Percent	Response Count
Yes	**80.6%**	1013
No	7.5%	94
No opinion	11.9%	150
answered question		**1257**
skipped question		**3**

11. What is your specialty?

	Response Percent	Response Count
Criminal	**81.5%**	1025
Civil	20.1%	253
Appellate	2.9%	36
Other (please specify)		117
answered question		**1257**
skipped question		**3**

12. How long have you been an AUSA?

	Response Percent	Response Count
Less than 5 years	18.0%	226
5-10 years	22.4%	282
11-15 years	13.6%	171
16-20 years	**22.7%**	285
21-25 years	14.1%	177
More than 25 years	9.2%	116
answered question		**1257**
skipped question		**3**

13. What is your gender?

	Response Percent	Response Count
Male	**65.5%**	808
Female	34.5%	426
answered question		**1234**
skipped question		**26**

14. In what State are you employed?

	Response Percent	Response Count
AI	2.2%	27
AK	1.6%	19
AZ	3.7%	45
AR	1.1%	14
CA	6.7%	81
CO	2.1%	26
CT	0.7%	8
DE	0.2%	2
DC	2.3%	28
FL	5.3%	65
GA	1.9%	23
HI	1.2%	15
ID	1.1%	13
IL	3.7%	45
IN	0.8%	10
IA	1.3%	16
KS	1.2%	15
KY	1.6%	19
LA	2.8%	34
MA	0.6%	7
ME	0.7%	8
MD	2.4%	29
MI	3.0%	36
MN	0.4%	5
MS	1.4%	17

MO		1.6%	19
MT		0.3%	4
NE		0.3%	4
NV		1.1%	13
NH		0.6%	7
NJ		1.6%	20
NM		1.0%	12
NY		3.5%	43
NC		1.6%	19
ND		0.4%	5
OH		3.9%	47
OK		1.9%	23
OR		1.6%	19
PA		**8.0%**	98
PR		0.9%	11
RI		0.8%	10
SC		0.7%	9
SD		0.8%	10
TN		3.4%	42
TX		**8.0%**	98
UT		0.9%	11
VI		0.3%	4
VT		0.1%	1
VA		2.5%	31
WA		1.4%	17
WI		0.6%	7
WV		1.7%	21
WY		0.5%	6

answered question	1218
skipped question	42

15. Are you a member of NAAUSA?

	Response Percent	Response Count
Yes	66.6%	837
No	28.1%	353
Former member	5.3%	67
answered question		1257
skipped question		3

Ms. SÁNCHEZ. Thank you, Mr. Delonis.

At this time, I would invite Professor Turley to give his oral testimony.

TESTIMONY OF JONATHAN TURLEY, ESQ., THE GEORGE WASHINGTON LAW SCHOOL, WASHINGTON, DC

Mr. TURLEY. Chairwoman Sánchez, acting Ranking Member Franks, distinguished Members of the Subcommittee, it is a great honor to appear before you and with this distinguished panel to talk about so many important issues. I am here just to speak about the performance of the Department of Justice in terrorism cases.

And before I start, because my testimony is critical of that record, I want to emphasize that I know no one, no lawyer, no citizen, who does not want terrorists to be prosecuted and punished. Particularly in this area, terrorism is no abstraction. American Airlines Flight 77 crashed right behind my car as I was passing the Pentagon, killing a friend. And my family lives within minutes of the Capitol. All of us want prosecution of terrorism.

And I also want to note that my criticism today is not a criticism of U.S. attorneys or prosecutors generally. I have worked for now approaching 30 years—it is hard to imagine—as a criminal defense attorney. And the vast majority of Federal prosecutors I have worked with have been honorable people and talented lawyers.

And the criticism I have today is a very small percentage, quite frankly, of prosecutors and how they have handled terrorism cases. I have handled terrorism cases and national security cases on the defense side, including cases I am currently lead counsel in, in the Eastern District for Dr. Ali Al-Timimi and Dr. Sami Al-Arian.

I want to cut to the chase and to be clear. I think the record is clear. I think that the Bush administration has assembled the worst record of prosecution of terrorism of any modern presidency. And I must say, I think that is rather objectively established.

And what is troubling is that we have seen since 2001, a padding of the record of terrorism cases. As many of you may know, I write for "USA Today" as a columnist. And many of us who write for the newspapers have written for years now in criticism of the reporting done by the Department of Justice on terrorism cases.

And yet, the same problems that have been identified over and over again continue to appear in the reporting of these cases. That is, they have included cases that are not terrorism cases, and that has very significant impacts, which I am going to talk about in a second.

What is clear is that the Department of Justice has long had an incentive to cite a lot of terrorism cases. I mean, the fact is that former Attorney General John Ashcroft came to the Congress in the first of these reports and said that the Patriot Act had proven al Qaida's worst nightmare.

And he said that, "I have a mountain of evidence that the Patriot Act continues to save lives." And he cited in that report 310 cases. And when you looked at the cases, you found out that a lot of them were standard immigration cases—cases that later on even the Department of Justice admitted should not have been in that group.

And yet, it has continued, where we have seen, for example, in Nevada, a couple that burned down their pizza parlor for insurance

purposes was listed as a terrorist case. It also turns out—and this worries me for Congressman Cannon, who is a friend of mine—it worries me that Utah is a hotbed of terrorism. In fact, there are more terrorists per capita in Utah than any other State, apparently, because they have been number one and have been uncovering terrorists all over the State.

And when we have looked at it, it turns out that many of those terrorists have proven to be people with false driver's licenses, general fraud cases, immigration cases. It is, indeed, perfectly safe to go to Utah.

The question is, why do you do it? Why do we have the continual gaming of the system?

And the answer is, there is an incentive to do it. That is, you have a counterterrorism program that has increased in funds from 2001 from $737 million to $3.6 billion in 2006. And the Justice Department continually references these numbers to support that system.

My objection to this is primarily not just simply the fact that you have a distortion of the record, but you also have many cases that are overcharged. And you also have the creation of a false image. We all have to find a balance between privacy and security. We all recognize it is a balance.

But in order to do that, we need to understand what the problem is. And we cannot do that, if there is this representation of a far greater number of terrorism cases than actually exists.

In my testimony, I point out that the Department of Justice, if you strip away the non-terrorism cases, has actually performed fairly dismally, quite frankly. Even by their own figures, when you look at the terrorism cases, it is around 60 percent conviction rate.

Most, by the way, prosecution offices—not most, but many prosecution offices—have a 90 percent or more conviction rate. It is a very high conviction rate.

But actually, it is the performance in major terrorism cases that has proven to be rather bad. And I have cited many of the major prosecution cases that the Department of Justice has cited since 2001 as being major prosecutions. These are prosecutions where they spend a lot of money on. And they lost.

And what is notable about these cases is that they occur in very conservative jury pools. For a defense attorney, these are areas where you frankly do not want to try a case, if you can.

So, what I encourage you to look at is why they have lost these cases, and also, why there is this need to pad the record. Ultimately, I am afraid that we see in these figures a certain self-perpetuating act, to increase terrorism numbers, which began with memos from John Ashcroft in encouraging U.S. attorneys to produce a body count.

And in conclusion, I want to note that there is a lot of criticism about that culture of a body count. We saw in Vietnam how corrosive a body count approach can be. And that is what we have today. It is a body count policy. And I think that has had a terrible effect upon the success of the Department of Justice, which, once again, has many, many committed and talented prosecutors, many of whom are on the other side of me in a courtroom, I regret to say.

But thank you very much for allowing me to speak to you today.

[The prepared statement of Mr. Turley follows:]

PREPARED STATEMENT OF JONATHAN TURLEY

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PROFESSOR JONATHAN TURLEY

I.
INTRODUCTION

Chairman Sánchez, Ranking Member Cannon, members of the Subcommittee, it is an honor to appear before you today to discuss the performance of the United States Justice Department in the prosecution of terrorism cases.

I come to today's hearing with both a professional and academic interest in the prosecution of terrorism cases. As you may know, I have handled national security related cases for many years, including terrorism cases. I am currently lead counsel in the cases of Dr. Ali Al-Timimi and Dr. Sami Al-Arian before different judges in the United States District Court for the Eastern District of Virginia. I also teach in the areas of constitutional criminal law and litigation at George Washington University.

Despite my work as a defense attorney in terrorism and national security cases, I support a vigorous and comprehensive effort to combat terrorism. Like others, my wife and four children live minutes from the Capitol. Terrorism is a threat to us all. Moreover, for everyone living in this area, terrorism is no abstraction. Indeed, American Airlines Flight 77 crashed in my rear view mirror as I passed the Pentagon on September 11, 2001. I do not know a single lawyer or person who does not want terrorists to be prosecuted and punished. The problem is that the Bush Administration is not punishing terrorists. For the most part, the terrorism cases cited by the Administration through the years have targeted non-terrorists for conventional crimes – only to add them to the list of successful cases. Ironically, in major terrorism cases, the Administration has suffered repeated defeats in court.

I also want to stress that the criticism in this testimony is not meant to paint all Justice Department attorneys as unprofessional or unethical. The fact is that I know and I have worked with many ethical and professional prosecutors in the Justice Department. Indeed, I have heard many complaints about the policies of this Administration and the political pressures placed on prosecutors. There are many talented prosecutors who want to take serious terrorism cases. However, they tend to be displaced by prosecutors who are known for their blind pursuit of terrorism cases. This is

a small percentage of the prosecutors who work in this field, but they play a dominant role in setting priorities for local offices.

Since the 9-11 attacks, the Bush Administration has rightfully placed a priority on the investigation and prosecution of terrorism cases. The long controversy over the Administration's handling of terrorism cases has never been about the goal of increased terrorism investigation but rather over the means used to achieve it. President Bush has been criticized by many, including myself, for his continuing effort to circumvent the federal courts and try individuals in a legal system of his own making. That effort, which was the subject of the recent decision in *Boumediene v. Bush*, ___ U.S. ____ (2008), 2008 U.S. LEXIS 4887, is beyond the scope of today's hearing. However, it reflects a certain hostility of the Administration toward what it calls the "law enforcement approach" to terrorism cases. That hostility and suspicion toward the federal courts is, in my view, a contributing factor in the dismal performance of Administration in this area. The creation of a two-track system for terrorism suspects has served to distort and undermine the prosecution of terrorism suspects. The abusive treatment of Jose Padilla is an example of how the Administration effectively undermined its own of a legitimate terrorism target. Ultimately, it was unable to prosecute Padilla for the original allegations and was left with charging under the material support provision.

Terrorism prosecutions are too important to reduce to yet another subject for partisan spin and distortion. In my view, the record is clear. The Bush Administration has assembled arguably the worst record in prosecuting terrorism cases of any modern presidency. Indeed, the Administration's high profile losses may have fueled the desire to inflate prosecution figures through the years. Despite the recent claims of success, the Administration's record, when stripped of the statistical gloss, is hardly a matter for commendation or celebration. What is more troubling, however, are the reasons for these failures and the motive to inflate the numbers of prosecutions.

II.
THE BUSH ADMINISTRATION'S RECORD OF TERRORISM PROSECUTIONS

Soon after the 9-11 attacks, former Attorney General John Ashcroft launched what he promised would be a clean sweep of homegrown and

foreign terrorists lurking in the homeland. To that end, he demanded and received unprecedented powers under the PATRIOT Act and other legislation. Ashcroft's dire predictions and expanded authority created a need to produce cases to show that there was a true need for the increased budget and powers – as well as a decrease in civil liberties. Ashcroft prodded U.S. Attorneys to produce such annual figures to show, in his words, that "the Patriot Act is al-Qaida's worst nightmare." In his first 29-page report to Congress, Ashcroft cited 310 such cases as "a mountain of evidence that the Patriot Act continues to save lives." On closer examination, this report (like so many that followed it) was found to be inflated with immigration and non-terror related cases. In order to "make the grade," U.S. Attorneys converted various common offenders into terrorists. For example, in New Jersey, prosecutors had only two cases to offer to Mr. Ashcroft in their annual body count, so they included 65 Middle Eastern men prosecuted for lying on visa applications as terrorism cases.

A. The Justice Department's Broad Definition of Terrorists

Despite criticism for years over the exaggeration of case numbers and the over-charging of many cases, the Justice Department has been undeterred. For example, a recent study of cases cited as terrorism matters in Nevada showed the same pattern. In the case of Moez and Gina Zakraoui, the prosecutors were faced with a garden-variety arson case. They were accused of burning down the pizza parlor. However, the U.S. Attorney listed them as two of the 28 terrorists prosecuted by that office.[1] Many of the cases involved people from Asian and Latin American countries with immigration problems. Other "terrorists" included (1) a Connecticut man who was fined $275 for going through airport security with a knife; (2) a California man convicted of having counterfeit social security card and money orders; (3) a man who took a security device off a military fence; and (4) a man who threatened a couple with a claim of having anthrax and had to undergo mental health treatment.

United States Attorneys obviously strive to land on the top of the list for such cases. It turns out, for example, that Utah is a hotbed of terrorism. With 96 such terrorist prosecuted one year, Utah led the nation in per capita

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[1] Alan Maimon, *Changing Definitions*, Las Vegas Review-Journal, August 27, 2006, at 6.

prosecutions. It turns out that most of the terrorists in Utah seek to undermine the nation through identity theft.[2]

The tendency to convert conventional crimes into terrorism cases is also a signature of the Joint Terrorism Task Force (JTTF). In one of its more notable investigations in November 2001, the JTTF led Operation Tarmac and checked the credentials of airport workers. As would be found in most large workplaces, it found false social security numbers, fake driver licenses, and other types of fraud. It counted every arrest as a terrorist charge despite the view of the Inspector General that they had nothing to do with terrorism.

Since Main Justice has been pummeled with public questions and a fair degree of ridicule for years, the failure to reform these practices indicates that it is obviously content with allowing such inflation to occur. Notably, it has not tried to narrow the definition of terrorism cases that is found in places like the Legal Information On-line System (LIONS) Manual. This definition allows prosecutors to count virtually any prosecution intended to disrupt potential terrorist threats. The Justice Department also has not sought more accurate reporting standards despite the criticism of its own Inspector General in its recent report "*The Department of Justice's Internal Controls Over Terrorism Reporting.*" The accuracy of such reporting has been criticized for years. *See* General Accounting Office, *Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Conviction Statistics*, January 2003.

B. Creation of a Body Count Culture of Prosecution

The Justice Department's inflation of terrorism prosecution numbers is a case of history repeating itself. In Vietnam, the Defense Department learned how the "body count" approach was corrosive and counterproductive to actual war fighting. Commanders eager to meet perceived quotas or expectations began to count civilians and even animals killed as dead enemy soldiers. It led to a false sense of security and success that came crashing down with the Tet Offensive. The same phenomenon has occurred at the Justice Department. Ordered to produce body counts, U.S. Attorneys quickly learned how to game the system; to pad their reports by counting immigration cases and unrelated prosecutions. Worse yet,

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2 *Id.*

prosecutors began to bring terrorism charges in conventional cases – often triggering public ridicule and criticism.[3] These have included the prosecution of protesting nuns, protesters, and performance artists in national security cases.

The pressure to produce body counts is obvious in the padding of the accounts to Congress. Consider the figures since 2001.[4] From 2001 to 2007, the Justice Department claimed to have prosecuted 632 people in terrorism cases. Of those, only 202 were actually charged under a terrorism statute. Looking at those 202, sixty-nine percent were convicted. By adding the non-terrorism charges, the Justice Department increases its performance. Those 430 individuals were charged with such things as immigration violations (7.54% of charges), commercial fraud (8.57%), general fraud (13%), racketeering (17%), and other crimes. The conviction rate for those non-terror offenses was 92%. By intermixing non-terror cases, therefore, the Justice Department can claim a high number of prosecution as well as a higher level of success in such prosecutions.

The fact that the Justice Department did not bring terror charges in these collateral cases is telling. The Administration has shown little hesitation to charge individuals under terrorism statutes with the slimmest possible evidence. Indeed, with changes in the material support provisions, the standards are so low that they act as a virtual strict liability offense – often compelling pleas. If there were serious evidence of terrorism, it is highly doubtful that the Administration would simply bring a general fraud charge or immigration charge.

There is an obvious institutional interest in producing impressive numbers of terrorism cases. It is difficult to convince Americans that expanded powers and shrinking privacy is necessary without a steady stream of prosecutions to show the continuing danger at home. This is particularly important when the Justice Department has received an increase of funds

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[3] *See generally* Jonathan Turley, Political Critics, Protesters and Artists Are Among Victims of Ashcroft's Policy, Baltimore Sun, July 23, 2004, at 19A; Jonathan Turley, Students, Nuns and Sailor-Mongers, Beware, Los Angeles Times, October 17, 2003, at 15.

[4] These figures are taken from "Terrorist Trial Report Card: Update January 1, 2008" by The Center on Law and Security at the New York University School of Law.

from $737 million in fiscal year 2001 to $3.6 billion in 2006 for counterterrorism efforts. Thousands of personnel have been shifted over to terrorism investigations and prosecutions. Not only does this create an obvious incentive to justify budgets with inflated numbers, but it increases the likelihood that conventional crimes will be defined in terrorism terms by investigators tasked with such cases. As Abraham Maslow stated, "if the only tool you have is a hammer, you tend to see every problem as a nail." With this new massive enforcement system looking for terrorism in every corner of the country, it is not surprising that they tend to see terror-elements in the most conventional cases.

C. The Distortive Effect of This Culture on the Legal System

The pressure to produce terrorism cases has tended to distort the legal system. It has led to extended grand juries that seem solely designed as endless fishing expeditions.[5] One such example that I have witnessed involves the continuing investigation related to International Institute of Islamic Thought (IIIT). The IIIT investigation has been ongoing for many years without a single indictment. The Justice Department can cite only one indictment, which was unrelated to IIIT. Yet, the Justice Department continues to call various witnesses to the grand jury to discuss matters unrelated to IIIT.[6] Many defense attorneys have complained that grand juries like IIIT are being used for perjury traps and fishing expeditions by JTTF attorneys and designated AUSAs. Regardless of whether actual IIIT charges ever emerge from this grand jury, it has clearly been used to trawl for any possible charges that might be brought, including in areas far removed from the focus of the investigation.

The pressure to bring cases has also led to alarming allegations of prosecutorial abuse and possible crimes. This was evident in the terrorism

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[5] When terrorism charges are impossible, we have seen them use the grand juries for perjury traps – particularly for individuals who have been acquitted in earlier trials of terrorism charges like Abdelhaleem Ashqar, Dr. Sami Al-Arian, and Sabri Benkahla. Thus, after these men were acquitted, they received subpoenas to appear before grand juries with immunity. The pattern is always the same. If your client testifies, he is charged with some false statement. If he does not testify, they charge him with criminal contempt after an extended civil contempt confinement.

[6] My client Dr. Sami Al-Arian is one such witness.

case in Detroit where Judge Gerald Rosen threw out the convictions of Abdel-Ilah Elmardoudi and Karim Koubriti, after finding evidence of possible crimes committed by the Justice Department. The Justice Department eventually dropped all terrorism charges in the case. In throwing out the convictions, Judge Rosen found "[a]lthough prosecutors and others entrusted with safeguarding us through the legal system clearly must be innovative and think outside the conventional envelope in enforcing the law and prosecuting terrorists, they must not act outside the Constitution. Unfortunately, that is precisely what has occurred in the course of this case."

This pressure may also be a contributor to some of the documented misconduct by the Justice Department. We have seen admissions from the Justice Department that it has destroyed evidence in federal cases and given false information to federal judges. In one of my cases, I have seen such abuses first hand. For years, in the case of Dr. Ali Al-Timimi, we have struggled to show that the Justice Department withheld information from his trial. Recently, I was allowed to see some classified information in the case before Judge Leonie Brinkema. While this information is classified and I cannot share the details, I can state that the material reveals clear abuse of ex parte filings by the Justice Department and confirms that material evidence was withheld in the case. We are in the process of seeking the public disclosure of this record and pursuing further evidence of the withholding of evidence from the court and counsel.

D. The Administration's Record in Major Terrorism Cases

As noted earlier, the inclusion of non-terrorism cases tends to inflate not only the raw number of cases but the performance of the Justice Department in the area. In a surprising number of major terrorism cases, the Administration has performed poorly in court. In prior administrations, it was very rare to see the Justice Department lose a major terrorism trial. For the Bush Administration it is routine. A few such examples are illustrative of the problem.

Dr. Sami Al-Arian – The government spent an enormous amount of time and money prosecuting Dr. Al-Arian and defendants Ghassan Ballut, Hatim Fariz and Sameeh Hammoudeh in the United States District Court for the Middle District of Florida in Tampa. After a six-month trial and over 80 witnesses, a jury acquitted Dr. Al-Arian of eight of 17 counts. There were only two jurors who voted against

acquitting him of all of the remaining counts. Ballut and Hammoudeh were acquitted on all charges. No one was convicted of a single count and Dr. Al-Arian later agreed to plead guilty to a single count in exchange for being allowed to leave the country – an agreement that the Justice Department has broken as it continues to hold Dr. Al-Arian.

Dr. Sami Omar Al-Hussayen. The government billed the prosecution of Al-Hussayen in Idaho as a major terrorism prosecution. Al-Hussayen was a graduate student who ran an Islamic website. The Justice Department put on a six-week trial. The defense called only one witness. The jury in this conservative state acquitted him of all three terrorism charges, and three of the eight immigration charges. They deadlocked on the remaining immigration charges.

The Detroit Combat Cell Case. The Justice Department prosecuted Abdel-Ilah Elmardoudi and Karim Koubriti in Detroit under the claim that it had busted a major "sleeper operational combat cell." As previously noted, the convictions were thrown out after a judge concluded that the prosecution committed grave violations of federal law and professional ethics to secure the verdicts. Ultimately, the Justice Department dropped all terrorism charges.

Holy Land Defendants. The Bush Administration was widely criticized for its crackdown on the Holy Land Foundation (HLF), once one of the largest Muslim charities in the world. The HLF was given limited ability to challenge the evidence of its alleged support for Hamas by the Treasury Department's Office of Foreign Asset Control. Much of this evidence has been challenged as false or unreliable. Nevertheless, the government prosecuted HLF officials on such charges in a major case in Texas. A jury, however, acquitted or hung on all charges. The result reinforced the view that, absent the presumptions given the government in the administrative proceedings, HLF could have presented a robust defense to allegations of terrorism support.

Zacarias Moussaoui. The government spent years prosecuting Moussaoui despite his willingness early on to plead guilty to terrorism charges that carry a life sentence. However, Moussaoui was often called the 20th hijacker and used as an example of holding those

responsible for 9-11 accountable. Rather than simply secure a life sentence based on his admissions, the government spent millions seeking the death penalty. It lost when a jury refused to vote for capitol punishment. The government ultimately secured the sentence that it could have secured years earlier.

Liberty City Seven. Just recently, the third effort to prosecute the six defendants accused of plotting to blow up the Sears Tower ended in a mistrial. Notably, the six were charged with material support – a crime with a notoriously ambiguous and easily satisfied definition. The men were indicted in Miami in 2006 despite the fact that one Justice Department official admitted that the alleged plot was more "aspirational than operational." Three juries declined to indict.

These are but a few such examples of major losses in the last seven years – losses that once would have been viewed as alarming. It is also notable that many of these losses have occurred in very conservative judicial districts. The fact that these juries are rejecting these claims in the post-9-11 environment should be a cause of concern. The government tended to over-play and over-charge these cases – destroying its credibility with jurors. Despite enormous budgets and prosecution teams, the Justice Department has faced increasingly skeptical juries and judges around the country.

E. A Pattern of Exaggerated Claims and Over-Charged Cases

The record of the Justice Department is also distorted by a history of over-selling terrorist cases. The Bush Administration often seems to reverse engineer cases: holding press conferences on major investigations and then trying to make the case fit the rhetoric. Many "major" cases have proven to be minor matters. The most recent example is the case of the two University of South Florida students arrested in Florida. Arrested on a highway, they were portrayed as possible terrorists seeking to bust Jose Padilla out of jail. Ahmed Abda Sherf Mohamed ultimately pleaded guilty to a material support tied to a YouTube video that he posted. A third student, Karim Moussaoui, was later arrested in the investigation. He was convicted of a federal weapons charge for simply posing with a rifle at a gun range. He held the gun for 2 1/2 minutes. Mohamed is still awaiting trial.[7]

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[7] I was counsel in an analogous national security case: the prosecution

Even where the Justice Department has had strong cases for prosecution, it has sometimes undermined those prosecutions through abusive tactics or exaggerated claims. Moussaoui and Jose Padilla are two such examples. In his first press conference, Ashcroft insisted that the Justice Department had foiled a plan to destroy a city with a nuclear device with the arrest of Padilla. Later, the White House had to publicly deny that account and Padilla proved to be a relatively minor figure. Indeed, he was ultimately convicted of material support rather than any of the original allegations that led to his long and abusive confinement as an enemy combatant. Moussaoui was billed as a 9-11 hijacker, even though he proved to be a perfect barking lunatic with no role in the attack. Both Moussaoui and Padilla deserved to be prosecuted, but the Administration wasted years and millions to secure the convictions. Both men could have been convicted in a relatively short time had the Administration acted more reasonably in their treatment and prosecution.

The exaggeration of both the statistics and individual cases in this area follows a disturbing pattern for this Administration. We now have an enormous system committed to the investigation and prosecution of terrorism. It is a system that all too often seems to struggle to define acts as terrorism in a type of self-perpetuating act. Under this approach, a terrorist can literally be anyone who is charged with any crime that a terrorist might also commit -- from identity theft to a false employment application. There is a widespread view that the government is inventing its own terrorists to confirm its dire warnings of terrorism. By expanding the definition of terrorists, the government can create a target rich environment – and a further justification for the expansion of counter-terrorism budgets and personnel. It is a dangerous and perverse incentive for any free nation.

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of Dr. Thomas Butler, a respected professor at Texas Tech University. Ashcroft dispatched dozens of agents to Lubbock, Texas after Dr. Butler reported vials of plague missing in his laboratory. The Justice Department portrayed the case as a major terrorism investigation and ultimately charged Dr. Butler with a series of national security-related charges. The jury in Lubbock acquitted him of every national security charge. He was convicted on technical import/export charges and various contractual irregularities with the University.

III.
CONCLUSION

In closing, I wish to commend this Subcommittee for taking the time to critically review the record of the Justice Department in terrorism prosecutions. The country is made no safer by the current system of exaggerated prosecution claims and the over-charging of cases to inflate annual reports. To the contrary, these efforts have had their greatest impact not on Al Qaeda but citizens who find conventional charges converted into terrorism charges. It has also reduced cooperation in the Muslim community, where there is a well-founded fear of making any statements to a federal investigator. It has led to many defense attorneys discouraging their clients from voluntarily cooperating or appearing in grand juries. The clear sense in all of these communities is that the Justice Department is desperately looking for anyone to add to the list of accused terrorists.

Perhaps the most serious danger of the inflation of terrorism cases is that it deprives Congress and the public of a fair estimate of the current threat facing the nation. The fact is that, after 9-11, we did not find rampant terrorism threats in this country. Most of the terrorism suspects have proven to be unhinged or incompetent individuals. Nevertheless, there is obviously a continuing threat of terrorism that we must take very seriously. However, the inflation of these case numbers leaves a distorted picture of the size and scope of that threat. Both Congress and the public need accurate information to determine how to strike the balance between security and liberty concerns. They also need accurate information to determine how much money and resources are required. Obviously, the Justice Department has an institutional interest in securing such financial and public support. However, it cannot "cook the books" by representing a far greater incidence of terrorist crimes to justify continued support. The current debate over the loss of civil liberties in this country demands honest and accurate figures from the Justice Department.

Given the foregoing, the past inflation of prosecution numbers by the Administration should not be the sole concern for this Subcommittee. Members should look more deeply at the motivation and the means used to inflate these numbers. Congress has helped create a massive system that seems to demand a steady stream of individuals to investigate and prosecute. The abuses outlined in this testimony can be found across the country. They

manifest one of the greatest dangers to our system, as described most famously by Justice Louis Brandeis:

> Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Olmstead v. United States, 277 U.S. 438, 479 (1928). As a nation committed to the rule of law, it falls to Congress to act with understanding and to use its considerable authority to deter the abuses in this system.

I would be happy to answer any questions that the members may have at this time.

Ms. SÁNCHEZ. Thank you, Professor Turley.

We are now going to begin the questioning. And I will begin by recognizing myself first for 5 minutes of questions.

Professor Turley, according to a study by TRAC at Syracuse University, many international terrorism cases involve lesser crimes, like immigration violations or fraud. And the median sentence for those convicted was 20 to 28 days, with many of them receiving no jail time at all.

How do you explain the fact that, in general, the punishment for these cases has been relatively minor, given that they are "terrorism cases"?

And I think you sort of alluded to it in your testimony about their being an incentive. And I am curious to know what your thoughts are in terms of the incentive.

Mr. TURLEY. Well, we know that there has been padding of the record, starting in 2001. There has been a lot of documentation to the inclusion of immigration cases in these numbers—a lot of general fraud cases, racketeering cases that are not terrorism cases.

In fact, in a recent study by NYU, it showed that, of the 632 individuals identified by the Department of Justice as terrorism cases, only 202 were actually charged on terrorism statutes.

And so, I think that there is a certain gaming of the system in that regard.

Ms. SÁNCHEZ. But why the padding? I mean, you said that there is an incentive to sort of pad. What is the incentive?

Mr. TURLEY. Well, you know, from——

Ms. SÁNCHEZ. Is it the glory of saying we are convicting terrorists? Or, I mean——

Mr. TURLEY. No, not that much bravado. I think it is, unfortunately, more calculated.

Attorney General John Ashcroft asked and received expansions of authority with the Patriot Act. And these reports became a justification of that, to show that we did have a terrorism problem in this country. And I do not want to belittle—in my next statement, I do not want to be taken as belittling terrorism in this country, because it is not.

But the fact is, we have not found a huge terrorism problem in this country. Most of the terrorist cases we have, have proven to be unhinged or very isolated individuals. And it is a good thing we prosecuted them.

But there has been an effort to suggest that it is a much broader problem, and I think the most obvious reason for that is to justify the expansion of these laws, and the expanded budget.

Now, it does not mean that, if there is a more honest portrayal, we are going to argue for a cut-down in budget. But what it does mean is that we cannot have a policy discussion, unless we get real figures.

Ms. SÁNCHEZ. I appreciate your answer.

My next question is for Ms. Williams.

You stated that you are concerned about the misdirection of resources, because each day your office's lawyers spend on misdemeanor border crossing cases, they are not talking about a drug case, a sex crime, a murder, assault or any number of white-collar cases. And the same is obviously true of the prosecutors.

What do you think should be done to ensure that prosecutors and Federal defenders have the resources that they need to handle all types of cases in their respective offices?

Ms. WILLIAMS. I think that we are very blessed, because not only has my boss, Jon Sands, the Federal public defender, recognized the need within our office, but also the Office of Defender Services has been very proactive in getting us the money and the approval for additional positions.

The difficulty is in finding qualified people. I know that that has also been a challenge in talking to some of the assistant U.S. attorneys, as well.

But if you have somebody who is having to spend a lot of time on immigration cases, and those immigration cases are not assessed the same way and given the same weight as the many other cases. And these cases can be very complicated in terms of trying to work one's way through the deportation process, as well as its sentencing, trying to figure out if somebody is actually an aggregated felon or not. There is a lot of time spent in researching and investigating that.

If you are spending the time then in all these immigration cases, then other cases which by comparison can also be much more complicated, those tend to get put on the back burner, and they get continued. And so, you have this trickle down effect from prosecuting the criminal immigration cases, that then affects the drug cases, and, as we saw in Arizona, the white-collar crime cases.

I cited in my written statement about how we had a meeting with Paul Charlton, who was then the U.S. attorney for the District of Arizona in 2006. One of the lawyers who attended the conference that Mr. Charlton had said, what about these white-collar cases? I have been representing a couple of individuals for a couple of years now, who are being investigated. When are they going to get charged?

He said, I don't know, because Washington has told us we need to focus on immigration.

Those people were charged just last week.

Ms. SÁNCHEZ. Thank you. Mr. Melson, I am very interested in this line of questioning about the immigration cases.

Ms. Williams in her written testimony said that under Operation Streamline defense lawyers are given between 3 and 30 minutes: to meet and educate the client, herself; decide whether the client is competent; determine whether there is a defense of citizenship or duress, a lack of intent, a pretrial motion to suppress evidence or statements to the constitutional violations; learn personal information, which might mitigate a sentence; consider the client's option not just in the criminal case, but also any immigration consequences or release available, such as asylum; and advise a client on whether to plead guilty or to go to trial.

And there have been instances in which immigration cases, they have taken defendants 10 at a time to plead. And I thought it was ironic that Ms. Williams used the term cattle call, because literally at a place where cattle is held, they brought defendants in from the morning until the night, and 10 at a time before a judge to plead in immigration cases.

Do you believe that defense lawyers can adequately and ethically execute the duties described to his or her clients in 3 to 30 minutes' time?

Do you think that that is adequate due process?

Mr. MELSON. Thank you. The Department of Justice, and particularly the U.S. attorneys in the field, are very committed to making sure that due process is accorded to each and every single defendant that passes through that court.

Earlier this year, I went down to southwest border—in fact, I have been down there on several occasions now—to look for myself and get a first-hand view of what was going on down there. And while doing it, we met collectively with the judges, the Border Patrol, public defender's office, the prosecutor's office, the court clerks, and others. I remember the day when we sat around the courtroom and met with all the magistrate judges, I believe.

And there is concern about the number of cases that are going through the courtroom. It sounds like perhaps the public defenders need more resources, if they feel that they cannot handle the number of cases that are being prosecuted.

But there is another avenue, and that is, they are free, if they believe that due process is not being accorded to their clients, to make the appropriate motions before the magistrate judge or the district judge, suggesting those deficiencies.

I do not believe, all across the southwest border in the several areas in which Operation Streamline is underway, that there have been any rulings that the defendants are being denied their due process rights.

Ms. SÁNCHEZ. I am just troubled by some of the accounts which I have read. And I will probably talk with you further about that.

My time has expired.

At this time, I would recognize Mr. Franks for 5 minutes of questions.

Mr. FRANKS. Well, thank you, Madam Chair, and thank all of you for being here.

Just for the record, I would like to suggest that, during the hearings that we have had here in the last year-and-a-half related to the attorneys, the U.S. attorneys, I have seen no evidence whatsoever that any U.S. attorney based their prosecution or non-prosecution of a criminal act on fear of being fired, or that anyone was fired for either of those two things. I have seen no evidence to that effect.

And Mr. Melson, just for the record, do you know of anyone in the department, any U.S. attorney, that was fired or unduly pressured by the Administration to prosecute in some fraudulent way, or not to prosecute someone who deserved it for a criminal act?

Mr. MELSON. I have no personal knowledge of that whatsoever. And as you know, I was not the director at the time that these events occurred. But I have no personal knowledge concerning that whatsoever.

Mr. FRANKS. I understand. Thank you, sir.

Related to terrorism, you know, if one listens to the terrorist leaders, al Qaida leaders themselves, they talk often of trying to gain a base in a Muslim land with a Muslim authority in which to launch terrorism across the world.

In the last 7 years, or approximately that amount of time, the United States has not had an act of terrorism, which is distinctly in contrast to the previous 7 years prior to that. And it occurs to me that perhaps some of the terrorists have been a little bit busy lately, and that that might account for some of the drop-off.

And I just think that, with all of the challenges that the department has had, that sometimes we have not looked at what you have done right and what we can do to further assist you in that regard. And I just want to make that clear.

Now, I will ask a question, Mr. Melson, related to perhaps some of the more partisan areas.

Did Countrywide Financials VIP or friends of Angelo sweetheart loan program come up in the department's Operation Malicious Mortgage investigation? Did that come up in your investigation at all?

Mr. MELSON. Unfortunately, I do not know the answer to that. We certainly can get back to you on that.

Mr. FRANKS. Would you do that? And would you be able to tell me today that the department is going to make sure that that investigation occurs, or, if there is clear evidence there, that you will pursue that?

Mr. MELSON. That will be determined by the U.S. attorney in the venue in which the case occurred. I have great confidence in our U.S. attorneys, and that if there is a crime that has been brought to their attention, which meets the principles of Federal prosecution, that they will pursue it vigorously.

Mr. FRANKS. And Operation Malicious Mortgage involved more than 50 U.S. attorneys' offices, Main Justice, the FBI and at least eight sister agencies. What challenges did EOUSA and the U.S. attorneys' offices face in the coordination and execution of this effort? What kind of challenges did you face?

Mr. MELSON. Well, there are lots of challenges that we face in a large operation like that. EOUSA has a legal programs office that has experts who are detailed to our office to work on various aspects of the criminal law, one of them being fraud. And we work with and try and coordinate and facilitate the various cases throughout the country.

Lots of them may involve more than one jurisdiction. And we have to do a lot of deconfliction. We have to look at making sure that our witnesses are not impeded, or that people are not charged duplicatively in different jurisdictions.

One of the reasons that we have had such success here, and why it is such a success, is because of the flexibility of the U.S. attorneys in being able to direct their resources to national issues and problems. And they have done that in the mortgage fraud area, and which might be part of an explanation as to why, if, in fact, some of the other white-collar crime prosecutions have gone down, it may be because of a change in emphasis on those prosecutions.

And certainly, we hope that the President's budget is passed, so that we can supplement our resources in white-collar crime, so that we can continue to do the traditional crime as well as the mortgage fraud.

Mr. FRANKS. Well, Mr. Melson, just the last question. Professor Turley, some of his comments I found were legitimate concerns.

But at the same time, I wanted to ask you, related to terrorism convictions, I know that the percentages have been down.

But even related to the 1993 bombing of the World Trade Center issue that was before your time, are there special circumstances, special difficulties that make perhaps terrorism cases less likely to be convictions?

Mr. MELSON. Well, there are lots of issues that are involved in a terrorism case in which terrorism charges are levied against the individual. A lot of that is with respect to classified information. Some of that cannot be released, cannot be used in court, because it will indicate or show resources and methods that we use in the field. And we do not want to do that.

As a result, sometimes the full array of evidence cannot be presented in a case.

Mr. FRANKS. Well, thank you, Mr. Chairman. My time has expired.

Mr. JOHNSON. [Presiding.] I believe I am, having been called upon to Chair in the absence of the Chair, I believe it would be my opportunity now to ask questions, and I will give myself the 5 minutes that everyone else gets, though I am tempted to waive that rule for purposes of my own questioning.

But Mr. Melson, you really did not give a good, square answer to the Chairwoman's question. And you really do not mean to intimate that it is possible within the space of 3 to 30 minutes: to meet and educate the client and yourself about the client's case; to decide whether or not the client is competent; to determine whether there is a defense of citizenship or duress, or determine whether or not a pretrial motion to suppress due to constitutional violations is in order; to consider any personal information that could mitigate the sentence of the accused; to consider any immigration consequences that may ensue from a guilty plea or a conviction; to determine whether or not the individual, say, may have been fleeing from right-wing paramilitary oppression in a country, or perhaps from Hugo Chavez, the monster of South America, that everyone thinks is down there?

Can a defense lawyer possibly within the space of 3 to 30 minutes—is that enough time for a defense lawyer to be able to make those basic determinations? And yes or no I think will suffice.

Mr. MELSON. Well, unfortunately, it cannot be answered in a yes or no, because what you are doing, Mr. Johnson, is mixing different types of cases. What I think she is talking about——

Mr. JOHNSON. Okay, well, then, hold on. Hold on. Since you do not want to——

Mr. MELSON [continuing]. Is Mexicans that are coming across.

Mr. JOHNSON. Since you do not want to give me a yes or no, let me ask the two other witnesses here.

Mr. Delonis, do you think it is possible? Yes or no?

Mr. DELONIS. Is it possible? Yes or no.

I think, as a plain hypothetical, I could say that there might be a case somewhere, sometime where the answer would be yes.

Mr. JOHNSON. But that would be—you would have to be stretching to find such a case, I take it.

Mr. DELONIS. I have never been in that situation. That is why I am addressing it as a hypothetical.

It is certainly not the desirable situation.

Mr. JOHNSON. Okay. Good enough.

Professor Turley, what is your opinion?

Mr. TURLEY. Well, I cannot imagine how you can possibly consult with a client, even in a special program that has a large number of similarly situated defendants. Ms. Williams has pointed out, there is a variation in this group. And as an attorney, you have an ethical obligation to identify the unique aspects of your client's case.

Mr. JOHNSON. Is it possible to do that within 3 minutes to 30?

Mr. TURLEY. I doubt it, particularly when you are dealing with somebody who is unfamiliar with the legal system, unfamiliar with you.

Mr. JOHNSON. And perhaps through an interpreter, as well.

Mr. TURLEY. That is right.

Mr. JOHNSON. Okay, well let me ask Ms. Williams. And excuse me for interrupting, because I only do have 5 minutes.

Ms. Williams, what is your take on that?

Ms. WILLIAMS. I know that our lawyers—I know that our lawyers are quite concerned that their bar licenses are on the line for being consistently ineffective assistance of counsel.

We are fortunate in Tucson in that the court has backed us up in limiting our representation each day to six people. That is not happening in Yuma, that is not happening in Del Rio, and that is not happening in Laredo. And in fact, in Del Rio one lawyer may be representing as many as 80 to 100 people a day. And so, you get much more the 3-minute situations than the 30-minute situation that we may have in Tucson.

We are concerned, because our office also takes duty calls.

Mr. JOHNSON. Okay. Let me stop you right there. I want to ask Mr. Melson, and this will be my last question.

If there were such a situation where a—well, first I will say that, in the last 25 years prior to 2006, only 25—excuse me, only 10—U.S. attorneys were forced to resign, in the last 25 years prior to December of 2006. All were fired for cause and under a cloud of scandal.

But then, on 1 day, December 7 of 2006, seven were forced to resign, not for cause, but just at the will of the executive who appointed them—and another in June of 2006 and another in January of 2006, so, for a total of nine. And there have been questions about whether or not they were forced to resign, because they were not "loyal Bushies."

And since that time, there has been a—or during that time, I assume that morale was lower among the assistant U.S. attorneys, many of whom may have been hired for political reasons, or with political considerations involved in their hiring, of career U.S. attorneys.

Are you familiar with a drop in morale during that time period among U.S. attorneys?

And I will ask the same question of Mr. Delonis.

Mr. MELSON. Well, it is hard to say that the morale dropped uniformly. I am sure that there were morale issues within the districts in which the U.S. attorneys were fired, because of the associations between the U.S. attorney and the AUSAs.

I do not believe that it was overwhelming in all districts. I was in a district at that point, and I do not think that the firing of those U.S. attorneys necessarily affected the morale of people who were not associated with those districts.

Mr. JOHNSON. All right.

Mr. MELSON. I can tell you, however, that the morale has increased tremendously since—over the last year or so.

Mr. JOHNSON. All right. Thank you, sir.

And your take, Mr. Delonis?

Mr. DELONIS. Mr. Melson I think is quite right when he points to the fact that it is going to be mostly impacting the districts where the U.S. attorney was being asked to resign. And other districts that are more remotely connected to the situation would not experience the same type of impact on morale.

But speaking for myself, for instance, I love my job. I have been doing it for over three decades. And I love the Department of Justice and serving the cause of justice.

And any time that our office—and I am speaking generally now—gets this kind of publicity, this kind of focus on it, these kinds of issues being raised, it is troubling. It is troubling. It is disconcerting, because it is a negative kind of light being shown on an institution that we love, and that we work for and we have dedicated our careers to.

Mr. JOHNSON. All right. Thank you, sir.

At this point, I will turn it over now for questions——

Mr. JORDAN. Thank you.

Mr. JOHNSON [continuing]. To the gentleman from North Carolina——

Mr. JORDAN. Ohio.

Mr. JOHNSON [continuing]. Mr. Jordan. Ohio, I am sorry.

Mr. JORDAN. I have been called a lot worse.

Mr. JOHNSON. I am sorry.

Mr. JORDAN. Appreciate the Chair.

I want to start where Congressman Franks left off. He had talked about Operation Malicious Mortgage. I want to ask you about what some would call Operation Generous Mortgage.

Two U.S. senators, two former Cabinet members, a former ambassador to the United Nations received loans from Countrywide in a little-known program that waived points, lender fees and company borrowing rules.

You are all accomplished individuals. As professionals and using your professional judgment, do you think, based on what you have heard—which is, frankly, probably no more than what we have heard—do you think this at least warrants some kind of oversight, some kind of investigation by the United States Congress?

And we will just go down the line, and you can give your thoughts.

Mr. MELSON. Well, unfortunately, I do not know enough about the underlying facts to say one way or the other. All I can do is trust that our offices do not prosecute people for political-based reasons, that if there is crime that has been brought to the attention of the FBI or the U.S. attorney, that they will take the appropriate steps under the circumstances, depending on the nature and the quality and the reliability of the evidence.

Mr. JORDAN. Do you think it at least, as I said, warrants some kind of further examination?

Mr. MELSON. I am sure, if that information that you have disclosed has been brought to a U.S. attorney, they will examine it carefully.

Mr. JORDAN. Ms. Williams?

Ms. WILLIAMS. I honestly do not know.

Mr. JORDAN. Mr. Delonis?

Mr. DELONIS. I think it would be presumptuous of me from the executive branch to tell the legislative branch what it should do in terms of its oversight responsibilities.

Mr. JORDAN. We will go to the guy who is not an executive branch man.

Mr. TURLEY. Well, I think that anyone who has a better mortgage than I have should be investigated——

Mr. JORDAN. There you go.

[Laughter.]

Mr. TURLEY [continuing]. As a general rule. But I honestly do not know much about this allegation. And I do not think I could say it certainly deserves to be investigated. But, you know, there is a process.

I have been a critic of how the department—how the Congress handles ethics investigations in the past, which I think is not a particularly good record. But I cannot really comment on this, because I am not too sure of the facts.

Mr. JORDAN. Ms. Williams, to go back to your testimony, you talked about public defenders, 80 to 100 cases a day. And, you know, obviously, that seems like a lot. But what is the answer?

I mean, certainly you are not suggesting, as the Chair did, I think, in her opening comments, that somehow we are doing—we have got too much focus on prosecuting illegal immigration. That wouldn't make sense to me not to prosecute crime that is taking place.

So, is the answer you need more people, you need more money? Is it budgetary concerns? Or what is the answer to deal with the dilemma you have cited?

Ms. WILLIAMS. The answer to the dilemma is to come up with a comprehensive immigration policy that, as well as a foreign policy, that is going to inspire the people to stay in their country of origin and not get into such a desperate situation that they feel they need to leave their country, their family, the language that they speak and come to someplace where they don't know anybody, where they do not speak the language and they don't have promise of a job, but they have a hope that something is going to be better.

We are at the tail end of it. The best thing to do is to nip it at the bud and find the source.

Now, at the other side of your question is, should we not be prosecuting people who are violating the law? It is the ethical obligation of the prosecution to do justice. And when a prosecutor has a choice between, say, charging, investigating and pursuing a drug smuggler with 500 pounds of marijuana or more, or somebody who has come across the border for the first time who is just trying to find work, and you have to figure out how to best employ your re-

sources, I would suggest that prosecuting the first-timer across the border is not the way to use those resources.

Mr. JORDAN. I mean, I understand we certainly want to go after the drug smuggler and the drug dealer and the terrible things associated with all that. But I think the American people would say you prosecute crime.

I understand there are limited resources, but particularly on this issue, I think they understand how serious it is.

Mr. Melson, comment, if you would, briefly, on Mr. Turley's testimony. He talked about the padding of the numbers. I think in your testimony you mentioned, you know, certainly, you do not just look at the number of convictions, the number of prosecutions when you are looking at your anti-terrorism efforts.

But talk to us more about Mr. Turley's testimony.

Mr. MELSON. Well, I am a little disappointed that there are so many people out there that make light of the tremendous efforts of the U.S. attorneys in the anti-terrorism area. Not only should you not look just at the number of prosecutions that are based upon terrorist statutes, but you have to look at the numbers that Mr. Turley and TRAC and others use to begin with.

The data that TRAC puts out is unreliable. We cannot associate their numbers with anything compared to our numbers. And we have repeatedly told the press and others that those numbers are not representative and not accurate.

The other thing we can tell you is that our prosecution efforts in the area of terrorism is much more dynamic than simply prosecuting a terrorist after the act. I do not think anybody would want us to wait to a terrorist commits the last proximate act prior to the terrorist executing or exploding something, because the danger there is too great.

So, we take a much more comprehensive, multi-prong approach to anti-terrorism, which means that we try to disrupt and prevent.

It is true that not every terrorist can be convicted of a terrorist charge. But not every organized crime criminal can be convicted of racketeering. Sometimes it is tax, like we saw with Al Capone.

So, a lot of our efforts go into trying to prevent terrorism and disrupt the cells by trying to make our infrastructure more secure, so that people cannot get through the airports, people cannot get into our nuclear facilities, they cannot get into the Capitol, they cannot get into this room.

And we also look at other forms, like material support, people who are sending money overseas to fund terrorist organizations that may be plotting against the United States. We look for things in the programs like our immigration programs, that are ripe with fraud. If anybody can get into the United States by committing fraud in one of these programs, how secure can we be?

It is a holistic approach that allows us to prevent the terrorism and disrupt these things. And we may never know if we really do disrupt something or not, because——

Mr. JORDAN. Well, what we do know is, since September 11th——

Mr. MELSON. Absolutely.

Mr. JORDAN [continuing]. Things have been pretty good in this country, which——

Mr. MELSON. Because there has been nothing since September 11th. So, something is working.

Mr. JORDAN. Thank you.

Mr. JOHNSON. The time has expired.

We will next have questions from the gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

I was recalling the testimony that Chief Aguilar of the Border Patrol gave to the Immigration Subcommittee about a year ago. And he said, you know, we have got to get the nannies and the busboys off to one side so we can focus in on the drug dealers and the organized crime.

And I think we have actually gone the other direction here as a matter of—I am not criticizing the individual U.S. attorneys. But the policy of prosecuting border crossings, if the statistics are right, you know, we have had a substantial increase—I guess a 36 percent increase—on the immigration prosecutions, and a 38 percent decline at the same time in prosecution for organized crime.

So, it seems to me that, you know, we all know that we have a world where resources are not limitless, and we have made a tradeoff to prosecute the busboy, meanwhile letting the organized crime figure off the hook. And I do not think that is a tradeoff that most people in America would think is a wise tradeoff.

I want to talk about what we are doing about violence at the border. I recently was down in Mexico, meeting with the interparliamentary session with the members of the Mexican congress and a bipartisan group from the House of Representatives and Senate.

And if you look at what is happening in Mexico, we have had over 4,000 Mexican police officers and army members assassinated in the last year by the drug cartels. And they are making a very serious effort. They are reforming their justice system. They are taking power away from corrupt officials. They see this as either they are going to have civil society or they will not.

And their concern about what we need to do is that all the guns are coming from us. The drugs are coming up here and the guns are going down there.

So, I was looking at your testimony, Mr. Melson, on the drugs. And I saw on page 11, you notice that there were two defendants in southern California who pled guilty to transportation of firearms to Mexico. All the other cases you cite are really individual cases.

At the same time, we have had an increase of almost 12,000 felony and misdemeanor prosecutions in the southwest border region alone, tens of thousands of misdemeanor prosecutions.

Did you cite those two on page 11, because that is it? Or are there more statistics on that?

Mr. MELSON. Well, there are more statistics, and we can get you those if you would like them.

But let me point out that we are taking, we are doing two things. Number one, we have a zero tolerance with respect to violence against our law enforcement officials along the border——

Ms. LOFGREN. That is not the question I am raising here.

Mr. MELSON. Okay. And two, we are looking very carefully at guns and money going south—money that funds the cartels and guns that increases the violence.

Ms. LOFGREN. Well, I do not have much time. I would like the statistics, because they are not in your testimony. And I think, if we are going to get—we are partners with Mexico on this. I mean, there are now machine gun battles in Mexican border towns, and the concern is that could easily—we have got to be partners in stopping this. And I do not see any statistics about what we have done to disrupt the gun trade down to Mexico.

Mr. MELSON. That is part of our southwest border immigration strategy, a very important part.

Ms. LOFGREN. Well, you are not going to get there prosecuting the busboys.

Mr. MELSON. Well, prosecuting the busboys does not prevent us from doing the other things. The AUSA——

Ms. LOFGREN. Well, I think if—let me interrupt, because my time is very limited—and I think it is pretty obvious from the decrease in prosecutions statistically that a judgment has been made, a policy decision has been made.

Let me get to Mr. Turley on—and I would ask unanimous consent, Mr. Chairman, that the article from the New York Times about the arrest of nearly 400 primarily Guatemalans in Iowa be submitted for the record.

Mr. JOHNSON. Without objection, so ordered.

The material referred to follows:]

The New York Times
nytimes.com

May 24, 2008

270 Illegal Immigrants Sent to Prison in Federal Push

By JULIA PRESTON

Correction Appended

WATERLOO, Iowa — In temporary courtrooms at a fairgrounds here, 260 illegal immigrants were sentenced this week to five months in prison for working at a meatpacking plant with false documents.

The prosecutions, which ended Friday, signal a sharp escalation in the Bush administration's crackdown on illegal workers, with prosecutors bringing tough federal criminal charges against most of the immigrants arrested in a May 12 raid. Until now, unauthorized workers have generally been detained by immigration officials for civil violations and rapidly deported.

The convicted immigrants were among 389 workers detained at the Agriprocessors Inc. plant in nearby Postville in a raid that federal officials called the largest criminal enforcement operation ever carried out by immigration authorities at a workplace.

Matt M. Dummermuth, the United States attorney for northern Iowa, who oversaw the prosecutions, called the operation an "astonishing success."

Claude Arnold, a special agent in charge of investigations for Immigration and Customs Enforcement, said it showed that federal officials were "committed to enforcing the nation's immigration laws in the workplace to maintain the integrity of the immigration system."

The unusually swift proceedings, in which 297 immigrants pleaded guilty and were sentenced in four days, were criticized by criminal defense lawyers, who warned of violations of due process. In addition to 260 immigrants sentenced to five months for using false documents, two immigrants were sentenced to one year for that crime and another eight were sentenced to prison for a separate crime, while twenty-seven immigrants received probation. The American Immigration Lawyers Association protested that the workers had been denied meetings with immigration lawyers and that their claims under immigration law had been swept aside in unusual and speedy plea agreements.

The illegal immigrants, most from Guatemala, filed into the courtrooms in groups of 10, their hands and feet shackled. One by one, they entered guilty pleas through a Spanish interpreter, admitting they had taken jobs using fraudulent Social Security cards or immigration documents. Moments later, they moved to another courtroom for sentencing.

The pleas were part of a deal worked out with prosecutors to avoid even more serious charges. Most immigrants agreed to immediate deportation after they serve five months in prison.

The hearings took place on the grounds of the National Cattle Congress in Waterloo, in mobile trailers and

in a dance hall modified with black curtains, beginning at 8 a.m. and continuing several nights until 10. On Wednesday alone, 94 immigrants pleaded guilty and were sentenced, the most sentences in a single day in this northern Iowa district, according to Robert L. Phelps, the clerk of court.

Mr. Arnold, the immigration agent, said the criticism of the proceedings was "the usual spate of false allegations and baseless rumors."

The large number of criminal cases was remarkable because immigration violations generally fall under civil statutes. Until now, relatively few immigrants caught in raids have been charged with federal crimes like identity theft or document fraud.

"To my knowledge, the magnitude of these indictments is completely unprecedented," said Juliet Stumpf, an immigration law professor at Lewis & Clark Law School in Portland, Ore., who was formerly a senior civil rights lawyer at the Justice Department. "It's the reliance on criminal process here as part of an immigration enforcement action that takes this out of the ordinary, a startling intensification of the criminalization of immigration law."

Defense lawyers, who were appointed by the court, said most of the immigrants were ready to accept the plea deals because of the hard bargain driven by the prosecutors.

If the immigrants did not plead guilty, Mr. Dummermuth said he would try them on felony identity theft charges that carry a mandatory two-year minimum jail sentence. In many cases, court documents show, the immigrants were working under real Social Security numbers or immigration visas, known as green cards, that belonged to other people.

All but a handful of the workers here had no criminal record, court documents showed.

"My family is worried in Guatemala," one defendant, Erick Tajtaj, entreated the federal district judge who sentenced him, Mark W. Bennett. "I ask that you deport us as soon as possible, that you do us that kindness so we can be together again with our families."

No charges have been brought against managers or owners at Agriprocessors, but there were indications that prosecutors were also preparing a case against the company. In pleading guilty, immigrants had to agree to cooperate with any investigation.

Chaim Abrahams, a representative of Agriprocessors, said in a statement that he could not comment about specific accusations but that the company was cooperating with the government.

Aaron Rubashkin, the owner of Agriprocessors, announced Friday that he had begun a search to replace his son Sholom as the chief executive of the company. Agriprocessors is the country's largest producer of kosher meat, sold under brands like Aaron's Best. The plant is in Postville, a farmland town about 70 miles northeast of Waterloo. Normally it employs about 800 workers, and in recent years the majority of them have come from rural Guatemala.

Since 2004, the plant has faced repeated sanctions for environmental and worker safety violations. It was the focus of a 2006 exposé in The Jewish Daily Forward and a commission of inquiry that year by Conservative Jewish leaders.

In Postville, workers from the plant, still feeling aftershocks from the raid, said conditions there were often harsh. In interviews, they said they were often required to work overtime and night shifts, sometimes up to 14 hours a day, but were not consistently paid for the overtime.

"We knew what time we would start work but we did not know what time we would finish," said Élida, 29, a Guatemalan who was arrested in the raid and then released to care for her two children. She asked that her last name not be published because she is in this country illegally.

A 16-year-old Guatemalan girl, who asked to be identified only as G.O. because she is illegal and a minor and was not involved in the raid, said she had been working the night shift plucking chickens. "When you start, you can't stay awake," she said. "But after a while you get used to it."

The workers said that supervisors and managers were well aware that the immigrants were working under false documents.

Defense lawyers, who each agreed to represent as many as 30 immigrants, said they were satisfied that they had sufficient time to question them and prepare their cases. But some lawyers said they were troubled by the severity of the charges.

At one sentencing hearing, David Nadler, a defense lawyer, said he was "honored to represent such good and brave people," saying the immigrants' only purpose had been to provide for their families in Guatemala.

"I want the court to know that these people are the kings of family values," Mr. Nadler said.

Judge Bennett appeared moved by Mr. Nadler's remarks. "I don't doubt for a moment that you are good, hard-working people who have done what you did to help your families," Judge Bennett told the immigrants. "Unfortunately for you, you committed a violation of federal law."

After the hearing, Mr. Nadler said the plea agreements were the best deal available for his clients. But he was dismayed that prosecutors had denied them probation and insisted the immigrants serve prison time and agree to a rarely used judicial order for immediate deportation upon their release, signing away their rights to go to immigration court.

"That's not the defense of justice," Mr. Nadler said. "That's just politics."

Christopher Clausen, a lawyer who represented 21 Guatemalans, said he was certain they all understood their options and rights. Mainly they wanted to get home to Guatemala as quickly as possible, he said.

"The government is not bashful about the fact that they are trying to send a message," Mr. Clausen said, "that if you get caught working illegally here you will pay a criminal penalty."

Robert Rigg, a Drake University law professor who is president of the Iowa Association of Criminal Defense Lawyers, said his group was not consulted when prosecutors and court officials began to make plans, starting in December, for the mass proceedings.

"You really are force feeding the system just to churn these people out," Mr. Rigg said.

Kathleen Campbell Walker, president of the American Immigration Lawyers Association, said that intricate

issues could arise in some cases, for example where immigrants had children and spouses who were legal residents or United States citizens. Those issues "could not be even cursorily addressed in the time frame being forced upon these individuals and their overburdened counsel."

Linda R. Reade, the chief judge who approved the emergency court setup, said she was confident there had been no rush to justice. In an interview, Judge Reade said prosecutors had organized the immigrants' detention to make it easy for their lawyers to meet with them. The prosecutors, she said, "have tried to be fair in their charging."

The immigration lawyers, Judge Reade said, "do not understand the federal criminal process as it relates to immigration charges."

This article has been revised to reflect the following correction:

Correction: May 28, 2008
An article on Saturday about the convictions of illegal immigrants who worked in an Iowa meat-packing plant misstated the sentence or crime for some of them. Of the 270 immigrants who were sent to prison, 260 were sentenced to five months for using false work documents; 2 were sentenced to 12 months and 1 day for that crime; and 8 received five-month sentences for re-entering the United States illegally after deportation. All 270 immigrants were not sentenced to five months for using false documents.

Ms. LOFGREN. These individuals pled guilty, almost 300 of them. They pled guilty in teams of 10 over 4 days.

And here is the comment as reported in the Times by the U.S. attorney. If the immigrants did not plead guilty, Mr. Dummermuth said he would try them on felony identity theft charges that carry a mandatory 2-year minimum jail sentence. And they got 5 months for using somebody else's Social Security and paying into somebody else's Social Security account that they will get when they are retired.

Does this seem like a departure to you as an expert in the criminal justice system from prior policies? And does it make any sense to you?

Mr. TURLEY. Well, I think it is a departure. I think that from—starting in 2001, there was a great deal of criticism about the padding of the record on terrorism. There is no question that, under the LIONS Manual, the definition of terrorism, the Bush administration has included a lot of cases that were not previously included, and it should not include.

For example, the Joint Terrorism Task Force, one of their operations was Operation Tarmac, which arrested a whole bunch of people at different airports. And what they found was what you will find if you raid many large businesses. You found a lot of people with false driver's licenses, false employment applications. It was a very standard sweep.

They counted those as terrorism suspects. They are obviously not. It is not that it wasn't an important thing to do, but they were not terrorists, from what we can see.

Mr. JOHNSON. All right, the gentlewoman's time has expired. We are going to try to get to both remaining——

Mr. DELAHUNT. I thank the——

Mr. JOHNSON [continuing]. Witnesses before we recess. And——

Mr. DELAHUNT. I thank the Chair——

Mr. JOHNSON [continuing]. We will return after the budget, after the votes.

The distinguished gentleman from——

Mr. DELAHUNT. I thank the Chair for describing me as distinguished.

Let me direct this to Professor Turley, as well as the rest of the panel.

I find one of the shining lights in the Department of Justice the performance of the inspector general, Mr. Fine. Would you agree with that, Professor Turley?

Mr. TURLEY. Absolutely. The——

Mr. DELAHUNT. Mr. Delonis?

Mr. DELONIS. I would say so.

Mr. DELAHUNT. And Mr. Melson?

Mr. MELSON. He is a fine gentleman, does a good job. But——

Mr. DELAHUNT. Thank you.

Mr. MELSON [continuing]. We disagreed with——

Mr. DELAHUNT. Now, no, you—this is not a filibuster.

Mr. MELSON. Okay.

Mr. DELAHUNT. You answered the question, so don't try to filibuster.

Mr. MELSON. I was trying to answer——

Mr. DELAHUNT. No, well, you answered it.

Now, the gentleman from Ohio, my good friend, Mr. Jordan, indicated that, or posed a question to the four of you, would you consider an investigation or an inquiry, either by this Committee or by the Department of Justice, into what he described as the generous mortgage issue?

If the inspector general, Mr. Fine, conducted an exhaustive review of the hiring practices of the Department of Justice as it related to a particular program, to attract the best and the brightest, and concluded that the deputy attorney general at the time, not only violated departmental policy, but also violated Federal law, would you give, Professor Turley, considerable weight to that finding?

Mr. TURLEY. I would. I read that investigation.

And quite frankly, I should not be shocked much anymore, but I was shocked, particularly with reference to the Honors Program. As I think Mr. Melson and everyone else at this table would say, the Honors Program is a cherished part of the Department of Justice. And many conservatives and liberals in the bar have come from it, and they have always protected it from partisan manipulation.

And I think it is pretty clear that that occurred here, and it shows the degree to which the Department of Justice has been politicized and the damage done. And the vast majority of people that I know in the Justice Department really regret that trend.

But this, to me, was quite shocking, because it involved the Honors Program, which has so many proud and very famous graduates in this city.

Mr. DELAHUNT. Well, I concur with your sentiments. But here we have what I would consider an allegation by the Office of Inspector General, headed by an individual with impeccable integrity, that concludes that there was a violation of Federal law.

I would hope that the Department of Justice would consider appointing a special prosecutor to proceed, to determine whether there was grounds to move forward with a criminal investigation, the possibility of securing a criminal indictment. I am not familiar with what the relevant statutes would be, but not to give considerable weight to this particular issue, it is not simply a story, you know, in The Examiner or the Washington Times or the Washington Post. This is a serious allegation.

You, Mr. Delonis, indicate that there was low morale. Well, I can understand why there is low morale. As Professor Turley indicated, I have great respect for the career individuals who I think represent this country very well, who do an admirable job. I support—I think I would suggest a wide array of benefits that should be conferred upon them.

But when we have this politicization that is ongoing, where we have an individual—and I am sure she is a nice person—by the name of Esther McDonald, who graduated in May of 2003, who on June 13 was recommended to Monica Goodling, who appeared before this Committee, and then is responsible for monitoring the selection of individuals to a prize program, I find that just absolutely mind-boggling. It is incredulous.

It tells me that this particular department was rife with politics, and that it had to filter down. It devastated the morale in the Department of Justice, and I am glad to hear that it has improved. But this really left a stain on the Department of Justice that I think lingers today. And something has to occur to restore the confidence of the American people in the integrity of the Justice Department. That is what this is about.

A woman who, again—and I say this respectfully—I am sure never tried a case to a jury, who never even was a second seat in a trial. And she is reporting to the chief of staff to the deputy attorney general about recommendations, and references and allusions to buzzwords like "social justice."

My, how dangerous. Someone who embraces the concept of social justice in America. And of course, she is incompetent enough to put all this in writing, in an e-mail.

I would not want her advising any one of my——

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

We will resume with a second round after recess for these votes. Do we have time for Mr. Cohen?

All right. We will come back for Mr. Cohen and then begin a second round. If you all will stick with us, we have got two votes.

[Recess.]

Mr. JOHNSON. We will call us back to order, and we will start—or we will continue the first round of questioning with Mr. Cohen. Thank you.

The distinguished gentleman from Tennessee?

Mr. COHEN. Thank you, Mr. Chairman. And I apologize for my tardiness in returning.

Mr. Melson, Mr. Delahunt was talking about Ms. Goodling and her tenure with the Department of Justice. Who took her place?

Mr. MELSON. You mean who took her place in the Attorney General's Office?

Mr. COHEN. Yes, who is the patronage person now?

Mr. MELSON. I am sorry, who is the what?

Mr. COHEN. Who is the person in charge of hiring? What was her job?

Mr. MELSON. She had many different jobs, as I understand it. I was not here——

Mr. COHEN. What was the job that involved her in vetting people to work in the Justice Department?

Mr. MELSON. I am not sure. I was not here. I do not know where she was.

All I know right now is that, in our office, in the U.S. attorney's office—I mean the Executive Office for U.S. Attorneys—we do not make any decisions based upon political factors for personnel.

When I came over, she was not in the executive office. She was in the executive office for a period of time, but moved in other places in the department, where she was——

Mr. COHEN. So, what you are saying is, when she was at the other places at Department of Justice is when she did all her special services.

Mr. MELSON. I am not—I do not know. She may have done some in the executive office. I have not—there is an OIG report that——

Mr. COHEN. Do you know which law school she went to?

Mr. MELSON. I have no idea.

Mr. COHEN. Who remembers? It is the religious school in Virginia that one of the people on television——

Mr. MELSON. In Virginia Beach.

Mr. COHEN. Yes, you are getting close, then. Is it bigger than a—you know, smaller than a breadbox.

Mr. MELSON. A breadbox?

Mr. COHEN. Yes, that is right. Regent. Does Regent ring a bell?

Mr. MELSON. It does.

Mr. COHEN. It does. Do you know if the employment of attorneys from Regent has continued at the same rate it did when she was there? Or has it decreased? Or does it still exist?

Mr. MELSON. I have no information on that whatsoever.

Mr. COHEN. No information, okay.

Do you know about the—in your papers you talk about some of the exceptional cases and the projects you all have engaged in, which I agree have been good, including the projects in Tennessee on corruption. You are familiar with those cases in Tennessee?

Mr. MELSON. I am familiar with some of them. And you have some very good U.S. attorneys in Tennessee, in your——

Mr. COHEN. In Memphis we had Mr. Kustoff, who did an outstanding job. And Mr. Laurenzi is filling in right now, and he is a fine prosecutor.

Do you know if there have been any efforts in—in Memphis we went after politicians. And indeed, politicians had shown conduct that made them deserved of the attention that they received.

But most of the politicians, although these were stings, there were some cases that were not stings. And you cannot have somebody taking a bribe without somebody offering it. And the people that generally offer the bribes have not been prosecuted.

Is that true in other jurisdictions, where generally the politicians are the—which not that they should not be subject to prosecution, but that the other parties and the private folks who offer monies or inducements are not prosecuted?

Mr. MELSON. Well, we can get back to you with examples of whether they were or they were not. I have never done a study to determine that. But I am sure, if they were not part of a government cooperation, that they may have been prosecuted.

Mr. COHEN. All right. Let me ask this.

Ms. Williams, you are a public defender.

Ms. WILLIAMS. Yes, sir.

Mr. COHEN. You have seen the State and government prosecute drug crimes. Correct?

Ms. WILLIAMS. Correct.

Mr. COHEN. Marijuana, meth, crack, cocaine, et cetera?

Ms. WILLIAMS. Yes, sir.

Mr. COHEN. Do you think that, in your area, that the government prioritizes the drugs based on their harm to society?

Ms. WILLIAMS. They do.

Mr. COHEN. And so, they mostly go after——

Ms. WILLIAMS. They go after all the drug offenses that they have jurisdiction over.

However, the exception is going to be—and this may be in the process of changing—500 pounds or less of marijuana, port of entry

cases. That is, marijuana, 500 pounds or less, that has been hidden in a vehicle coming through a port of entry, where the defendant does not possess a gun or does not have a prior conviction. Those cases, I understand, have either been prosecuted as misdemeanors, simple possessions of marijuana.

Well, along with the felony, they are given the chance to go ahead and plead to the misdemeanor or have been handed off to the State for prosecution.

Mr. COHEN. So, they do meth, and crack and cocaine are more prioritized.

Ms. WILLIAMS. Yes. There is no exception.

Mr. COHEN. Good.

And Mr. Delonis, is that the same thing as you understand the U.S. attorneys' priorities are?

Mr. DELONIS. Pretty much so. And it has been very district-by-district. Quantities in southern Florida are going to be larger in terms of what is going to be prosecuted, whereas what is a big case in Wisconsin is not a big case in Florida, if you are talking about simply quantities of drugs involved.

And then you are going to have in different areas of the country different types of drugs are going to have varying kinds of levels of abuse. What is popular on one coast may not be as popular among the drug culture on the other coast, for instance.

Mr. COHEN. Right. But marijuana is treated a little less than crack and cocaine? Is that accurate?

Mr. DELONIS. Yes.

Mr. COHEN. Okay. Do we want to go on? Okay.

A big problem in all inner cities——

Mr. JOHNSON. We will do a second round, and we will start with you for the first 5 minutes.

Mr. COHEN. Thank you. Thank you, Mr. Chairman.

In a lot of inner cities—my city is no exception—gang crime is extremely serious. And I believe there are some grants that are offered by through the U.S. attorneys' offices for anti-gang prosecutions.

Mr. Delonis, are you familiar with those?

Mr. Melson, I am sorry.

Mr. MELSON. Yes. There are a number of grants that are given to cities and local law enforcement as part of our anti-gang strategy.

Mr. COHEN. How do you prioritize who gets the grants?

Mr. MELSON. It depends on which grant you are talking about. If you are looking at our Project Safe Neighborhood grants, they are done on a—have been done—on a formula basis, so that all districts will get some grant money to help them with the anti-gang money.

There is the 10-city initiative in which extra resources were put into 10 cities. Those decisions were based upon the aggravated nature of their gang problems.

Mr. COHEN. Do you know if Memphis is one of those 10 cities?

Mr. MELSON. If you give me a minute, I can look it up right here.

Mr. COHEN. Sure. I mean, I would hope we wouldn't be, but then I would hope we would be.

I presume what you are saying is, it is based on the level of gang activities reported and gang crime, and it goes to where it is needed.

Mr. MELSON. Yes. In those 10, in those 10 cities. It may take me a little bit longer to find it. I have it with me. But if you want to ask another question, I can look for it while you are doing that.

Okay. No, I have the list here. The 10 sites included Los Angeles, Tampa, Florida, Cleveland, Ohio, Dallas-Fort Worth, Milwaukee, eastern district of Pennsylvania, the 222 corridor, Oklahoma City, Rochester, Indianapolis and Raleigh-Durham.

Mr. COHEN. How were they chosen? Because I would be—I do not want to say that my city is deserved of top 10 recognition, as we were in basketball for 39 minutes and 50-some seconds—but I would have to think that we have got more of a gang problem than Raleigh-Durham.

Mr. MELSON. Well, I was not personally involved in that selection. But I believe there were applications made by cities who thought they should be included in the top 10. And they were classified by the nature of the problem, the amount of resources there, the types of crimes that were being committed, the types of gangs that were there, whether they are international, or so forth.

Mr. COHEN. This may have just worked out that way, but if you look at what you read me, it is like a political decision. You have got West Coast, L.A. You come around to Dallas in the Southwest, you come up to Oklahoma. You hit Milwaukee in the Midwest, come over to Cleveland. You come over to Rochester on the East. You come down to Raleigh-Durham.

And what are the other cities?

Mr. MELSON. We have eastern Pennsylvania.

Mr. COHEN. Right.

Mr. MELSON. The corridor.

Mr. COHEN. So, Raleigh—I mean, Rochester—eastern Pennsylvania. You get into the ACC there with Raleigh-Durham.

It is almost like a political thing to hit someplace around everywhere on the map except the Pacific Northwest.

Mr. MELSON. I have no information that anything political whatsoever was used in the selection of these cities for that money.

Mr. COHEN. Well, it sure looks like they were spread out, and there was some purpose in spreading them out, so that a little bit went here and a little bit went there. Because I would have to think that you have got a bigger gang problem in Memphis, in New York City, probably in Washington, D.C., and some other cities.

Do you know where the biggest gang problems are, the biggest number of gangs? I mean, Los Angeles has got a whole bunch.

Mr. MELSON. I am sure they do.

Mr. COHEN. And do you think New York might be right up there with them? Chicago?

Mr. MELSON. Yes.

Mr. COHEN. St. Louis, East St. Louis?

Mr. MELSON. Right. And they may also have other resources or other grants, which went to the same type of activity. So, without looking at the entire picture and the entire application, to look at other resources that are available that the other cities that were

chosen might not have, it is hard to tell whether or not those cities were ignored or whether they have resources to go after the gangs.

Mr. COHEN. I do not have any further questions, Mr. Chairman. Thank you.

Mr. JOHNSON. Thank you, Mr. Cohen.

I have a couple.

As you are well aware, Mr. Melson, prosecuting public corruption has been a high priority of the Justice Department. Do you support the U.S. Attorney Tom O'Brien's decision in March of 2008 to eliminate the public corruption and environmental crimes section in the Los Angeles office?

Mr. MELSON. He did not eliminate prosecutions or investigation of those cases. He redistributed the individuals from that unit to make other units—into other units, where more people could prosecute those types of crimes.

For example, many of those individuals went into the major fraud unit, major fraud and crimes unit, which, it is important to note, has experience in all of those types of cases. So, what this actually did is, it put more settings at the table, as their spokesman noted, for purposes of prosecuting those cases.

Mr. JOHNSON. So, I take it that you support that decision.

Mr. MELSON. That was his decision to make, and the discretion that he used to make his office more productive, more responsive to the needs.

Mr. JOHNSON. And do you support it?

Mr. MELSON. There have been no cases—yes, I support it, because there have been no cases that have been affected by that transition——

Mr. JOHNSON. What impact will that decision, you think, have on the Los Angeles U.S. attorney's office to prosecute, or to investigate and prosecute, public corruption cases?

Mr. MELSON. It will do nothing but enhance it.

Mr. JOHNSON. All right.

I want to ask you some questions about Leslie Hagan. Are you familiar with that case?

Mr. MELSON. I have no personal knowledge of it. And I understand the OIG and OPR have included that in their investigation. So, it is difficult for me to talk about an ongoing investigation at the department.

Mr. JOHNSON. Well, you are aware that she is a former assistant U.S. attorney in the Western District of Michigan, who was appointed as a detailee in October 2005, to be a liaison between the department and the U.S. attorneys' committee on Native American issues?

Mr. MELSON. Yes. In fact, she still is an assistant U.S. attorney. She never left that job. She was simply detailed to the executive office.

Mr. JOHNSON. Now, in her final evaluation at EOUSA, dated February 1, 2007, Ms. Hagan received the highest possible performance rating. Despite receiving the outstanding ratings on her job performance evaluation, she was removed from her position amid rumors of her sexual orientation.

Is that your understanding of why she was removed?

Mr. MELSON. I have no personal knowledge as to why she—and she would not have been removed. Her detail would have been—the detail was not extended. I do not believe that she was removed.

Mr. JOHNSON. Do you know whether or not her sexual orientation had anything to do with——

Mr. MELSON. I do not know that, but I can guarantee you that no decision regarding personnel in the Executive Office for U.S. Attorneys will, under my watch, be based upon sexual orientation.

Mr. JOHNSON. One month after Special Counsel Scott Bloch took office in February of 2004, he ordered the removal from the OSC Web site of all references to the agency's authority to hear complaints by Federal employees who alleged discrimination based on their sexual orientation.

Does the department—does your department agree with that policy?

Mr. MELSON. I don't think I can answer that, because I am not familiar with the removal of that information from his Web site.

Mr. JOHNSON. Well, do you think that it is only right that Federal employees with complaints of alleged discrimination based on sexual orientation should be heard by your agency? Is that something that is appropriate?

Mr. MELSON. Those are considerations and issues that EOUSA certainly will evaluate. But whether or not the department does, and whether or not it comes within the confines of the EEO process, I do not know.

But all I can say is that there will not be any of that under my watch at EOUSA.

Mr. JOHNSON. All right.

And now, also, court security legislation enacted last year required your office to provide a report to Congress by early April on the safety of assistant U.S. attorneys. To-date, your office has not provided that report.

Can you tell us why? And can you also tell us when do you expect to provide that report?

Mr. MELSON. If it has not been, I apologize. It was my understanding that we had provided that to you. But I will check on that and get back to you. And if it has not, we will get it to you.

Mr. JOHNSON. All right.

All right. At this point, my time has expired.

Mr. Cohen, I will defer to you for a third round of questioning, 5 minutes.

Mr. COHEN. Thank you, Mr. Chairman.

I have always had a concern about prioritizing the funds of the Justice Department, and in every way in prosecutions. And we have had a drug war for many, many years. I have not seen where we have made much success in the drug war. And I do not know.

Mr. Delonis, are you an attorney?

Mr. DELONIS. Yes.

Mr. COHEN. You are? Were you a prosecutor?

Mr. DELONIS. I have been for 38——

Mr. COHEN. Okay.

Mr. DELONIS [continuing]. Nearly 39 years.

Mr. COHEN. All right. I was not sure. I just was not here for the introductions.

What should we be doing? And can we ever successfully "win" the drug war? Because I think it has been going on maybe since Nixon's time, maybe before. Maybe it goes back to Harry Anslinger, but at least since Nixon in 1970.

And from what I can tell, we are not winning. What can we do to improve? Is it prioritizing? Is it more treatment? Is it more border patrols, more prosecutors? What is the answer?

Mr. DELONIS. I do not know that there is a simple answer. It is a complex social problem that deals with prosecution on one side, with demand on the other side, with dealing with offenders who are caught and rehabilitation to the extent that that may be possible, to dealing with it as a foreign relations problem, too, because the source of a lot of the drugs is from overseas.

It is one of those problems that has a myriad number of aspects to it, that there is no simple solution. It is something that has got to be addressed in a multi-agency, multidisciplinary——

Mr. COHEN. I get where you are coming from, but I think you know where I am coming from, and I think we both agree the same thing. It is complex, but there is not enough out there. As complex as you make it, as interdisciplinary as you make it, we are not making a dent.

Mr. DELONIS. Well, you can look at it two ways. You can say we are not making a dent. And then you could say, if we had not been doing what we are doing, where would we be today? How much worse off would we be, had we not put the effort into it that we have?

Mr. COHEN. Is it possible that the sentences were too great, and the judicial—the sentencing system we have got, where people have to serve a great percentage of their time, and maybe the sentences are too long. If the sentence is—I mean, putting somebody away for 15 years as distinguished from 7 years is still a deterrent, a major deterrent? They come out after 7 years, maybe. And you can put a different round of people.

You get up with the same number of people in jail. But if you can put twice as many people in for 7 years, as the same—half the number for 15 years, you might have a better chance at kind of taking the people off the streets?

Mr. DELONIS. I don't know that that is necessarily true. I think those that get the longer sentences, by and large, are deserving of those sentences. And——

Mr. COHEN. Ms. Williams, what do you think about that? Do you think we could—you know, because you take somebody that deserves it out of the system. Doesn't somebody else, just like a shark's tooth, come up and take that person's place?

Ms. WILLIAMS. Unless you have arrested the head of the beast, then yes, exactly. The people that we represent, especially in Arizona, who tend to be what we call the mules—either mechanized or walking, bringing the drugs across the border—they do not have information.

They are not running the organization. They are poor people who are doing this just to make money, and then you throw them in jail for a mandatory minimum period of time. And there are insufficient resources within now the Bureau of Prisons to go ahead and help these people.

There is a statute that allows for shock treatment, which is basically a boot camp for certain offenders. Bureau of Prisons does not have the money to fund that anymore, and it was a highly successful program.

Mr. COHEN. Would it be better to spend money on the—what is the typical person that has got a great deal of crack or marijuana, whatever? Is it a 10-, 15-year sentence? I guess it depends on the different factors, I know.

Ms. WILLIAMS. Lots of different factors, depending on the amount and depending on the person's criminal history. Many of the people we see can qualify for safety valve, and that is to get below the mandatory minimum if they qualify.

But sometimes, if you have somebody who just served 90 days in jail for a misdemeanor, they are not going to qualify for safety valve. And they may have the mandatory minimum amount of crack or heroine, or whatever, and now they are stuck with 10 years, even though they are low person on the totem pole.

Mr. COHEN. Do you think that Congress should change the sentencing laws to give judges more flexibility in how they use our resources, our jail resources, and who they put away and for how long?

Ms. WILLIAMS. Absolutely.

I think also it would be worthwhile to go ahead and provide funding with probation and pretrial to start doing drug court. It is a program that in the State systems has shown to be very effective. And not many Federal courts have it, but it shows a great deal of promise.

Mr. COHEN. Mr. Delonis or Mr. Melson, do you agree or disagree that we should change our sentencing laws, particularly in the area of either drug offenses, possession or smaller drug cases, or drug cases, marijuana, to give the judge more discretion and/or have drug courts?

Mr. DELONIS. I think that we have seen with the latest Supreme Court decision on the guidelines, that the judiciary has stepped forward and given more discretion to the judges.

Now, what we do not want to do is go back to the unbridled discretion of the old days, when you had wide disparities of sentencing. When I am talking about the old days, I am talking a quarter-century ago, where an offense of a certain kind in one jurisdiction will draw a far more serious sentence from a different judge in a different jurisdiction.

So, we need to have some fairness and uniformity, which the guidelines give us. And I think we have gotten a——

Mr. COHEN. So, are you saying that the judicial changes, the rulings from the courts, were appropriate?

Mr. DELONIS. Well, first, the Supreme Court has given, now, more discretion in the trial judges when it comes——

Mr. COHEN. So, before the Supreme Court acted, the law was not a good law.

Mr. DELONIS. Oh, I am not going to say whether it was good or not. I am just saying——

Mr. COHEN. Well, it was improved upon. It is better. It is like Tide, a new and improved law.

Mr. DELONIS. Pardon me?

Mr. COHEN. It is a new and improved law now.

Mr. DELONIS. Call it what you will. What we have we have got to deal with. To me it looks like a better situation, because the courts do now have a little more discretion than they had before.

Mr. COHEN. Professor Turley, do you think we can make it better?

Mr. TURLEY. Oh, I think we definitely can make it better. I think that we have had great improvement as we have moved away from the mandatory, rigid rules of the guidelines. And I think we can improve it more by giving discretion.

You know, I testified a long time ago with a judge. And I remember his statement always stuck with me.

He said, you know, I spend my—Federal judges in this country are very accomplished people. And we spend our whole lives going to good law schools, doing well, getting a job, making partner, being successful. And then, when we have all that experience, you make us Federal judges, and immediately tell us, don't apply any of that in sentencing.

And I think he is very much correct in that. Most Federal judges I have seen—and this has nothing to do with who appointed them, conservative and liberal judges—tend to take sentencing very seriously. And I think that you can give them more discretion, and they do a very good job.

Mr. COHEN. And if I can have one.

Mr. Melson, how do you weigh in on this?

Mr. MELSON. Well, I can tell you that when they had the sentencing guidelines and minimum mandatory sentences, we were seeing many more cases that we could go up the chain to the head of the beast, because those sentences encourage defendants to cooperate with us. And we were able to get cooperation out of a tremendous number of people.

Now that the defendants can litigate their sentences with the judge in a sentencing, and not be bound by the sentencing guidelines, I think we are going to see fewer people cooperating with us, making it harder for us to go up the chain to those who really need to go away for a long, long, long time.

Mr. COHEN. Mr. Turley, can you tell me why you smile?

Mr. TURLEY. Well, it is only because there is a difference between a criminal defense attorney and a prosecutor that I am sure Ms. Williams would agree on.

One of the reasons why sentencing was so neat under the earlier system is, as a defense attorney you would plead your person out, because there was not much room for you to do anything else. And so, yes, it was great for prosecutors, because you could hit some guy with multiple decades unless they cooperated. And that is always good for producing cooperation and pleas.

But it often produced great injustices. And I think we have a better system by relying on our judges. And I think the prosecutors have more than enough leverage to get cooperation.

Ms. SÁNCHEZ. [Presiding.] Professor Turley, if the gentleman would yield.

Mr. COHEN. I yield to the——

Ms. SÁNCHEZ. It is interesting that you struck on something that is very near and dear to my heart, which is justice, because I do

understand the need to try to get people to inform on people higher up the chain.

But when you do not get people who are informing, and they face a very draconian, mandatory minimum, where is the justice and the sentence fitting the crime, which in many cases is very basic, foot soldier, mule type work, not masterminds of vast criminal networks?

And so, I think we also have to be mindful that guidelines are great, but mandatory minimums do not always necessarily mean that the ideal of justice is being served.

Mr. TURLEY. And Madam Chair, one of the things that I would love to see this Committee look into is a very serious problem involving the use of what are called snitches and cooperation deals with prosecutors. As you alluded to, it is very, very common now for prosecutors to tell first offenders, you know, go and get me someone else. If you do not have information, then bring some other guy in here, and I will deal with you.

And "Frontline" did a wonderful program on this about 10 years ago. There have been other studies. People have been killed trying to do sting operations. There was a father once who was injured once, because he was trying to do a sting to get someone to produce a deal for his son.

And it had just gotten way out of control. And it would be worthy of this Committee to look at it. It is very dangerous, and it also shows how draconian these sentences are for first offenders, that they would do anything they can to try to find someone that they can snitch on.

Ms. SÁNCHEZ. Thank you. The time of the gentleman has expired.

I am going to recognize myself for 5 minutes for questions, and this will be the last set of questions. So, I appreciate everybody's patience in staying here during the votes, et cetera.

Mr. Melson, according to the department's Web site, one of EOUSA's major functions is to evaluate the performance of the offices of the United States attorneys, making appropriate reports and taking corrective action when necessary.

During the U.S. attorney firings controversy, we learned that Kyle Sampson, the now-resigned chief of staff to the attorney general, maintained and revised various lists of U.S. attorneys to be fired or retained. He received input from various sources, including several White House officials.

In the wake of the controversy, have evaluations of the U.S. attorneys changed? Has a process for evaluating them changed?

Mr. MELSON. The process for evaluating the U.S. attorneys' offices, which we think is a very valuable and significant process, has remained the same. It was not defective or broken during the time of the U.S. attorneys' firings.

I do not know how the reports were used, but the evaluation process had integrity then. It maintains integrity now.

In fact, I participate——

Ms. SÁNCHEZ. With all due respect, in our investigation into the U.S. attorneys' firings, there have been a number of pieces of evidence, which lead us to suspect that many of those firings were

done for purely political reasons, not having to do with the qualifications or the ability of these U.S. attorneys.

In fact, some of them received outstanding and rave reviews, and yet their names appeared on the list, because they had displeased somebody with their failure to pursue certain cases that were being thrust upon them, where they saw no evidence, or because—and other political considerations, as well.

So, I don't know that I agree 100 percent with your assessment that the process of evaluating them has integrity.

Mr. MELSON. Well, may I respond to that?

Ms. SÁNCHEZ. Absolutely.

Mr. MELSON. Those conclusions that you found in your investigations would not have been drawn from the EARS evaluation. The EARS evaluators are 100 percent career prosecutors and support staff who go into these offices. They look at the programs. They evaluate how the programs are running. They do not make judgment calls. They do not make political calls in there.

So, I do not think you will find in any of the EARS evaluations, the evaluations from our staff, that have anything that will support your allegations or suppositions with respect to the political firings.

And I am not saying they were or they were not. All I am saying is——

Ms. SÁNCHEZ. I understand. Let me rephrase the question.

The reports that are prepared as to a U.S. attorney's qualifications and their work product, do you think that those should be disregarded when it comes to hiring and firing U.S. attorneys? If their performances are outstanding, and these are U.S. attorneys that are teaching seminars to other U.S. attorneys on how to prosecute certain cases, I mean, do you feel that it is, you know, that those reports can be disregarded or completely ignored?

Mr. MELSON. No, and they have not been disregarded when there is a basis in the evaluations for a removal for cause. And there have been some U.S. attorneys over the history, as I think one of the other Congress members pointed out, U.S. attorneys that have been removed for cause.

And our reports, when they raise serious allegations of performance with respect to a U.S. attorney, those may be acted upon by the deputy attorney general. Our reports merely reflect their performance in the office as the head prosecutor for that district.

Ms. SÁNCHEZ. Okay. Assuming that the reports are very favorable, and there is not a desire to remove somebody for cause, but simply at the whim—and somebody is performing in an outstanding capacity and desires to stay on in the U.S. attorney's office—doesn't it really render the evaluation useless, if these people can just summarily be dismissed for reasons other than cause?

Mr. MELSON. That consequence certainly is not one of the purposes of the evaluation and review staff and the reports that we do.

Ms. SÁNCHEZ. I have a couple of lines of questioning. Just out of curiosity, and one of the issues that I mentioned in my opening statement was the dissolution of the public corruption section in the Los Angeles U.S. attorney's office.

In justifying the dissolution of that section, a spokesman said that he was not aware of any other U.S. attorney's office in the

country that had an entire section of lawyers specializing in public corruption cases. Is that a correct statement?

Mr. MELSON. I have not looked at all the U.S. attorneys' offices. There very well could be large districts—maybe one of the New York districts or Chicago's—that have a public corruption unit. But that is really beside the point.

Mr. O'Brien merely reorganized his office to become more efficient and to produce better results.

The name of a unit that a particular prosecutor is in is of little consequence. None of the cases that were pending at the time that he made the reorganization have been or are being affected by the reorganization.

In fact, the public corruption cases are now being pursued by a much larger group of very experienced career prosecutors, who hopefully will be able to actually pay more time and attention to those very serious and significant cases.

Ms. SÁNCHEZ. Statistically speaking, have the same number of cases been brought, now that that unit has been disbanded and farmed out among different other units?

Mr. MELSON. It is a little bit too early to say that, because these cases take a long time. But since the reorganization, several long-term, pending cases have popped out of the grand jury, have been indicted. So, to that extent, we have a preliminary indication that his reorganization was a dramatic success.

Ms. SÁNCHEZ. If over time, statistically speaking, the opposite comes to pass, in that the number of cases of public corruption actually drop significantly, would they consider reinstituting the special unit?

Mr. MELSON. I think Mr. O'Brien is dedicated 100 percent to public corruption cases. And if it looks like it is necessary to reorganize the office to maintain the aggressive prosecution of public corruption cases, he will do that.

Ms. SÁNCHEZ. Thank you. A last question for Mr. Delonis.

Anecdotal accounts from U.S. attorneys' offices along the southwest border indicate that these offices are having a difficult time recruiting and retaining qualified assistant U.S. attorneys, because they are primarily working on misdemeanor border crossing prosecutions.

To your knowledge, are those accounts correct?

Mr. DELONIS. I do not have any personal knowledge with respect to retention and recruiting in those particular jurisdictions. I would guess the natural inclination of an applicant would be that, on joining a U.S. attorney's office, that they would aspire to prosecute large, significant felony cases.

But that is generally something you work your way up to. You do not start at that level.

Ms. SÁNCHEZ. I understand. But if an emphasis is being placed on less significant cases that are being used to drive up statistics in a particular area, and people are—they are having a hard time recruiting or retaining people, because they are not doing work that they aspire to do, or that is meaningful for them, would that be a problem?

Mr. DELONIS. Like I said, I don't really know, because nobody has discussed with me that it is a problem in their particular office.

I would just say that, from experience, you start with—it was a long time ago when I started—but my first assignments included prosecuting moonshine cases and stolen cars. And that is how I started my career, and I worked my way up to things that were much more complicated.

Now——

Ms. SÁNCHEZ. Ms. Williams, can I ask the same question of you?

Ms. WILLIAMS. I know that in the Tucson office last September, there were five assistant U.S. attorneys who resigned or were reassigned to different offices. One became an immigration judge. And that part of the reason for that was the frustration of the high caseloads and the morale within the office, because of the high caseloads.

When I started with the public defender's office 14 years ago, I knew that the Tucson U.S. attorney's office was a popular spot for assistants to transfer maybe for a short time, 2 years, to go ahead and prosecute cases, especially if the prosecutors were from colder places. Now, they are not getting the people volunteering to do that anymore, because of the high caseloads.

Ms. SÁNCHEZ. Right. I appreciate your answer.

My time has expired, so I would like to thank all the witnesses for their testimony today.

Without objection, Members will have 5 legislative days to submit any additional written questions, which we will forward to the witnesses and ask that you answer as promptly as you can, so that those can also—those answers should also be made a part of the record.

And without objection, the record will remain open for 5 legislative days for the submission of any additional materials.

Again, I want to thank all of the panelists for their testimony and for your patience, especially in the face of votes across the street.

And with that, this hearing of the Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 5:11 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

RESPONSE TO POST-HEARING QUESTIONS FROM KENNETH E. MELSON, ESQ., DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

"Executive Office for the United States Attorneys"

June 25, 2008

Questions for the Hearing Record
for
Kenneth E. Melson
Director
Executive Office for the United States Attorneys
United States Department of Justice

QUESTIONS FOR THE RECORD FROM CHAIRWOMAN LINDA SÁNCHEZ

1. **How has the operation of EOUSA changed in response to the issues raised during the U.S. Attorneys' controversy?**

RESPONSE:

The Executive Office for United States Attorneys (EOUSA) is focused on accomplishing its mission to provide the United States Attorneys with general executive assistance and direction, implementation of policy directives, administrative management direction and oversight, operational support, and coordination with other components of the Department and other federal agencies. EOUSA is led by a Director, who while appointed as non-career SES, served as a career Department of Justice employee for over twenty years prior to his appointment as Director. The Director hired three career Deputy Directors who have a combined total of over 60 years of experience as Assistant United States Attorneys and as career Justice employees. The Director is continuing to fill senior management positions with career employees.

2. **In justifying the dissolution of the public corruption section, the Los Angeles U.S. Attorney's Office spokesman said that "he was not aware of any other U.S. Attorney's office in the country that had an entire section of lawyers specializing in public corruption cases."**

   Is this statement correct?

RESPONSE:

The great majority of the 94 United States Attorneys' Offices (USAOs) do not have a unit which handles public corruption cases exclusively, and no district in California has such a unit. Although the spokesman's statement was true, in that he was not aware of any such units, there are in fact four that do maintain a section of lawyers devoted exclusively (or almost exclusively) to public corruption cases.

If not, how many U.S. Attorney's offices have a public corruption section:

RESPONSE:

See response above.

3. **What is EOUSA's role in determining how U.S. Attorneys' offices are structured and whether or not they should have a public corruption section?**

RESPONSE:

Each United States Attorney has discretion to structure his or her office as he or she sees fit to most effectively carry out the Department's law enforcement mission. In determining the appropriate structure of the office, each U.S. Attorney must take into account the unique circumstances, challenges, and opportunities of the district and the office. EOUSA offers advice, guidance, and support to United States Attorneys in organizing their offices to best carry out their functions. Approximately every three to four years each USAO undergoes a full office evaluation undertaken by EOUSA's Evaluation and Review Staff (EARS), which is comprised of senior career prosecutors and support staff from around the country who volunteer as a collateral duty to review and evaluate other offices. Occasionally recommendations are made during an EARS evaluation that affect the management structure of an office; however, EOUSA does not require that USAOs have any one particular office structure. There is no EOUSA protocol or procedure outlining whether or not a USAO should or should not have a unit dedicated solely to public corruption cases.

4. **Why is it valuable for a U.S. Attorney's office to have a public corruption section?**

RESPONSE:

As presidentially-appointed officials, United States Attorneys have the authority and discretion to organize their offices as they see fit. EOUSA does not require that United States Attorneys adhere to any one organizational model. A United States Attorney must have the flexibility to organize his or her office to best address the federal law enforcement concerns that exist in the district. Often, those needs change as new challenges arise. Organizational adjustments may be made without approval from EOUSA.

It may be valuable for a United States Attorney's Office to have a public corruption unit where the current and forecasted case load warrants a dedicated unit and where other priorities will not require assistance from attorneys assigned to the unit. Having a dedicated unit may encourage AUSAs to develop expertise and build positive relationships with other corruption-fighting agencies. Many other factors, however, must be weighed in deciding to create such a unit. Those factors include:

- The size of the office;

- The location of government facilities (e.g. the presence of a state capitol in the district);
- The organization and resources of investigating agencies
- The need for resources in other areas;
- The availability of appropriate supervisors;
- The availability of assistance from the Public Integrity Section of the Criminal Division; and
- The experience level of the staff

Many United States Attorneys have determined that assigning both public corruption and another area of complex litigation to a single unit encourages AUSAs to develop expertise while providing the flexibility a fluctuating caseload demands. For example, public corruption prosecutors are often placed into units which handle other complex white collar crimes.

Do you think it is important to have attorneys specialize in complex public corruption cases?

RESPONSE:

Yes. However, that is difficult in some offices. For example, AUSAs in smaller USAOs will find it necessary to prosecute many different kinds of crimes. The Department of Justice continually develops the public corruption expertise of its prosecutors in a number of ways, such as training courses in public corruption issues provided at the National Advocacy Center. A public corruption web site and instructional materials are available to all AUSAs on the DOJ IntraNet. The Public Integrity Section of the Criminal Division specializes in complex public corruption cases and is available and regularly provides guidance to all United States Attorneys' Offices.

5. **Ms. Williams notes in her written testimony that the increase in misdemeanor immigration cases caused by Operation Streamline prompted the U.S. Attorney's Office in Tuscon to put marijuana and white collar cases "on the back burner."**

   Do you believe that focusing on misdemeanor immigration cases over drug and white collar crimes is the best use of the U.S. Attorney's offices' time and resources?

RESPONSE:

The United States Attorney's Office in Arizona is very committed to prosecuting appropriate fraud and "white collar" cases. In FY 2006 the USAO in Arizona filed 47 "white collar" cases. They increased that number in FY 2007 to 53 cases, an increase of 12.8%.

United States Attorneys Offices around the country, including Arizona, work diligently to make the most efficient use possible of their resources. The misdemeanor cases brought by each of the USAOs along the Southwest Border, including the District of Arizona, have an impact on

USAO resources, as well as the resources of the agencies and branches of government that participate in the arrest, prosecution and adjudication of these defendants. The primary question is whether the use of these resources is well spent. EOUSA has been, and is, in communication with each of the other participants in the arrest, prosecution, and adjudication process maintains a continuing dialogue on the effectiveness and efficacy of those prosecutions.

6. **Between 2000 and 2006, prosecutions for immigration violations increased by 36 percent. In the same time period, there were significant declines in the number of prosecutions for environmental violations (reduced by 12 percent), organized crime (38 percent), white-collar crime (10 percent), bank robbery (18 percent) and bankruptcy fraud (46 percent).**

Are you concerned that U.S. Attorney's offices are not prosecuting as many complex criminal cases because of the recent push to prosecute misdemeanor immigration cases?

RESPONSE:

Many different factors affect the number and type of criminal prosecutions across the country, including the determination by investigative agencies to focus their resources on particular areas of enforcement. Below are EOUSA prosecution statistics that show an overall increase in prosecutions since 2000.

Description	FY	Cases	Defendants
All Felony Cases/Defendants	2000	52,887	72,766
	2006	58,702	81,008
Civil Rights	2000	84	122
	2006	90	201
Government Regulatory Offenses	2000	1,717	2,555
	2006	1,617	2,546
Immigration (Felony Only)	2000	13,033	14,119
[misdemeanors not counted]	2006	17,686	19,215
All Drugs	2000	16,448	28,896
(OCDETF and Non OCDETF)	2006	15,408	29,051
Official Corruption	2000	475	621
	2006	503	731
Organized Crime	2000	252	601
	2006	156	459

Violent Crime	2000	8,082	9,963
	2006	10,908	12,904
White Collar	2000	6,645	8,766
	2006	5,745	8,036
Other Criminal Cases	2000	3,939	4,472
	2006	4,216	4,870

Misdemeanor immigration cases are not counted in the data above. Those misdemeanor cases, and indeed most of the immigration cases along the Southwest Border, are investigated and referred by the U.S. Border Patrol and by Immigration and Customs Enforcement. Most of the narcotics cases, corruption cases, violent crime cases, and white collar cases come from other law enforcement agencies. In some areas the immigration misdemeanor cases are prosecuted by Special Assistant United States Attorneys provided by the Department of Homeland Security. In those areas the misdemeanor caseload has no significant impact on the workload of the Assistant United States Attorneys in those offices. Historically, approximately two thirds of the immigration cases, and the vast majority of the immigration misdemeanors, are prosecuted by the five U.S. Attorneys Offices along the U.S./Mexico border, and their workload has no impact on the types and numbers of cases being filed by other U.S. Attorneys Offices.

7. **Anecdotal accounts from U.S. Attorney's offices along the Southwest border indicate that these offices are having a difficult time recruiting and retaining qualified Assistant U.S. Attorneys because they are primarily working on misdemeanor border-crossing prosecution.**

   Are these accounts correct? If so, what can be done to attract and retain qualified Assistant U.S. Attorneys in these offices?

RESPONSE:

The U.S. Attorneys Offices located along the Southwest Border are as diverse as the region itself. Those offices range from small offices with three or four attorneys such as in Alpine, Texas (Western District of Texas) with a population of around 6,000 people to San Diego (Southern District of California), with more than 100 AUSAs and a population of more than 1.2 million in the city. From Brownsville to San Diego the AUSAs in those offices handle cases across the spectrum of federal criminal jurisdiction, including narcotics, violent crime, firearms, Indian Country, as well as immigration offenses including, at times, misdemeanor immigration cases. Typically, new AUSAs start their career working on misdemeanors and less complex felony cases and then proceed to more complex, and arguably more interesting, cases. We believe such motivating factors will continue to draw talented AUSAs to work on the Southwest border.

8. **The Department has requested $100 million to support the Southwest Border Enforcement Initiative, $8.4 million of which would fund additional Assistant**

U.S. Attorneys and paralegals tasked to support prosecutorial efforts along the Southwest Border.

Given the increased enforcement efforts through programs such as Operation Streamline, do we need to fund more federal prosecutor positions beyond those covered in the $8.4 million request?

RESPONSE:

We believe that the President's request for additional prosecution resources matches the need for additional AUSAs and support staff.

Should funding be set aside for additional defense attorneys to handle these cases?

RESPONSE:

The Administrative Office for the United States Courts (AOUSC) is responsible for both the Federal Defender Program and for the Criminal Justice Act panel. The AOUSC received additional funds in FY 2008 for border generated cases.

9. **In a February 2007 report, the Inspector General found that only 2 of the 26 sets of important statistics on domestic counter-terrorism efforts compiled by the Department of Justice and the FBI from 2001 to 2005 were accurate. The most significant inaccuracies were compiled by EOUSA, who reportedly inflated the number of terrorism cases by counting hundreds of cases that involved only minor crimes with no connection to terrorist activities.**

How has EOUSA addressed the issues cited in the IG report?

RESPONSE:

Following its review of terrorism statistics compiled by the Criminal Division, the FBI, and EOUSA, the Inspector General made five recommendations to all three components, as well as a sixth recommendation to EOUSA. Seven months later EOUSA had addressed and successfully resolved each of the recommendations addressed to it. On September 28, 2007, the OIG confirmed that it "considered the recommendations for the EOUSA to be closed."

The primary issue in the OIG report that EOUSA addressed was to redefine the code used to label an "anti-terrorism" case. The anti-terrorism codes were created to label those cases that were preventative in nature and were undertaken to protect critical infrastructures in the country. These cases focused on preventing and disrupting potential terrorist activity, which was and is the Department's top priority. Apart from these prevention efforts, separate codes were then and are now used to label cases that charge actual domestic and international terrorist activity. Similarly, there are separate codes used to label cases charging terrorist hoaxes as well as terrorist financing. Although the anti-terrorism codes were intended to distinguish cases brought

to prevent potential terrorism from those cases charging actual terrorist activity, the code definition was somewhat ambiguous and the OIG interpreted it to require that the defendant have identifiable links to terrorist activity. In response to OIG's recommendation, EOUSA has re-defined and re-named the various anti-terrorism codes into a more descriptive code. The new code is the national security/critical infrastructure code, and it specifically states that "[d]efendants in cases coded under this program code may have, but are not required to have, identifiable links to terrorist activity." This new code is explicitly used to label those critical cases that are "brought to protect against vulnerabilities to, or restore the integrity of, public or non-public infrastructure that is critical to our national security." Thus, the code properly changes the focus from terrorism to protection of critical infrastructure that can be exploited by terrorists.

In addition to this important change, EOUSA also has mandated that each USAO conduct bi-annual reviews and certifications of all terrorism and national security-related case data. EOUSA has also required that the USAOs prioritize the entry of terrorism-related data into its case management system. Finally, EOUSA has undertaken to better track the terrorism-related data that it gathers and disseminates.

10. While requests for funding have been on the rise, the number of terrorism cases has been in decline. Terrorism prosecutions, which peaked at 818 in 2003, are now down to 505 in 2007.

How do you explain the decrease in terrorism prosecutions?

RESPONSE:

Given the nature of the national security programs in the U.S. Attorney's Offices, funds committed to these programs cannot meaningfully be correlated with cases filed. Each United States Attorney's Office leads an Anti-terrorism Advisory Council (ATAC) as its primary mechanism to ensure that prevention of terrorism remains its top priority. Many of the core functions of the ATACs relate to preventive and protective activities, including training, information-sharing, threat assessment, infrastructure protection, and critical incident preparedness. These functions are not directly case-related and therefore comparing program costs to terrorism cases filed results in an incomplete picture of the nature of work that is being conducted in the various USAOs.

As to a "decline" in cases filed, this should not be unexpected given the enormous "spike" in cases brought in the aftermath of the September 11 attacks. Many of the cases initially charged were quickly resolved, leaving longer-term, more complicated cases such as those involving enterprise investigations, terror financing, and overseas-based organizations. EOUSA case statistics reveal that from FY 1995, through FY 2001 (ending Sept. 30, 2001), approximately 30 terrorism/national security cases were filed in each fiscal year. During FY 2002, 1,046 of these cases were filed. Since that period, cases filed have ranged between 570 in FY 2003, and 340 in FY 2007. Again, as programs and initiatives have been implemented, the focus has turned to longer-term and more complicated investigations which will naturally result

in a decreased number of cases charged. That is not a reflection of the quality or effectiveness of the USAOs' programs.

11. According to a study by TRAC at Syracuse University, in the nearly 6,500 cases treated by the Justice Department as "terrorism" investigations between September 2001 and September 2006, only about one in five defendants were convicted.

How do you explain the Department's lack of success in terrorism prosecutions?

RESPONSE:

We note that TRAC takes data from EOUSA's case management system and re-sorts and re-configures it in ways that are not transparent to EOUSA or the public at large. As a result, there is no way to confirm the accuracy of TRAC's published data. Absent any way to examine the process by which TRAC converts EOUSA's data, we do not consider it to be reliable data. Relevant empirical data is contained in "The United States Attorneys' Statistical Report." Annual reports from 1998 to 2008 are posted online at http://www.usdoj.gov/usao/reading_room/foiamanuals.html.

Comparison of the gross number of investigations opened over a five-year period, to the number of convictions, is an apples-to-oranges analysis and is one that ignores the reality of national security matters and cases. Many investigations are opened to facilitate obtaining information in international or multi-state inquiries, and others provide a basis to provide legal advice or assistance, such as subpoenas or even search warrants, in investigations that may not be expected to result in cases filed in the district in which the assistance is provided. Moreover, the more complex investigations are long-term which may require as many as 4-5 years before charges are filed. Such a case is the recent successful prosecution in the Northern District of Ohio, in the Amawi case, in which the investigation was opened in early 2002, and the indictment filed in February 2006. The trial began April 1, 2008, and guilty verdicts were returned for all three defendants on all counts on June 13, 2008.

A more telling indicator for conviction rate would compare cases terminated or concluded, with defendants convicted (by trial or guilty plea). Under this indicator, conviction rates in terrorism/national security cases were 85.5% in FY 2006, 88.6% in FY 2007, and 88.8% to date in FY 2008, according to the USAO case management system as managed by EOUSA. Even in the face of the complexity of terrorism/national security cases, these rates are comparable to the overall conviction rates for all federal criminal cases (respectively, 91.9%; 92.0%; and 91.5%).

In the final analysis, as Director Melson testified, "we should not measure success in the counterterrorism area simply by counting cases or convictions. The Department's mandate is not only to prosecute those who commit terrorist acts, but to disrupt and prevent terrorist acts. The latter activities do not necessarily result in charges or convictions."

12. **According to a study by TRAC at Syracuse University, many "international terrorism" cases involved lesser crimes like immigration violations or fraud, and the median sentence for those convicted was 20 to 28 days, with many receiving no jail time at all.**

How do you explain the fact that in general, the punishment for these cases has been relatively minor?

RESPONSE:

We note that TRAC takes data from EOUSA's case management system and re-sorts and re-configures it in ways that are not transparent to EOUSA or the public at large. As a result, we cannot confirm the accuracy of TRAC's published data, and we do not consider it to be reliable data. Relevant empirical data is contained in "The United States Attorneys' Statistical Report." Annual reports from 1998 to 2008 are posted online at http://www.usdoj.gov/usao/reading_room/foiamanuals.html.

Sentences in criminal cases are imposed by judges, not by prosecutors. Federal sentencing practice changed dramatically with United States v. Booker, 543 U.S. 220 (2005), in which the United States Sentencing Guidelines were held to be advisory, and not mandatory, for district judges imposing sentences. The Guidelines still, however, retain vitality in the federal sentencing system as a starting point or a benchmark for the determination of a reasonable sentence. Given the continuing role of the Guidelines, it is instructive to look at the Guidelines provisions for many of the statutes used to deter and prevent potential terrorist activity.

There is a very high threshold for the terrorism enhancement contained in Guidelines Section 3A1.4, under which federal prosecutors must show that a non-terrorism offense "involved, or was intended to promote, a federal crime of terrorism." It is difficult to establish the enhancement and, when it does not apply, the Guidelines provisions for the non-terrorism offenses are often very low, and directly reflect the at-times low prison sentences imposed. For instance, fraudulent acquisition of documents relating to naturalization, citizenship, or legal residence status carries a base offense level under the Guidelines of 8: even after a conviction at a trial, with no enhancements, the sentencing range is 0-6 months and permits a probationary sentence. A false statements charge has a base offense level of 6, also providing for a probationary sentence, unless a higher level of proof results in an obstruction of justice (base offense level 14), which calls for a 15-21 month range. Thus, the criminal statutes which are frequently used in the Department's disruption and prevention efforts tend carry low Guideline sentences.

Finally, judges make the final sentencing decisions, and there are cases such as United States v. Padilla, et al., in which the court did not follow the United States' recommendations, and sentenced the lead defendant to a 17-year sentence where a life sentence was possible. In contrast, in United States v. Abu Ali, 528 F.3d 210, 269 (4th Cir. 2008), the Court of Appeals vacated a thirty-year sentence of imprisonment for Ali and remanded the case for resentencing with the direction that a new sentencing proceeding "not lose sight of the immensity and scale of wanton harm that was and remains Abu Ali's plain and clear intention." Sentencings are

complicated determinations, and considering all factors, it is very difficult to draw conclusions from "average sentence" statistics.

13. Have all of the budget problems in the U.S. Attorney's Offices been solved by the recent appropriations increases?

RESPONSE:

We certainly appreciate the increased funding received in FY 2007 and FY 2008. With those funds we have been able to provide additional resources to various districts. These monies have allowed us to fill district vacancies and by the end of FY 2008, we anticipate having only 500 vacancies throughout the USA community.

14. The Office of the Inspector General is auditing the allocation of resources of the 94 U.S. Attorneys Offices. The audit is examining the allocation and utilization of federal prosecutors within USAOs, the accuracy and completeness f USAO utilization and casework data, and the type and number of cases being handled by the USAOs.

What prompted this IG audit?

RESPONSE:

The Department of Justice's Office of Inspector General periodically performs audits that are designed to evaluate the effectiveness of resource allocations within the various DOJ components. Such reviews are important work for the OIG to undertake and helps us do our job better. We are not aware of what prompted the OIG audit of EOUSA and USAO resource allocations; however, we do not believe there is any particular incident or event that prompted the audit.

RESPONSE TO POST-HEARING QUESTIONS FROM HEATHER E. WILLIAMS, ESQ., FIRST ASSISTANT, FEDERAL PUBLIC DEFENDER, DISTRICT OF ARIZONA, TUCSON, AZ

Written Response to Questions
from Chairwoman Linda Sanchez
for

Heather E. Williams

First Assistant
Federal Public Defender
District of Arizona - Tucson

4 August, 2008

Follow-up to Testimony before the
United States House of Representatives
Subcommittee of Commercial and Administrative Law

Oversight Hearing on
the "Executive Office for United States Attorneys"

held Wednesday, 25 June, 2008

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QUESTION 1.

You observe in your written testimony that under Operation Streamline, defense lawyers are given between "3 and 30 minutes" to meet and educate the Client and yourself; decide whether the Client is competent; determine whether there is a defense of citizenship or duress, lack of intent, a pretrial motion to suppress evidence or statements due to constitutional violations; learn personal information which might mitigate a sentence; consider the Client's options not just in the criminal case, but also any immigration consequences or relief available, such as asylum; and advise the Client whether to plead guilty or go to trial.

Do you believe that you can adequately and ethically execute your duties to your clients in 3 to 30 minutes?

Response to Question 1

The criminal defense lawyer representing Operation Streamline defendants who has 3 to 30 minutes to meet with each Client, I believe, is challenged in being adequate and ethical counsel. As with many issues, this depends upon the lawyer's abilities, the Client's personal history and experience, the facts of the case, and whether the time together is closer to 3 minutes or to 30 minutes.

In answering this question, I have looked to both case law and Arizona's attorney Ethics Rules, which are similar to the American Bar Association (ABA) Model Rules of Professional Conduct used as a basis for many states' own ethics rules.

UNITED STATES CONSTITUTION, 6th Amendment

The 6th Amendment to the United States Constitution promises that a person accused of committing a crime will "have the assistance of counsel for his defence." Our Supreme Court has interpreted that "assistance" as needing to be effective,[1] "adequate" by your question and Ethics Rules.[2] Counsel is ineffective when (1) counsel's performance is deficient (as opposed to strategic), (2) counsel's performance falls below the objective standard of reasonableness examined "as of the time of counsel's conduct," and (3) the deficient performance is prejudicial, that is, there was a reasonable probability that, but for counsel's unprofessional errors, the result would have been different.

Lawyer's Role

Every lawyer plays several roles when representing a Client.

> As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.[3]

Competence

To satisfy these roles, each lawyer must be competent, employing the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[4] This includes "adequate preparation" which implies adequate **time** to prepare.[5] Will 3 minutes per Client do this? Will 30 minutes?

Diligence

Each lawyer must also be reasonably diligent, "despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with

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[1] *Strickland v. Washington*, 466 U.S. 668 (1984).

[2] 17A A.R.S. Supreme Court Rules, Rule 42: Arizona Rules of Professional Conduct, Ethics Rule (hereafter AZ ER) 1.1 COMPETENCE, *Comment* ¶ 5.

[3] AZ ER PREAMBLE, *A Lawyer's Responsibilities* ¶ 2.

[4] AZ ER 1.1 COMPETENCE.

[5] AZ ER 1.1 COMPETENCE, *Comment* ¶ 5.

commitment and dedication to the interests of the client."[6] This demands the lawyer control her work load "so that each matter can be handled competently."[7]

Communication

During the given 3 to 30 minutes, each lawyer with each Client must:

> "(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent . . .; and
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; . . ."[8]

That lawyer also must "explain (the) matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation," including telling the Client about any plea offer.[9] Sufficient time is needed to allow the lawyer to convey and the Client to absorb "sufficient information" to make a knowing, voluntary and intelligent decision.[10] This will be challenged when the Client has little formal education or suffers from a mental illness or disability, and when the lawyer has insufficient time to recognize these.[11]

Client with Diminished Capacity

The Client with diminished capacity who may not be competent presents a special dilemma. In Operation Streamline, many defendants who plead "guilty" will likely receive time served or rather short sentences of imprisonment. If issues of competency rise, unless the government dismisses the charges, the statutory requirement kicks in: sending the defendant to a Bureau of Prisons (BOP) medical facility for 4 months or more to see if competency can be restored.[12] The defense lawyer then must decide:

1. Whether to disclose the Client's possible incompetency (damning the Client to much more time in custody than if he pled and possibly violating the lawyer's

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[6] AZ ER 1.3 DILIGENCE and *Comment* ¶ 1.

[7] AZ ER 1.3 DILIGENCE, *Comment* ¶ 2.

[8] AZ ER 1.4(a) COMMUNICATION.

[9] AZ ER 1.4(b) and (c) COMMUNICATION.

[10] AZ ER 1.4 COMMUNICATION, *Comment* ¶ 1 and 5.

[11] AZ ER 1.4 COMMUNICATION, *Comment* ¶ 6 and ER 1.14(a) CLIENT WITH DIMINISHED CAPACITY.

[12] 18 U.S.C. § 4241(d).

obligation of confidentiality)?[13] and

2. Whether not disclosing the Client's incompetency violates the lawyer's obligation of "candor to the tribunal"?[14]

High Case Loads

Finally, accepting a high number of court-appointed cases may violate ethical obligations and be presumptive ineffective assistance of counsel. The Ethics Rules require lawyers to decline representations and not accept appointment when the representation will likely "result in violation of the Rules of Professional Conduct or other law."[15] The Arizona Supreme Court found there is presumptive ineffective assistance of counsel when a criminal defense lawyer handles more than 150 felony cases or 300 misdemeanor or 25 appeals a year.[16] The ABA also recently raised concerns of ineffectiveness based upon high case loads.[17]

Therefore, I do believe that, given the number of Operation Streamline cases to be handled each day, given the 3 to 30 minutes which can be devoted to each Client, and given each Client's unique facts, I am and would be continually challenged in providing adequate and ethical representation to Operation Streamline defendants.

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[13] AZ ER 2.1 ADVISOR (during Client presentation, the "lawyer shall render candid advice . . . refer[ring] not only to law but to other considerations such as moral, economic, social and political factors . . . relevant to the client's situation.") and ER 1.14 CLIENT WITH DIMINISHED CAPACITY, *Comment* ¶ 8 ("Disclos(ing) the client's diminished capacity could adversely affect the client's interest. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by ER 1.6 [CONFIDENTIALITY]. Therefore, unless authorized to do so the lawyer may not disclose such information. The lawyer may disclose information otherwise protected by ER 1.6 to the extent such disclosure may be required by law."

[14] AZ ER 3.3(a)(1) CANDOR TOWARD THE TRIBUNAL. "A lawyer shall not knowingly make a false statement of fact . . . to a tribunal . . .."

[15] AZ ER 1.16 (a)(1) DECLINING OR TERMINATING REPRESENTATION and *Comment* ¶ 1 and 2, and ER 6.2. ACCEPTING APPOINTMENTS.

[16] *Arizona v. Joe U. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984).

[17] ABA Opinion 06-441.

QUESTION 2.

Anecdotal accounts from U.S. Attorney's offices along the Southwest border indicate that these offices are having a difficult time recruiting and retaining qualified Assistant U.S. Attorneys because they are primarily working on misdemeanor border-crossing prosecutions.

Are there similar concerns for Federal Defender offices?

Response to Question 2

There are similar hiring and retention concerns for the Federal Public Defender offices serving courts along the Southwest border.

Regarding hiring, many Defender offices along the border require their staff to be Spanish speakers. These Spanish speakers must have sufficient language skills to communicate complex legal ideas simply and to understand subtle Client communications as they apply to each particular Client's legal situation. Finding capable, experienced lawyers dedicated to indigent criminal defense who are adequately fluent in Spanish becomes an increasing challenge.

In Tucson, which has a greater population than most other border court cities, we have usually had a larger pool of applicants to draw from, both locally and nationally, due to our community's size. The smaller border court cities - Laredo, Del Rio, and Yuma - have significantly smaller pools of uniquely qualified lawyers locally and tend not to attract those lawyers from around the country.[18]

Lawyer retention is always a concern and border Defender offices address this by changing case loads to mix felonies and misdemeanors. Additionally, there is an inherent distinction between a prosecutor handling 50 misdemeanor Operation Streamline cases, not distinguishing one from another, and a defense lawyer handling 50 misdemeanor Operation Streamline cases and the interest in getting to know (as much as possible) each Client and his or her individual history. With the prosecutor, the frustration would be the numbing similarity of each case. For the defense lawyer, the frustration is the inability to do much to help each Client and his desperate situation, especially given the limited time.

[18] *See* Amended Written Testimony of Heather E. Williams, Appendix 1-1.

POST-HEARING QUESTIONS SUBMITTED TO RICHARD L. DELONIS, ESQ., PRESIDENT, NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS, LAKE RIDGE, VA

Questions for Richard Delonis from Chairwoman Linda Sánchez

1. Have all of the budget problems in the U.S. Attorney's Offices been solved by the recent appropriations increases?

*Note: The Subcommittee on Commercial and Administrative Law did not receive a response to these questions from the witness prior to the printing of this hearing.

RESPONSE TO POST-HEARING QUESTIONS FROM JONATHAN TURLEY, ESQ.,
THE GEORGE WASHINGTON LAW SCHOOL, WASHINGTON, DC

RESPONSES TO SUPPLEMENTAL QUESTIONS
JONATHAN TURLEY
SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

HEARING ON THE EXECUTIVE OFFICE
FOR UNITED STATES ATTORNEYS

JUNE 25, 2008

SUBCOMMITTEE ON THE COMMERCIAL
AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
THE UNITED STATES HOUSE OF REPRESENTATIVES

1. While requests for funding have been on the rise, the number of terrorism cases have
been in decline. Terrorism prosecutions, which peaked at 818 in 2003, are reportedly
now down to 505 in 2007. Why do you think the number of terrorism prosecutions has decreased?

There remains a troubling disconnect between the level of funding and the actual number of terrorism investigations and prosecutions. The budget for these investigations continues to expand without any cognizable relationship to the threat or the actual prosecutions. The danger of such a self-perpetuating budget was the subject of my earlier testimony. The fear of appearing "soft on terror" gives this budget a type of immunity from the normal fiscal scrutiny given to other appropriations. The fact is that, despite efforts to inflate these numbers, there is no evidence of a widespread or acute threat of domestic terrorism in this country. While there remains some terrorist threats domestically that must be aggressively pursued, there is no objective basis to sustain this type of massive funding.

The drop in the number cases is particularly telling given the demonstrated willingness of the Counter-Terrorism Section and other offices to litigate the weakest of cases and to convert conventional criminal cases into terrorism cases. Indeed, in the absence of real cases, the Counter-Terrorism cases often turns on prior defendants to generate new charges and cases like the current effort directed at my client Dr. Sami Al-Arian. Even with an entire system dedicated to finding and prosecuting cases, there is simply an insufficient number of real domestic terrorism cases to occupy this large number of investigators and prosecutors. What is needed is a mature and detached review of the level of funding and personnel dedicated to these cases.

2. According to a study by TRAC at Syracuse University, in the nearly 6,500 cases treated
by the Justice Department as "terrorism" investigations between September 2001 and
September 2006, only about one in five defendants were convicted. How do you explain the government's lack of success in terrorism prosecutions?

Part of the problem has been exaggerated claims and litigation abuses during the Bush Administration. The prior Administration was routinely criticized for exaggerating both charges and arguments in federal court. I discussed some of those cases in my prior testimony.

The Bush Administration may have assembled the worst record in prosecuting terrorism cases in history. This was due to a certain hostility to the federal courts that was evident in its circumvention of federal courts for detainees and its refusal to allow even judges to review some evidence in federal cases. Finally, many of these cases were simply weak. This massive counter-terrorism bureaucracy feeds on prosecutions. Considerable pressure was brought on local offices to maximize the number of terrorism prosecutions to justify the budget and resources committed to these offices. The result is that marginal or dubious cases were litigated and often over-charged. This is the byproduct of the "body count culture" that has permeated the counter-terrorism cases in the last eight years.

I would be happy to answer any further questions that any of the members may have on my testimony or the performance record of federal prosecutions of terrorism cases.

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