DEPARTMENT OF JUSTICE WITH ATTORNEY GENERAL ERIC HOLDER

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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MAY 14, 2009

DEPARTMENT OF JUSTICE WITH ATTORNEY GENERAL ERIC HOLDER

THURSDAY, MAY 14, 2009

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

The Committee met, pursuant to notice, at 10:15 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Cohen, Johnson, Pierluisi, Quigley, Sherman, Weiner, Schiff, Sánchez, Wasserman Schultz, Maffei, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Forbes, Franks, King, Gohmert, Jordan, Poe, Chaffetz, Rooney, and Harper.

Staff Present: Robert Reed, Majority Oversight Counsel; Crystal Jezierski, Minority Oversight Counsel; and Renata Strause, Majority Staff Assistant.

Mr. CONYERS. The Committee will come to order.

Good morning. We welcome everyone to today's oversight hearing on the Department of Justice with the Honorable Attorney General Eric Holder, whose career and relationship to the House Judiciary is well-known. A distinguished public service career; Columbia University; Justice of Department's Public Integrity Section; Judge of the Superior Court; U.S. Attorney for the District of Columbia and Deputy Attorney General in 1997; Covington & Burling for a number of years; and confirmed as the Attorney General of the United States in February of this year.

Most of us know the Attorney General. We welcome him and we agreed that would permit him to make his opening statement and additional comments, and then we will return to the regular order with Mr. Smith and myself making opening comments at that time.

Welcome again to this hearing room, Attorney General Holder. You know most of the people, except for Quigley and three freshman Republicans who have never done this before. And so we are happy to have you with us.

TESTIMONY OF THE HONORABLE ERIC HOLDER, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HOLDER. Well, I am glad to be here. Good morning, Mr. Chairman, Ranking Member Smith, and Members of the Committee. Thank you for the opportunity to appear before you today

to highlight the work and the priorities of the United States Department of Justice.

Mr. SCOTT. Pull the mike closer.

Mr. HOLDER. I would also like to thank you for your ongoing support of the Department. I look forward to working with the Committee and appreciate your recognition of the Department's mission and the important work that I think that we do. As you know, the Department is responsible for ensuring public safety against threats both foreign and domestic, ensuring fair and impartial administration of justice for all Americans, assisting our State and local partners, and defending the interest of the United States according to the law.

As I testified during my confirmation hearings earlier this year, we will pursue a very specific set of goals. And already over the first 100-plus days of my tenure as Attorney General we have begun working to strengthen the activities of Federal Government that protect the American people from terrorism, and will do all that we can within the letter and the spirit of the Constitution to continue to do so.

We have been working to restore the credibility of the Department that was badly shaken by allegations of improper political interference. We have been reinvigorating the traditional missions of the Department. I feel strongly that without ever relaxing our guard in the fight against global terrorism, it is imperative that the Department also embrace its historic role in fighting crime, protecting civil rights, preserving the environment and ensuring fairness in the marketplace.

Before answering your questions, I would like to ask you to allow me to briefly talk about several of our current initiatives. I provided more detail on each of them in my written statement that I have submitted.

With regard to national security, this is the highest priority of the Department, and that is to protect the American people against acts of terrorism. The Department has improved significantly its ability to identify, to penetrate, and to dismantle terrorist plots as a result of a series of structural reforms, the development of new intelligence and law enforcement tools, and a new mind-set that values information sharing, communication, and prevention. Working with our Federal, State, and local partners as well as our international counterparts, the Department is working tirelessly to safeguard America.

With regard to Mexican cartels in the southwest border, the Department has undertaken significant work to confront the threat posed by the Mexican cartels and to ensure the security of our southwest border. We are increasing our focus on the investigations and prosecution of southbound smuggling of guns and cash that fuel the violence and corruption in Mexico, as well as attacking the cartels in Mexico itself in partnership with the Mexican authorities.

We are also policing the border to interdict and to deter the illegal crossing of undocumented persons or contraband goods and confronting the large and sophisticated criminal organizations operating simultaneously on both sides of the border.

With regard to Guantanamo, the Department is leading the work set out by President Obama to close the detention facility at the Guantanamo Bay Naval Base and to ensure that policies going forward for detention, for interrogation, and transfer of detainees live up to our Nation's values. Paramount is our commitment to doing everything possible, again, to keep the American people safe.

With regard to financial and mortgage fraud, as we work to reinvigorate the Department's traditional law enforcement mission, we have focused significantly on financial crimes. The successful prosecution of Bernard Madoff is one tangible example of the progress we are making in this area, and the investigation of that particular matter continues.

Moreover, the Administration has announced a new coordinated effort across Federal and State governments and the private sector to target mortgage loan modification fraud and foreclosure rescue scams, which aligns responses from Federal law enforcement agencies, State investigators and prosecutors, civil enforcement authorities, as well as the private sector.

I appreciate the Committee's work with us on legislation to enhance the Department's criminal and civil tools and resources to combat mortgage fraud, securities and commodities fraud, money laundering, and to protect taxpayer money that has been expended on recent economic stimulus and rescue packages.

Additionally I am committed to ensuring that homeowners who may have difficulty making mortgage payments do not experience discrimination and can benefit in equal measure from legitimate loan modification programs and other Federal programs designed to provide mortgage assistance and to stabilize home prices. We will use the full range of our enforcement authority to investigate and to prosecute this type of lending discrimination.

With regard to civil rights, the Department continues to be fully committed to defending the civil rights of every American. And we are rededicating ourselves to implementing the range of Federal laws at our disposal to protect rights in the workplace, the housing market, and also in the voting booth.

One important element of strengthening civil rights is to ensure fairness in the administration of our criminal laws. The Justice Department firmly believes that our criminal and sentencing laws must be tough, they must be predictable, they must be fair, and they must be free from unwarranted racial and ethnic disparities.

The Justice Department has recently begun a comprehensive review of Federal sentencing policy. I have asked the Deputy Attorney General to convene and chair a Department-wide sentencing and corrections policy working group that will examine, among other issues, Federal cocaine sentencing policy. Based on that review, we will determine what sentencing reforms are appropriate, including making recommendations to Congress on changes to crack and powder cocaine sentencing policy.

Another civil rights issue that is a priority for us is the enactment of an effective hate crimes legislation bill. I thank you, Mr. Chairman for your leadership in this area.

Finally, with regard to the American Recovery and Reinvestment Act of 2009, that included $4 billion in Department of Justice grant funding that will be distributed by the Justice Department's three

major grant-making offices: the Office of Justice Programs; the Office of Violence Against Women; and the Community-Oriented Policing Services Office, also known as COPS. This funding is being used to enhance State, local, and tribal law enforcement efforts, including the hiring of new police officers to combat violence against women and to fight Internet crimes against children. In addition, it will help reinvigorate the Department's traditional law enforcement mission, a key element of which is partnership with State, local and tribal law enforcement agencies and is vital to keeping our communities strong.

As Governors, mayors and local law enforcement professionals struggle during the current economic crisis, we will remain steadfast in our commitment to fighting crime and keeping communities safe.

Chairman Conyers, Ranking Member Smith, and Members of the Committee, I want to thank you again for this opportunity to address the Department of Justice's priorities. I will be pleased to answer any questions that you might have. Thank you.

[The prepared statement of Mr. Holder follows:]

PREPARED STATEMENT OF THE HONORABLE ERIC H. HOLDER, JR.,
ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Department of Justice

STATEMENT

OF

ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

ENTITLED

"OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE"

PRESENTED

MAY 14, 2009

STATEMENT OF ERIC H. HOLDER JR.
ATTORNEY GENERAL OF THE UNITED STATES
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

MAY 14, 2009

Good morning Chairman Conyers, Ranking Member Smith, and Members of the Committee. Thank you for the opportunity to appear before you today to highlight the work and priorities of the U.S. Department of Justice. I would also like to thank you for your support of the Department. I look forward to your continued support and appreciate your recognition of the Department's mission and the important work that we do.

The Department is responsible for ensuring public safety against threats both foreign and domestic; ensuring fair and impartial administration of justice for all Americans; assisting our state and local partners; and defending the interests of the United States according to the law.

As I testified during my confirmation hearings earlier this year, we will pursue a very specific set of goals:

First, we will work to strengthen the activities of the federal government that protect the American people from terrorism, and will do so within the letter and spirit of the Constitution. Let me be clear: we need not sacrifice our core values in order to ensure our security. Adherence to the rule of law strengthens security by depriving terrorist organizations of their prime recruiting tools. America must be a beacon to the world. We will lead by strength, we will lead by wisdom, and we will lead by example.

Second, we will work to restore the credibility of a Department badly shaken by allegations of improper political interference. Law enforcement decisions and personnel actions must be untainted by partisanship. Under my stewardship, the Department of Justice will serve the cause of justice, not the fleeting interests of politics.

Third, we will work to reinvigorate the traditional missions of the Department. Without ever relaxing our guard in the fight against global terrorism, the Department must also embrace its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the market place.

In addressing these priorities over the next several years, I look to the continued support of this Committee and the Congress, as a whole, to ensure a systematic approach is implemented to target each one of the priorities outlined.

National Security: Counter-Terrorism Efforts Since 9/11

The highest priority of the Department is to protect America against acts of terrorism. The Department has improved significantly its ability to identify, penetrate, and dismantle terrorist plots as a result of a series of structural reforms, the development of new intelligence and law enforcement tools, and a new mindset that values information sharing, communication and prevention.

I am committed to continuing to build our capacity to deter, detect and disrupt terrorist plots and to identify terrorist cells that would seek to do us harm. And I am committed to doing so consistent with the rule of law and American values. We will continue to develop intelligence, identify new and emerging threats and use the full range of tools and capabilities the Department possesses in its intelligence and law enforcement components.

The threats that confront us know no boundaries. So while our focus is on protecting the security of Americans here at home, now more than ever, there is a critical link between our national security and the creation of sustainable justice sector institutions in emerging, failing, or failed states and in post conflict environments. Our counter-terrorism efforts are aided by fostering international justice sector cooperation, maximizing U.S. influence regarding the development of foreign legal policies and procedures, and establishing direct ties and personal relationships so that our and our counterparts' law enforcement agencies may use them whenever necessary.

Working with our federal, state, and local partners, as well as international counterparts, the Department has, and will continue to, work tirelessly to safeguard America.

Over the past several years, the FBI has transformed its operations to better detect and dismantle terrorist enterprises – part of the FBI's larger emphasis on threat-driven intelligence. As part of this strategic shift, the FBI has overhauled its counterterrorism operations, expanded intelligence capabilities, modernized business practices and technology, and improved coordination with its partners. From the Joint Terrorism Task Forces, where agents work side by side with their state and local counterparts to make sure no terrorism threat goes unaddressed, to growing a professional analytic cadre to identify emerging threats, I am committed to ensuring that the FBI continues to build its capabilities as a national security organization.

The Department's National Security Division ensures that the prosecutorial and the intelligence elements within Main Justice are centrally managed. Since January 20, the National Security Division has marked several key achievements in prosecuting terrorism and terror-related cases, including:

- In the first use of U.S. criminal courts to prosecute an individual for terror offenses against Americans in Iraq, Wesam al-Delaema pleaded guilty to planting roadside bombs targeting Americans in Fallujah, Iraq.

- Four defendants pleaded guilty in connection with their efforts to acquire surface-to-air missiles and other weapons for the Liberation Tigers of Tamil Eelam, a terrorist organization in Sri Lanka.
- An associate of international arms dealer Monzer al-Kassar was found guilty of terror violations in connection with his efforts to sell surface-to-air missiles and other weapons to terrorists in Colombia.
- An Ohio man and al-Qaeda member was sentenced to 20 years in prison for conspiring to bomb targets in Europe and the United States.

Implementing the President's Executive Orders to Close Guantanamo

Consistent with our commitment to national security as the Department's number one priority, the Justice Department is leading the work set out by the President to close Guantanamo and to ensure that policies going forward for detention, interrogation and transfer live up to our nation's values.

On January 22nd, President Obama issued three Executive Orders and a Presidential Memorandum that gave significant responsibility to the Department. The Department is leading an interagency effort to conduct the hard work of implementing these important Presidential initiatives. We have been called upon to:

- Review and effect the appropriate disposition of individuals currently detained at the Guantanamo Bay Naval Base;
- Develop policies for the detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations;
- Study and evaluate current interrogation practices and techniques and, if warranted, recommend additional or different guidance; and,
- Review the detention of Ali Saleh Kahlah al-Marri.

The Department is implementing these Orders; and with the indictment and guilty plea of Mr. al-Marri last month, we have brought about a just resolution of that case.

With regard to the President's Executive Orders, I have appointed an Executive Director to lead the Task Force on Review of Guantanamo Bay Detainees. I have also named two officials to lead the Task Force Reviews on Interrogation and Detention Policies.

The Guantanamo Detainee Task Force is responsible for assembling and examining relevant information and making recommendations regarding the proper disposition of each individual currently detained at Guantanamo Bay. The Task Force is considering whether it is possible to transfer or release detained individuals consistent with the national security and foreign policy interests of the United States; evaluating whether the government should seek to prosecute detained individuals for crimes they may have committed; and, if none of these options

is possible, the Task Force will recommend other lawful means for disposition of the detained individuals.

The Special Task Force on Interrogation and Transfer Policies is charged with conducting a review to determine whether the Army Field Manual interrogation guidelines, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence to protect the nation, and whether different or additional interrogation guidance is necessary. This task force is also responsible for examining the transfer of individuals to other nations to ensure that such practices comply with all domestic and international legal obligations and are sufficient to ensure that such individuals do not face torture or inhumane treatment.

The Special Task Force on Detention Policy is charged with conducting a review of the lawful options available to the federal government for the apprehension, detention, trial, transfer, release or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.

These Presidential Orders require me to coordinate or co-chair each of these interagency activities. These task forces also involve other Departments and agencies, including the Secretaries of Defense, State, Homeland Security, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Chairman of the Joint Chiefs of Staff and other officials.

While implementing these Orders, the Department will take necessary precautions to ensure decisions regarding Guantanamo detainees account for safety concerns of all Americans. Our paramount concern is the safety and security of the American people. The Guantanamo Review Task Force is making individualized determinations about the disposition of each detainee. Those decisions are dictated by what is in the interest of national security, the foreign policy interests of the United States and the interests of justice.

With respect to the review of the detention of Ali Saleh Kahlah al-Marri, I am pleased to report to you that on April 30, al-Marri pleaded guilty to conspiracy to provide material support to the al-Qaeda terrorist network. By entering into that agreement, al-Marri admitted that he worked for and provided material support to al-Qaeda with the intent to further its terrorism objectives and activities here in the United States. The resolution of this matter in the criminal justice system is a result of the dedicated work of career prosecutors and investigators at the Justice Department and in other agencies. As a result, the Department has shown that our criminal justice system can and will hold terrorists accountable for their actions, protecting the American people in a manner consistent with our values and prosecuting alleged terrorists to the full extent of the law.

The Mexican Cartels and Southwest Border Security

The Department has undertaken significant work recently to confront the threat posed by the Mexican cartels and to ensure the security of our southwest border. The Department's strategy for confronting the threat posed by the Mexican cartels is being coordinated by Deputy Attorney General David Ogden. This strategy uses federal prosecutor-led task forces that bring

together federal, state and local law enforcement agencies to identify, disrupt and dismantle the Mexican drug cartels through investigation, prosecution, and extradition of their key leaders and facilitators, and seizure and forfeiture of their assets. The Department is increasing its focus on investigations and prosecutions of the southbound smuggling of guns and cash that fuel the violence and corruption, as well as attacking the cartels in Mexico itself, in partnership with the Mexican Attorney General's Office and the Secretariat of Public Security. As part of that effort, I have convened a working group within the Justice Department that is working closely with their Mexican counterparts to improve coordination among law enforcement on illegal firearms trafficking investigations, including looking at our Integrated Ballistic Identification Systems (IBIS) to make sure that we can share useful leads in criminal investigations.

Confronting the Mexican cartels, in partnership with the Mexican government, is a paramount concern for the United States and the Department. Illegal immigration and border security likewise continue to be paramount concerns. The southwest border in particular is a vulnerable area for illegal immigration, drug trafficking, and the smuggling of illegal firearms. Implementing a comprehensive strategy for confronting the cartels and security at the border involves collaboration and coordination at various levels of the government.

Addressing southwest border security has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large and sophisticated criminal organizations operating simultaneously on both sides of the border. To that end, the Justice Department is targeting the Mexican cartels as it did La Cosa Nostra or any other large organized crime organization. These efforts – which rely upon the combined efforts of the Justice Department law enforcement components (DEA, FBI, ATF, U.S. Marshals Service (USMS), the U.S. Attorneys, the Criminal Division and the Organized Crime Drug Enforcement Task Force (OCDETF)) together with the Department of Homeland Security and other federal agencies – have already achieved important results.

In February, I announced the arrest of more than 750 individuals on narcotics-related charges and the seizure of more than 23 tons of narcotics under Operation Xcellerator, a multi-agency, multi-national effort that targeted the Mexican drug trafficking organization known as the Sinaloa Cartel. The Sinaloa Cartel is also believed to be responsible for laundering millions of dollars in criminal proceeds from illegal drug trafficking activities. This Cartel is responsible for bringing tons of cocaine into the United States through an extensive network of distribution cells in the United States and Canada. Through Operation Xcellerator, federal law enforcement agencies—along with law enforcement officials from the governments of Mexico and Canada and state and local authorities in the United States—delivered a significant blow to the Sinaloa Cartel. In addition to the arrests, authorities seized over $59 million in U.S. Currency, more than 12,000 kilograms of cocaine, more than 1,200 pounds of methamphetamine, approximately 1.3 million Ecstasy pills, and other illegal drugs. Also significant was the seizure of 169 weapons, 3 aircraft, and 3 maritime vessels.

But there is much more to do as we combat the threat presented by these criminal cartels. In March, the Department announced increased efforts to be used in the fight against Mexican Drug Cartels. The Administration will invest $700 million this year to enhance Mexican law enforcement and judicial capacity, and the Department and the Department of Homeland

Security (DHS) are working closely in support of the Department of State on efforts against the cartels in Mexico through the Merida Initiative. The Department, through the efforts of the FBI, DEA, ATF, USMS, OCDETF, and the Criminal Division, will also work to investigate and prosecute cartel members for their illegal activities in the United States and coordinate with law enforcement colleagues to disrupt the illegal flow of weapons and bulk cash to Mexico.

Over the last eight months, the USMS has deployed an additional 94 Deputy U.S. Marshals to district offices and will be sending four additional deputies to assist the Mexico City Field Office in order to step-up efforts along the Southwest Border. In addition, within the last three months, four new Criminal Investigators have been placed in the asset forfeiture field units along the Southwest Border. These new positions will support U.S. Attorneys' Offices and investigative agencies in the investigation of cartels and other large-scale investigations.

The Department's efforts to target the Mexican cartels will allow it to commit 100 ATF personnel to the U.S. Southwest border to supplement our ongoing Project Gunrunner. DEA will add 16 new positions on the border, as well as four newly reconstituted Mobile Enforcement Teams, and the FBI is creating a new intelligence group that will focus on gang/drug criminal enterprises, public corruption, kidnapping, extortion and other investigative matters related to the Southwest Border. DHS is making similar commitments regarding southwest border resources. In addition, I have had a series of meetings with Secretary Napolitano to discuss increased coordination on various matters between the Department of Justice and DHS.

Last month, I, along with other U.S. government officials, attended the Mexico/United States Arms Trafficking Conference in Cuernavaca, Mexico. This was my first foreign trip as Attorney General. My attendance at this conference reflects my commitment to continuing this fight against the drug cartels. The United States shares the responsibility to find solutions to this problem and we will join our Mexican counterparts in every step of this fight.

Federal and State Partnerships Targeting Financial and Mortgage Fraud

As it has reinvigorated its traditional law enforcement mission, the Department has placed a distinct focus on financial crimes.

As many Americans face a devastating economy and an unstable housing market, the Administration announced a new effort coordinated across federal and state governments and the private sector to target mortgage loan modification fraud and foreclosure rescue scams. These fraudulent activities threaten American homeowners and can prevent them from getting the help they need during these challenging times. The new effort aligns responses from federal law enforcement agencies, state investigators and prosecutors, civil enforcement authorities, and the private sector to protect homeowners seeking assistance under the Administration's Making Home Affordable Program from criminals with predatory schemes.

The Department, in partnership with the U.S. Department of the Treasury, the Department of Housing and Urban Development (HUD), the Federal Trade Commission (FTC) and the Attorney General of Illinois, will coordinate information and resources across agencies to maximize targeting and efficiency in fraud investigations, alert financial institutions to emerging

schemes, and step up enforcement actions. As part of this multi-agency effort, the Department has outlined ways to crack down on mortgage fraud schemes. The FBI is investigating more than 2,300 mortgage fraud cases, nearly triple in the last three years. The Bureau has more than doubled the number of agents investigating mortgage scams, created a National Mortgage Fraud Team at Headquarters, and is working hand-in-hand with other partnering agencies.

I appreciate the Committee's work with us on S. 386, the "Fraud Enforcement and Recovery Act", to enhance the Department's criminal and civil tools and resources to combat mortgage fraud, securities and commodities fraud, money laundering, and to protect taxpayer money that has been expended on recent economic stimulus and rescue packages. The legislation would reverse unfortunate court decisions that have hindered the ability to prosecute money laundering by allowing the Department to obtain all the proceeds of unlawful activity. With the tools that the bill provides, the Department of Justice and others would be better equipped to address the challenges that face this Nation in difficult economic times and to do their part to help the Nation respond to this challenge. Further, the bill would amend the False Claims Act in several important respects to ensure that that legislation remains a potent and useful weapon against the misuse of taxpayer funds.

In addition to focusing on fraudulent scams, I am committed to ensuring that homeowners who may be having difficulty making their mortgage payments do not experience discrimination and can benefit in equal measure from legitimate loan modification programs and other federal programs to provide mortgage assistance and stabilize home prices. Lending discrimination prevents its victims from enjoying the benefits of access to credit, including reasonable mortgage payments, so they can stay in their homes and provide much needed stability for their neighborhoods.

Discrimination in lending on the basis of race, national origin, or other prohibited factors is destructive, morally repugnant, and against the law. We will use the full range of our enforcement authority to investigate and prosecute this type of unacceptable lending discrimination.

The Department has been investigating and prosecuting financial crimes aggressively and has had tremendous success in identifying, investigating, and prosecuting massive financial fraud schemes, including securities and commodities market manipulation and Ponzi schemes. The Department has sought to ensure that significant sentences are meted out for the perpetrators. For example:

- On March 12, Bernard L. Madoff pleaded guilty to 11 felony counts related to a massive Ponzi scheme. The Justice Department alleged that Madoff perpetrated a scheme to defraud the clients by soliciting billions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Madoff's own benefit and the benefit of others without the knowledge or authorization of the investors. Madoff faces a statutory maximum sentence of 150 years' incarceration. He is also subject to mandatory restitution and faces fines up to twice the gross gain or loss derived from

the offenses. The Criminal Information also includes forfeiture allegations which would require Madoff to forfeit the proceeds of the charged crimes, as well as all property involved in the money laundering offenses and all property traceable to such property.

- On March 27, 2009, the Department secured 30-year and 25-year sentences, respectively, for two executives of National Century Financial Enterprises (NCFE) following their convictions on conspiracy, fraud and money-laundering charges related to a scheme to deceive investors about the financial health of the company, which may have cost investors as much as $2 billion.

- The Department secured a four-year sentence for Christian M. Milton, a former vice president of American International Group (AIG), for his role in a scheme to manipulate the company's financial statements.

Reform

The Department is committed to an open, transparent, and accountable government. These values are central to our revitalization of the basic traditions of the Department, and are key features of our reform efforts. We issued new comprehensive Freedom of Information Act (FOIA) Guidelines that direct all executive branch departments and agencies to apply a presumption of openness when administering the FOIA. The new Guidelines, announced in a memo to heads of executive departments, build on principles of openness and rescind the guidelines issued by the previous administration.

In applying a presumption of openness and disclosure, the new Guidelines stress that agencies should not withhold records simply because they may do so legally; rather, agencies should consider whether any real harm may result from their disclosure. Furthermore, the Guidelines established a new standard for when the Department of Justice will defend an agency that denies a FOIA request. Under the new standard, the Department will defend the agency "only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law." The new Guidelines also emphasize that open government is everyone's responsibility. Agencies must work cooperatively with FOIA requesters and should reply in a timely manner.

In addition to issuing these new FOIA Guidelines, the Department released several previously undisclosed Office of Legal Counsel (OLC) memoranda and opinions. On April 16, for example, the Department released to the public four previously undisclosed OLC opinions from 2002 and 2005 that addressed the use of various interrogation techniques. When releasing these opinions, I explained that the "President has halted the use of the interrogation techniques described in these opinions, and this administration has made clear from day one that it will not condone torture. We are disclosing these memos consistent with our commitment to the rule of law." After reviewing these opinions, moreover, the Office of Legal Counsel withdrew them: they no longer represent the views of the Department. The release of these memos and opinions

followed the release of seven other previously undisclosed opinions and two previously undisclosed OLC memoranda.

Civil Rights

The Department is fully committed to defending the civil rights of every American. In the last eight years, vital federal laws designed to protect rights in the workplace, the housing market and the voting booth have languished. Moreover, improper political hiring undermined this important mission. This is now changing, and I have made this a priority as Attorney General. One important element of strengthening civil rights is to ensure fairness in the administration of the criminal laws.

The Justice Department firmly believes that our criminal and sentencing laws must be tough, predictable, fair, and free from unwarranted racial and ethnic disparities. Public trust and confidence are essential elements of an effective criminal justice system – our laws and their enforcement must not only be fair, but they must also be perceived as fair. The perception of unfairness undermines governmental authority in the criminal justice process. This Administration is committed to reviewing criminal justice issues to ensure that our law enforcement officers and prosecutors have the tools they need to combat crime and ensure public safety, while simultaneously working to root out any unwarranted and unintended disparities in the criminal justice process that may exist. The Justice Department has recently begun a comprehensive review of federal sentencing policy. I have asked the Deputy Attorney General to convene and chair a Department-wide Sentencing and Corrections Policy Working Group that will examine, among other issues, federal cocaine sentencing policy. Based on that review, we will determine what sentencing reforms are appropriate, including making recommendations to Congress on changes to crack and powder cocaine sentencing policy.

Another civil rights issue that is a clear priority for the Department is enactment of effective hate crimes legislation. Hate crimes victimize not only individuals, but entire communities. Such bias-motivated violence simply cannot be tolerated, and we need the tools to address the worst cases at the federal level. Thank you, Mr. Chairman, for your leadership in this area.

Recovery Act

The American Recovery and Reinvestment Act of 2009 included $4 billion in Department of Justice grant funding to enhance state, local, and tribal law enforcement efforts, including the hiring of new police officers, to combat violence against women, and to fight internet crimes against children. This funding will not only help jumpstart our economy and create or save millions of jobs, but it will also help reinvigorate the Department of Justice's traditional law enforcement mission, a key element of which is its partnerships with state, local, and tribal law enforcement agencies. I am personally committed to rebuilding the Department's traditional partnership with our law enforcement partners through both operational synergies and Federal assistance funding. This funding is vital to keeping our communities strong. As governors, mayors, and local law enforcement professionals struggle with the current economic

crisis, we cannot afford to decrease our commitment to fighting crime and keeping communities safe.

The Recovery Act provides $4 billion in grant funding that will be distributed by the Justice Department's three major grant-making offices: The Office of Justice Programs (OJP), The Office on Violence Against Women (OVW), and the Community Oriented Policing Services (COPS). The Recovery Act's grant funding is primarily apportioned among these offices as follows:

- OJP is overseeing the distribution of nearly $2.76 billion worth of grant money through the Bureau of Justice Assistance (BJA), the Office of Victims of Crimes (OVC) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Nearly $2 billion dollars of this funding is available through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, which allows state, local, and tribal governments to support a broad range of activities to prevent and control crime and improve the criminal justice system.

- OVW is responsible for granting $225 million to fund programs through its Services Training Officers Prosecutors (STOP) Formula Grant Program, its Transitional Housing Assistance, grants to Tribal governments, and to State and Tribal Sexual Assault and Domestic Violence Coalitions.

- The COPS office, through its COPS Hiring Recovery Program (CHRP) will be distributing $1 billion for large and small police departments and tribal law enforcement agencies to hire and rehire officers. The COPS CHRP program is estimated to create 5,500 positions in law enforcement around the country.

The program announcements soliciting applications under these Recovery Act grant programs have all been posted on the Department's Recovery Act website and the Grants.gov Fund Grant Opportunities webpage. Some deadlines have passed, and all applications for those programs are now being reviewed. To date, DOJ has awarded more than $800 million in grants. State awards have been made under the Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program and the VOCA State Crime Victim Compensation Program, as well as 20 grants under the State Byrne/JAG. Formula grants to states, localities, and tribal governments under the Byrne/JAG Program are being processed and will be awarded on a rolling basis. Competitive grant applications for other programs, including COPS, are being considered by staff and dozens of panels of peer reviewers. Nearly all of the grant funds should be awarded by the end of July 2009, and I understand that the COPS awards will be disbursed in September, 2009.

The Department also has worked to ensure that grants are being awarded within a framework of accountability and transparency and that the risk of waste, fraud, error, or abuse is mitigated. Representatives from the Department's granting components, including OJP, OVW,

and COPS, have attended specific grant fraud prevention and detection training. In addition, the granting components have created new Recovery Act webpages that will allow the public to readily access Recovery Act information. These Recovery Act webpages include detailed information on each of the grant programs and links to applications, FAQs, and other relevant materials. In this way, the Department hopes to ease the application process for Recovery Act grants, so that this important funding can be distributed promptly and efficiently.

Conclusion

Chairman Conyers, Ranking Member Smith, and Members of the Committee, I want to thank you for this opportunity to address my priorities for the Department. I am pleased to answer any questions you might have.

Mr. CONYERS. Thank you very much, Attorney General Holder. We welcome your first appearance to the Committee today.

We are very sensitive to the fact that this Administration and the Department have hit the ground running. These first 110 days

or so have not been short of activity and setting a new direction, and it has been exciting and breathtaking to watch.

I wanted to raise a number of questions for you: the Department's use of state secrets privilege; the detention policy for detainees, both at Guantanamo and around the world; your Department's position with respect to possible prosecution of government officials who may have authorized the use of torture, and whether it might be appropriate to appoint a special counsel, as more than a dozen of the Committee Members of Judiciary have suggested; the release of additional, still secret Office of Legal Counsel memos relating to the so-called war on terror and the pending Office of Professional Responsibility investigation of those who wrote such memos; the Department's position in the Black farmers case, the Pigford matter; the decision to reverse course and oppose release of the detainee abuse photos, even after the Department told the Federal court that they would be released; and the proposal contained in a bipartisan measure I have introduced to create an independent blue ribbon commission to investigate and tell the American people about the real reason we entered into a war on terror.

And so those are all the questions I have.

Mr. HOLDER. Where would you like me to start, Mr. Chairman?

Mr. CONYERS. Well, you could start from the end and work back to the front if you would like.

Wait a minute, let's hear from Mr. Smith. He has a much longer list than I do. Lamar Smith.

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

The President made a campaign promise to close the Guantanamo Bay terrorist detention facility before he had been briefed by our national security agencies. But keeping his campaign pledge could, in fact, endanger American lives.

Before the Administration transfers detainees to the United States, the American people need to know why al Qaeda financial specialists, organization specialists, bomb makers and recruiters are being sent to our shores. They will certainly give new purpose To Neighborhood watch organizations.

Under this Administration's approach, some terrorists will end up in American jails, but their detention facility could become a target for attack by terrorist sleeper cells here and around the world.

The United States already gives such detainees more rights than any other country. If moved to the U.S., these terrorists could be granted even more constitutional rights. Supreme Court precedents indicate Federal courts can bestow constitutional rights upon people simply because they are on U.S. soil. Those rights could mean information obtained or heard after a terrorist has been captured is inadmissible as evidence. If terrorist attorneys forum shop for friendly Federal judges, they could be released into American communities and become a threat to our families and neighbors. And if detainees are transferred to other countries, there is no guarantee they will continue to be incarcerated. They could be released, returned to the battle field and kill Americans or our allies.

According to Pentagon sources, at least 15 percent of released detainees have returned to fight our troops, and no doubt many more

have gone undetected. Media reports indicate that 17 Uyghurs are in the process of being released to the United States. They are all associated with terrorist organizations. They admitted they were trained by known terrorists who were part of a group that threatened to kill civilians at the Olympic Games in China last year. All of this is occurring when there is nothing wrong with the GITMO facility. Following the Attorney General's trip to Guantanamo Bay, he admitted "the facilities are good ones."

Before a single detainee is transferred or released anywhere, all unclassified files regarding their backgrounds should be made public. However, it appears the Administration is sharing more information about the detainees with foreign governments than it is with the American people. Anxious Americans shouldn't have to hope for a postcard from France to get information about terrorists. The Administration has replaced the phrase "enemy combatants" with "detainees"; "war on terror" with "overseeing contingency operations" and the term "terrorism" with "man caused disasters." But these attempts to downplay dangerous threats to America don't change the fact that al Qaeda and others still want to kill Americans. Worrying about image more than substance trivializes the very real risk to American lives.

I am concerned that in his first few months in office, this Administration has engaged in a pattern of behavior that is endangering the American people. First, the President announced the closing of Guantanamo Bay without any plan for the terrorists detained there, and has admitted that he cannot guarantee that those detainees who are released will not seek to attack our country again.

Second, the Administration has made public sensitive information regarding top secret interrogation techniques, giving our enemies a road map to neutralizing these techniques in the future.

Third, the Administration has expressed support for repealing the REAL ID Act, one of the central recommendations of the bipartisan 9/11 Commission. Repeal of REAL ID will once again allow terrorists, including those in the country illegally, to obtain U.S. drivers licenses and acquire the appearance of legitimacy.

Fourth, the Administration has continued to ignore Federal law and tolerate State and local so-called "sanctuary" policies protecting illegal immigrants, including illegal immigrant criminals from deportation. Time and again we have seen Americans killed and injured by illegal immigrants who were protected from deportation by the sanctuary policies.

Fifth, the Justice Department recently has come out in favor of equalizing the penalties for powder and crack cocaine, an intensely addictive drug. We shouldn't forget that it was the escalating violence in the inner cities across the country that resulted in the stiff crack penalty. Administration officials need to take responsibility for their actions. If they don't, the American people should hold them accountable.

Mr. Chairman, with these concerns in mind, I welcome the Attorney General again and look forward to our hearing and to his testimony.

Mr. CONYERS. Thank you, Lamar Smith.

We have several votes, it will probably take an hour. So we will stand in recess and we will resume as soon as the votes are concluded.

Mr. HOLDER. Thank you.

Mr. CONYERS. Thank you, Attorney General Holder.

[Recess.]

Mr. CONYERS. The Committee will come to order. Thank you for your patience, Attorney General Holder.

Returning to my list of questions, we appreciated receiving the letter recently from the Office of Professional Responsibility investigation on the Department of Justice lawyers who wrote the Office of Legal Counsel memos on waterboarding and other troubling interrogation tactics.

When do you expect the OPR report to be complete on this matter?

Mr. HOLDER. I am not sure. I think we are at the end of the process. This has all been reported in the press. I don't think I would want to go into this much detail. But the lawyers had an opportunity to respond to the report. Those responses have been received. I understand that OPR is in the process of—I have not actually seen the report as of yet, but I would think that we are looking at a matter of weeks before it will be complete.

Mr. CONYERS. And we will hope that you will continue your relationship with this Committee, to arrange for the OPR director to testify before us—and possibly along with other former OLC attorneys—after the report is complete.

Now, it has been said by yourself that you look at the OPR report of course, the facts and the law, to decide whether to appoint a special counsel on possible misconduct concerning torture, as more than a dozen Members of the Judiciary Committee have suggested. We know that you will make a careful judgment on this issue.

Is there anything you can tell us about how you will make this judgment and the factors that you would consider, including whether that will include our international treaty obligations relating to prosecuting torture?

Mr. HOLDER. As the President has said and I have said repeatedly with regard to investigating this matter, that for those agents who relied on, and in good faith relied on the statements in the bounds of those OLC memorandum, those are not matters that we think we would be looking into. Beyond that, as I have said, we would allow the law and the facts to take us wherever that was appropriate. So as things are developed, those are the—as matters develop, facts become more evident. Those are the kinds of things that would obviously flow into that determination.

Mr. CONYERS. I and others have proposed the creation of an independent blue ribbon commission with subpoena power, more or less modeled after the 9/11 Commission, to investigate and report on the interrogation and other policies previously undertaken in the name of the war on terror. The New York Times, Washington Post, Senator Leahy, and many others have endorsed this idea.

Can we solicit your concurrence this afternoon?

Mr. HOLDER. I have a hard enough time trying to help run the Justice Department. With regard to what Congress is going to do

with regard to investigating things, I will leave that to you all to decide.

Mr. CONYERS. Yes. But that is why you are here today for us, to coordinate more effectively our relationship. You could just say yes.

Mr. HOLDER. Well, if there were a proceeding, something that was put in place, obviously we would coordinate and cooperate. As I said, the selection or decision to do such a thing I will leave in your good hands.

Mr. CONYERS. Okay. Now, could you let us in on the reasoning involved in your recent decision to reverse course and oppose the release of detainee abuse photos, even after your Department has promised the Court they would be released?

Mr. HOLDER. Well, I think the President consulted with the generals on the ground and made the determination that the release of those photos would endanger our troops. The concern was that the release of those photos could have a negative impact on the situation both in Iraq and in Afghanistan. And I think the President, as Commander in Chief, after talking to General Odierno in particular, thought that the posture that he has now put us in was the better one.

We will have to argue that in court and we are prepared to do that. But I think the President has made a decision that is consistent with the best interests of our troops.

Mr. CONYERS. All right. Thank you so much. Lamar Smith is our Ranking Member and we would invite him for any questions.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Attorney General, you recently said that the Administration would not bring terrorists into our country and release them. Do you consider individuals who were trained at terrorist training camps to be terrorists?

Mr. HOLDER. Well, I think you have to make individualized determinations about a particular person. That is what we are doing with regard to the 241 who are at Guantanamo now.

Mr. SMITH. If someone were trained at a terrorist training camp by a terrorist, say, in the use of weapons against civilians, would they be a terrorist?

Mr. HOLDER. It gets closer to the definition of a person I would agree would be a terrorist. Again, you have to look at the totality of who the person is, what kind of training the person received, whether in making these determinations, where that person was intent on using their terrorist training, what country perhaps.

Mr. SMITH. If the Treasury Department and the United Nations designated an organization to be a terrorist organization, would you consider members of that organization to be terrorists?

Mr. HOLDER. Again, it would depend on the connection that that person had to the organization. If that person is a leader——

Mr. SMITH. So someone could be trained as a terrorist, trained in all the capabilities of a terrorist, and yet the Administration might not consider them to be a terrorist?

Mr. HOLDER. I am not saying that. What I am saying is that I would want to look at specifics. You are throwing hypotheticals at me, and I am not sure I can respond to that as well as if I had in front of me a file, like we are putting together on the Guantanamo detainees, and I could look at a file on somebody and tell you if that person was in fact——

Mr. SMITH. Their membership in a terrorist organization, therefore, is not enough to satisfy the Administration that they are terrorists?

Mr. HOLDER. I would certainly think that would be an indication, a marker, that that person is likely to be considered a terrorist.

Mr. SMITH. But that alone would not be enough if they were just members of a terrorist organization?

Mr. HOLDER. One of the great Justices of the Supreme Court was a member of the Ku Klux Klan at one point. So mere organization doesn't always necessarily take you to a conclusion. I think we have to be thoughtful. We have to be careful. We have to be complete in the examinations that we do, to make sure that we are going to label somebody as a terrorist, and then treat them accordingly.

Mr. SMITH. Right. Maybe we just have to disagree. I think someone who has been trained at a terrorist training camp by terrorists, has been trained in the use of weapons against innocent civilians, I consider to be a terrorist even if they haven't committed a terrorist act yet. But apparently that wouldn't necessarily satisfy the Administration?

Mr. HOLDER. Given all the facts that you now have laid out as opposed to going through each one separately, I would say we agree. I would agree with what you have just said.

Mr. SMITH. Okay. Good. Because I thought I had asked that just a minute ago. But I am glad you agree.

What if the FBI and the Homeland Security had expressed concerns about the release of individuals at Guantanamo Bay; would that be persuasive to the Administration not to release those individuals?

Mr. HOLDER. That would certainly be factors that we would take into account. But understand that in making determinations about the release, transfer of the people at Guantanamo, the thing that is going to guide this Administration more than anything is the safety of the American people. We are not going to do anything, anything that would put the American people at risk. Nothing.

Mr. SMITH. Although the President has said that he can't guarantee that the people who might be released might not kill Americans.

Mr. HOLDER. Well, we will go through those files, and the determinations that we make will be based on what we see in the files and the predictions that we can make about their future behavior.

Mr. SMITH. Let me go back to the previous question, because I was glad to hear you say that those individuals who had been trained at terrorist training camps by terrorists, perhaps in the use of weapons against innocent civilians, would be terrorists; because that is exactly what I understand the Uyghurs—would apply to the Uyghurs and that is how they have been trained. And yet the Administration is considering releasing the Uyghurs.

Is that the case or is that contradictory?

Mr. HOLDER. The determination has been made by a court of the United States of America that the Uyghurs have to be released. That is not a question for this Administration to decide. The courts of the United States have looked at that and made that determination. The Uyghurs—the Bush administration approved the release

of the Uyghurs, I guess, back in 2003. So, again, this is not this Administration making the determination.

Mr. SMITH. But if any of those individuals fit the definition of terrorist that you just agreed to, I presume that the Administration would object to their being released.

Mr. HOLDER. Well, in terms of release, we don't have a choice. They have to be released, unless you would ask us to defy an order from the United States court.

Mr. SMITH. Well, either that, or you can provide additional information on their background or training that might persuade a court not to release them.

Just one more question, if I may, Mr. Attorney General. Recently you were——

Mr. HOLDER. The Bush administration approved the release of both of these folks back in 2003. Again, it is not this Administration. It is the courts, the prior Administration, that has made a determination that the Uyghurs have to be released. It is not this Administration.

Mr. SMITH. Again, I won't repeat it. But I liked your definition of a terrorist that you and I just agreed to, because I think that might be applicable.

You traveled in Europe a week before last, I believe, and asked countries to release—or to take individuals who are now incarcerated in Guantanamo Bay. I assume that you provided those governments with information about those detainees.

Don't you think that the American people deserve to have that same information about those detainees that you provided to foreign countries?

Mr. HOLDER. My trip was not—as you say, I went and spoke to our allies and talked about the need for a unified approach to closing Guantanamo. We did not have any specific conversations about numbers of people they would take, specific detainees. The conversation was very general in nature.

Mr. SMITH. I would take your word for it. But that does contradict what the heads of state said you asked them for.

Mr. HOLDER. Not heads of state. There was a report that I read about somebody who said that I asked Germany to take 10 people or something like that. That conversation never happened.

Mr. SMITH. Did not occur?

Mr. HOLDER. Did not occur.

Mr. SMITH. Okay. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you. Chairman of the Constitution Committee, Jerry Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Attorney General, in January of last year, John Durham, a career Justice Department prosecutor, was appointed by then-Attorney General Mukasey to investigate the destruction of videotapes of CIA interrogations. At that time we asked that the underlying conduct whether U.S. interrogations of detainees complied with or violated the law—also be investigated. That request was denied by Attorney General Mukasey.

As you know, we recently renewed our request with your predecessor, more recently with you, for appointment of a special counsel to investigate who is responsible for the torture of detainees and

to hold accountable those who may have violated the law. We continue to believe that appointing a special counsel is not only mandated by the law because the law says that where torture occurred under U.S. jurisdiction, which is undeniable, there must be an investigation and, if warranted, prosecutions, if warranted. And where there is a possible conflict of interest, there should be a special counsel. And all those conditions seem to be met.

We continue to believe that appointing a special counsel removes any claim that political considerations inappropriately influence prosecutorial decisions and may be the only way to remove this as a major distraction.

My first question is: What is the status of Mr. Durham's investigation, and when can we expect the report on that to be completed? And will the conclusions be shared with us?

Mr. HOLDER. I am a little reluctant to talk about—I know that Mr. Durham is still at work. He is still investigating. He spoke to the Deputy Attorney General I believe a couple of weeks or so ago, and we had an update on his work. And he is still proceeding with his investigation.

Mr. NADLER. But you have no estimate as to when we might have some sort of conclusion?

Mr. HOLDER. I don't at this point. He laid out for us certainly what he is going to be doing over the next 2 to 3 months or so. But I don't have a sense—I can't say with any degree of certainty when he is going to be finished.

Mr. NADLER. Let me ask you this. Given that Mr. Durham has a team of lawyers and investigators who already have been cleared to review classified and sensitive information and are deep into this issue, would you think it might be a good idea to expand his jurisdiction to include investigation of actual interrogation policy and practice and ensure that his status is that of a special counsel, subject to the guidelines in your regulations?

Mr. HOLDER. I think that the decision first has to be whether or not that is appropriate. And as I have indicated, no one is above the law. We will look at the facts, we will look at evidence, and make the determination that is appropriate given the information that we have in the Justice Department in making that ultimate determination.

Mr. NADLER. Okay. In a recent press conference, President Obama agreed that the state secrets privilege should be modified and that, quote, right now it is overbroad, closed quote.

You have directed your Department to determine when it is legally appropriate to assert privilege. Could we agree that unless the case involves the actual parties to a secret espionage agreement, like a spy suing the U.S. for failure to pay for services or something like that—which was an actual case a number of decades ago—that that aside, it is never appropriate to raise the privilege to foreclose litigation altogether from the outset, based on a claim that the entire subject matter is a secret, and instead that the privilege should be asserted as an evidentiary privilege on an item-by-item basis?

Mr. HOLDER. What I have asked to be done, and it is almost complete, is for a review to be done of those cases where we have invoked the privilege, to find out what was the basis for it; could we

have done it in a more surgical way so that the case did not need to be dismissed, and perhaps could have used it in the way you have described as an evidentiary one.

In addition to that, we are working on a proposal about how we think we might modify the way in which the privilege is used by the executive branch. And once those two things are put together, it would be my hope to share that with this Committee to try to work on a solution to——

Mr. NADLER. You realize that there is legislation pending before this Committee, which I am sure you have looked at.

Mr. HOLDER. I understand that. So I would hope that in connection with that legislation, the other legislation, the other side, that we could consider our proposal as well.

Mr. NADLER. Thank you. In your testimony, you noted the recent conviction of Mr. al-Marri, and I applaud the Administration for bringing him to justice in our courts. As a result, however, the Administration also avoided Supreme Court review of a critical question, as the Bush administration did in a similar situation in the Padilla case.

The question is: Does the President have the authority, as the Bush administration claimed he did, to detain individuals indefinitely without charge? Now, I have two questions. Do you believe that the President has this power?

Mr. HOLDER. To detain people indefinitely?

Mr. NADLER. Indefinitely, without charge. The Bush administration called it "enemy combatants." Nobody calls it that anymore. But the claim of right was made that the President, under exigencies of Article 2 powers or A(1)(f) powers, has the right to detain people even in the United States—American citizens or otherwise—indefinitely, without charge, if he thinks they are what he called an "enemy combatant."

Mr. HOLDER. We have a fundamentally different view than the Bush administration did about the Article 2 powers that the President has. There are certain powers that, I guess, the Commander in Chief has with regard to detaining people under the laws of war. But the notion that a President, in an unfetterred way, not tied to some law, has that ability is not something we agree with.

Mr. NADLER. So you would agree that anyone held ultimately has to come to some sort of trial or proceeding of a judicial nature?

Mr. HOLDER. Well, as I said, with the laws of war, it has been traditional that people are held for the length or the duration of the conflict.

Mr. NADLER. It has been traditional that people are captured on a battlefield under arms—are labeled prisoners of war and are captured. But picking up somebody in Peoria, Illinois, and saying we have secret intelligence that he is an agent of al Qaeda, would you agree that any such person must have judicial recourse?

Mr. HOLDER. That is what we are trying to do with regard to the people of Guantanamo; to determine which of those people can be released, who can be tried. It is not the position of this Administration that we want to hold people for indefinite periods of time.

Mr. NADLER. I am asking a more specific question. I understand the benevolent intent of this Administration. I do not mean that sarcastically. I am asking whether you think the President or the

executive branch has the authority to hold someone indefinitely without judicial recourse.

Mr. HOLDER. And I thought I answered it. Without being tied to some statute, to some international agreement, some custom in the way in which this Nation has always conducted itself, I do not believe the President has that power. It has to be tied to something.

Mr. NADLER. Thank you.

Mr. CONYERS. The patient, distinguished Chairman Emeritus of the Committee, Jim Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. After hearing that, I was tempted to take the gentleman's words down, but I won't.

Mr. Attorney General, thank you very much for coming, and welcome here. As you know, I was the Chairman of the Committee after 9/11 and spearheaded the effort to tear down the wall that separated intelligence and law enforcement, and updated our laws so that intelligence officials had the same tools to combat terrorism as law enforcement has had for a number of years to combat drug dealers and child pornographers.

The USA PATRIOT Act was passed with wide bipartisan support. And over 3 years ago, I again spearheaded the effort to reauthorize the PATRIOT Act, a law which the FBI Director and other intelligence professionals have all testified has helped save lives and to protect our homeland.

I am a cosponsor of the legislation introduced by Ranking Member Smith to extend the three expiring provisions of the law crucial to our intelligence professionals.

I know you have been the Attorney General for only a very short period of time, but long enough to set departmental policies. The clock is ticking on this legislative session of Congress, and those expiring provisions will disappear on December 31st unless affirmatively extended before that time.

When will you submit to Congress the Administration's proposal for the reauthorization of the PATRIOT Act?

Mr. HOLDER. We want to look at those three provisions. They are, I think, important provisions that can be used, I think, effectively in the fight against terrorism. I want to see how they have been used, have a better sense of what the field experience has been with those provisions before we make a determination.

I expect that we will support the reauthorization, but I really would like to just have some more empirical information about the way in which they have been used and their effectiveness. And it is possible there may be changes that we would suggest and would work with the Committee about with regard to those three provisions.

Mr. SENSENBRENNER. The concern I have is one of those three provisions is the so-called lone-wolf terrorist provision, and that was passed specifically to plug the hole in the conspiracy laws which have been effective in dealing not only with terrorist conspiracy, but conspiracies that violate other laws and the civil liberties of American citizens. And if there is a gap in that, that means that one individual might be able to slip through the net and not be indicted before actually committing a crime and placing maybe thousands of people at risk.

Can you give me a commitment of a deadline on when the Administration will submit its recommendations relative to the three expiring provisions?

Mr. HOLDER. Yeah. We will certainly express our views with sufficient time to allow for debate, conversation, the potential for modifying them well before they expire, I guess at the end of December.

Mr. SENSENBRENNER. Well, I point out that, according to the schedule that the Majority party has released, that we are supposed to adjourn this session of Congress, sine die by the end of October. And that gives us effectively four session months to have a bill introduced, go through the hearings, have both houses pass the legislation—if it needs to be conferenced, have that happen—and to send it off to the President for his consideration. That is not a lot of time, particularly given the very ambitious schedule that the Democratic leadership has announced for July. And, in fact, we have to deal with appropriations.

I would really strongly urge you to step on the accelerator on this, because I just don't want to see us leave town and leave the American public to end up wanting in terms of the importance of, I believe, all three of these measures, but particularly the lone-wolf terrorist provision.

Mr. HOLDER. I am confident that we can do this in such a way that we will meet all the deadlines, even given the limited amount of time you indicated. These are obviously very important provisions that need to be considered in a very serious way. And I think we need to take the appropriate action. I don't want to take anything, any tools away from the very capable men and women who defend this Nation. With that in mind, we will be forwarding our views to Congress, as I said, as quickly as we can.

Mr. SENSENBRENNER. Thank you, General.

Mr. CONYERS. Thank you. The Chairman of the Crime Subcommittee, Bobby Scott of Virginia.

Mr. SCOTT. Thank you. And thank you, Mr. Attorney General, for joining us today. In 1963 there was a march on Washington, one result of which was a policy that there be no discrimination in Federal contracts, and that was followed pursuant to President Johnson's 1965 executive order for decades.

Now, do you support the ability of those hiring people with Federal money to deny jobs to people solely based on religion? And, if so, what would you tell a devoutly religious businessman why he can't discriminate with his own money?

Mr. HOLDER. Why he can't discriminate?

Mr. SCOTT. A devoutly religious businessman cannot discriminate in hiring with his own money. He cannot discriminate with his own money under Federal law. How can we therefore have a policy allowing people with Federal money hiring people and denying opportunities solely based on religion?

Do you support the idea that we should allow discrimination to take place in Federal contracts?

Mr. HOLDER. I think that we want to have Federal contracting done on a basis of ability, need, and without respect to religion, race, gender, sexual orientation. That is the kind of America I think this Administration wants to have.

Mr. SCOTT. Thank you. Mandatory minimums have been studied in sentencing, and they have been found often to violate common sense, generally a waste of taxpayers' money. In dealing with the 100 to 1 crack/powder disparity, there is a consensus that something has to be done.

Will your recommendations on the crack/powder/cocaine disparity consider eliminating mandatory minimums altogether in those cases and allow sentences to make sense in each case; especially since the mandatory minimums are now based on the total weight of the whole conspiracy creating the girlfriend problem, where if a girlfriend takes a message or drives a car, technically involved in the conspiracy, her sentence is based on the weight of the entire conspiracy, resulting in girlfriend getting sentenced to 10, 20, 30 years or more.

Will you consider eliminating the mandatory minimums in the crack/powder recommendations?

Mr. HOLDER. I have asked the Deputy Attorney General to head up a task force that is looking at Federal sentencing laws to come up with a way in which we make them more equitable, we make them more effective. The head of our Criminal Division, Lanny Breuer, testified on behalf of the Administration in the Justice Department of my strong belief, and the President's, that we need to do away with the disparity that exists between crack and powder sentencing.

And so I think that we want to take all of that together, especially see what David Ogden, who is the Deputy Attorney General, comes up with with regards to his look at sentencing, the task force, and see how useful are mandatory minimums—are there places where they need to be dialed back? That is all for us on the table.

Mr. SCOTT. Thank you. In terms of financial crimes, ID theft, organized retail theft, and of course the mortgage fraud and other financial fraud, we had testimony that FBI agents only had 250 agents with accounts backgrounds assigned to these cases. The savings and loan crisis, where it was just about one-third the size of this problem, they had about 1,000. Do you have sufficient money to investigate and prosecute financial crimes? And if not, will you let us know what your needs are?

Mr. HOLDER. One of the things that I told the President was that the Department that I come back to is different from the one that I left. There is a national security component to the Department of Justice that is much larger than existed when I left. And I think that is totally justified. We don't want to do anything to harm that effort.

But I also think that what I call the traditional parts of the Department, and among them the part that you described, this notion of looking at financial crimes has not gotten the attention and the resources that are necessary. In the 2010 budget we have greater amounts of money to allow us to hire more agents and more prosecutors in that field with regard to financial crimes.

Mr. SCOTT. And, finally, under torture, we have heard in the public discourse that it worked. We were scared. We were following orders which, frankly, might have been illegal. We know, from after World War II, that we tried and prosecuted as capital offenses Jap-

anese soldiers that tortured American soldiers, and we prosecuted them as capital offenses. If detainees were tortured to death, is it possible that no one committed a crime?

Mr. HOLDER. If somebody were tortured to death, clearly a crime would have occurred.

Mr. CONYERS. Thank you. The Chair recognizes Howard Coble, senior Member of the Judiciary Committee, North Carolina.

Mr. COBLE. Thank you, Mr. Chairman. Mr. Attorney General, good to have you with us.

Mr. Attorney General, as recently reported, President Obama's intelligence chief confirmed that some Guantanamo inmates may be released on U.S. soil and receive assistance to return to society. And I am quoting now: "If we are to release them in the United States, we need some sort of assistance for them to start a new life," said National Intelligence Director Dennis Blair at his first press conference.

General, would the Administration allow and/or encourage the use of taxpayer money to be used to provide welfare or social assistance to detainees released from Guantanamo?

Mr. HOLDER. No final decision has been made with regard to what is going to happen to those 241 people who are in Guantanamo, those who would be eligible for release or transferred. No final decision has been made as to where they would go, how they would be treated. So that is not an issue that we have yet confronted. We are still in the process of trying to make the determination about who is going to be prosecuted, who is eligible for transfer or release. That is the focus of our attention at this point.

Mr. COBLE. I don't want to be portrayed as an inflexible redneck kook, but I believe this would be reckless fiscal exercise to provide assistance to that end.

Let me shift, Mr. Attorney General, to the domestic side. I want to continue what Mr. Scott said regarding the retail crime, and it is indeed a problem as you know. I am told that the FBI has participated in several successful prosecutions of several organized retail crime rings in North Carolina. And this, as you know, is strongly supported by our retail community.

And to continue your response to Mr. Scott, do you all have the wherewithal—that is, the operation and the financial—to make this a front-burner issue?

Mr. HOLDER. I think what we have in the 2010 budget is a down payment on restoring—to the extent that I think it needs to be restored—the capability of the FBI in that regard. I think that we are capable. I think we can be more capable. And I think with the resources that we are getting next year, I think in the out budget year, that we will be at a place where I think we will have the capacity, and I think we need to deal with those issues.

And we are also in the process of working through a proposal that we will be sharing with the country about what we want to do, I think really generally, with regard to financial crimes.

Mr. COBLE. The loss that retail merchants are incurring, as you know, is substantial.

Let me shift back to terrorism. Recent press reports indicate that the Administration is currently considering releasing Shakir Amir. Now, according to one report—and I am quoting again—British au-

thorities are demanding the release of this guy. He is a bin Laden confident that trained aspiring terrorists at al Qaeda camps, met with the shoe bomber, Richard Reid, and traveled widely in the United States, meeting with embedded terrorists and sharing an apartment with Zacarias Moussaoui who was convicted in 2006, if you recall, for his complicity in the 9/11 plot.

Do you know if these assertions are accurate that I have just quoted, Mr. Attorney General?

Mr. HOLDER. Congressman, I will be honest with you, I am not familiar with that name and that case. I am not in a position to answer that question.

Mr. COBLE. If you will, put that name in the front of your head for future reference, because I don't see how this guy could not be classified as a terrorist.

Mr. HOLDER. I will certainly do that. But I would also emphasize that in this review of the people at Guantanamo, the guiding principle is the safety of the American people. And we are not going to release anybody, transfer anybody who would pose a danger to the American people. That is simply not going to happen. But I am not familiar with the name of that person.

Mr. COBLE. I thank you for being with us, Mr. Attorney General. Mr. Chairman, I want you to note that I am—Mr. Chairman, Mr. Chairman, I want you to note that I am beating the red light before it illuminates.

Mr. CONYERS. That has never happened before here, sir.

Mr. COBLE. I yield back.

Mr. CONYERS. Thank you. The Chair recognizes another Member from North Carolina, the distinguished gentleman Mel Watt, who serves on the Finance Committee as a Subcommittee Chairman as well as a senior Member of this Committee.

Mr. WATT. Welcome, Mr. Attorney General. I am a little reluctant to follow somebody who characterizes themselves as—what did Howard Coble call himself?

Mr. WEINER. He said he is not a redneck kook.

Mr. COBLE. Not an inflexible redneck kook.

Mr. WEINER. Just a regular redneck.

Mr. WATT. Just a regular redneck.

Mr. Attorney General, let me follow up on Representative Scott's question about this crack/powder disparity first, just long enough to find out when you anticipate that your task force will be completing its work and reporting to you, and when you will be able to report or make a public position known on that? That is an issue, of course, that has been hot and heavy, as you are well aware, in minority communities because of the substantial disparity between crack and powder sentencing. Can you give us a timetable?

Mr. HOLDER. I would think the task force will be something that will take months to do a complete job. But we have already indicated our desire to eliminate that disparity between crack and powder sentences. Lanny Breuer, as I said, testified about that at a hearing, I think last week, or perhaps the week before. There are other things that we look at, but this Administration has made the determination that it is our belief that we have to eliminate the disparity with the crack and powder sentencing.

Mr. WATT. The problem with that is once you make that public pronouncement and, then, at the same time, you say you have a task force looking at it, then it becomes an excuse for people not to do anything until the task force comes back and makes some affirmative recommendations.

Would you support following prior—at least in the interim—following prior Sentencing Commission recommendations regarding at least reducing if not completely eliminating the disparity?

Mr. HOLDER. I guess what I would want to do is make these changes in their totality. And the concern I would have about reducing as opposed to eliminating the disparity is that we might get stuck at——

Mr. WATT. I am in full accord with you, but that creates a pretty strong imperative to push the task force to move in a quick and timely fashion, because in the interim between now and then, people are still being sentenced under the guidelines that were in existence, and there is a substantial disparity that continues to exist.

That really wasn't my primary line of questioning.

Mr. HOLDER. I don't disagree with you. This is a priority for me. And we want to try to get this done as quickly as we can.

Mr. WATT. Let me go off on a subject that the Chair laid the foundation for because I do serve on Financial Services and on Judiciary, and last term of Congress actually chaired the Oversight Subcommittee on Financial Services and got a lot of public comment about who caused this meltdown and all this criminal activity that went on, and when are you going to have a set of hearings in the Oversight Subcommittee about how this occurred.

I think there is a strong belief that something aggressive needs to be done to investigate and prosecute people who were part and parcel of creating the financial meltdown, creating the credit crisis that we are in. And while the Madoff case is a big public case, it is a separate kind of thing than the meltdown itself, although it was characteristic of what was going on in other elements of the financial services industry.

I guess what I am more interested in is having some assessment of the number of cases that your Department is pursuing on an ongoing basis, because the last Administration basically devoted all of its resources to the terrorism front. We are not being critical of that. But virtually no resources were devoted to this, even though it was happening and playing itself out on their watch.

Could we commit you to just give us regular updates on the number of cases—I know you can't talk about the details of each case, but the kinds of cases that you are pursuing going forward?

Mr. HOLDER. That is fine. I think that is a perfectly legitimate oversight question. I know that, for instance, the FBI has under investigation now—and I might be transposing numbers—either 1,200 or 2,100 mortgage fraud cases. And that is the kind of information that we can share. And I will clear that up once I have had a chance to look at our materials, what that exact number is. With regard to the kinds of cases that we are looking at and the numbers of those cases, I would be more than glad to share that information with the Committee.

Mr. WATT. Mr. Chair, let me make one other entreat to make sure. When you say "mortgage fraud," a lot of the attention has

gone to the people who are the borrowers and their fraud in the process. That is a legitimate concern. But I want to make sure that your mortgage fraud universe includes the people that were fraudulently engaging in misconduct on the other side also.

Mr. HOLDER. The focus of the FBI efforts, when I talk about that 2,100 or 1,200, is really one of the lender; people who have done things in a fraudulent way with regard to lending money as opposed to those who might have done other things in trying to receive money.

Mr. WATT. Thank you, Mr. Chairman, for your indulgence. I yield back.

Mr. CONYERS. The Chair recognizes Bob Goodlatte of Virginia, a senior Member, former Chairman of the Agriculture Committee.

Mr. GOODLATTE. Thank you, Mr. Chairman. And welcome, Attorney General Holder.

I would like to ask you about the issue of the use of foreign court precedents in decisions in our Federal court system. A particular concern is with the Supreme Court. You may be aware that before he joined the Department of Justice, Deputy Attorney General Ogden represented the defendant in a landmark case of *Roper v. Simmons,* which ultimately held that the death penalty could not be used as punishment for criminals under the age of 18. In the brief filed by Ogden and others, he asserted that almost without exception the other nations of the world would have rejected capital punishment of those under 18.

As the top ranking law enforcement official of the United States charged with upholding and defending the Constitution and advising the President of the legality of his actions, do you agree with Ogden that the Supreme Court should rely on the opinions of other nations when interpreting the U.S. constitution? And will you rely on the opinions of foreign nations and foreign bureaucratic tribunals when advising the President on the meaning of constitutional provisions?

Mr. HOLDER. Well, I think—I don't remember what the number was in that case, but at least a couple, I believe, of the justices who not necessarily relied on but certainly referred to——

Mr. GOODLATTE. They cited it in their opinion. You are correct.

Mr. HOLDER. They referred to what the state of the law was in other countries. And it seems to me that taking into account what is going on in other countries is not necessarily a bad thing. I think we have to obviously rely——

Mr. GOODLATTE. In looking to the meaning of the Constitution, though, how could you look to the Constitutions or laws and interpretations of those laws by justices in other countries to find meaning in the U.S. Constitution?

Mr. HOLDER. That is what I was going to say. But with regard to making determinations about what the state of the law in this country should be, the primary focus, the first place we go is the Constitution of the United States and the laws that you all, Members of Congress, have passed over the years. The notion of looking at foreign law, foreign customs, is something that I think can perhaps in some ways be useful but can't be the primary focus for any kind of determination.

Mr. GOODLATTE. I know a number of the justices expressed some concern about that trend of citing foreign court precedents as well. But would you ever approve a Justice Department pleading that asked a court to rely on foreign laws and precedents in interpreting a provision in the United States Constitution?

Mr. HOLDER. It is hard to answer that question in a vacuum. It would depend, I suppose, on the case. Again, my focus always would be on what is the Constitution saying, what do our laws say, what do we glean from the way in which this Nation has dealt with that issue? It may be that there is something about the way in which another country has done something——

Mr. GOODLATTE. Wouldn't it undercut the legislative authority of the United States Congress and the actions of our executive branch and the appropriateness of the judicial decision making process to turn to the precedents of another country in telling our Supreme Court or lesser court how to interpret our Constitution?

Mr. HOLDER. Again, I wouldn't look toward foreign law to tell or ask the Supreme Court this is how you should interpret our Constitution based on what some other country has done. The primary focus has to be on what our Constitution says, how that Constitution has been interpreted, stare decisis, court opinions, what Congress has done. Those are the things that I think we have to focus on, and that has to be the primary emphasis for any position that the Department would take.

Mr. GOODLATTE. Thank you. I would encourage you to take a strong stand.

Let me move to another subject. As you may know, the Judiciary Committee has commissioned a task force to investigate the potential impeachment of Judge Thomas Porteous of the Eastern District of Louisiana. The gentleman from California, Mr. Schiff, is the Chairman of that task force. I am the Ranking Minority Member. Do we have your commitment to work with us in a timely fashion to investigate this matter?

Mr. HOLDER. Yes. There are documents, I understand, that are contained in the criminal division of the Department of Justice, and we will work with you to make materials available so that you can do the duties that are incumbent upon you.

Mr. GOODLATTE. Thank you. We are working in a very bipartisan fashion on this and attempting to take it very seriously. And the cooperation of the Justice Department which has investigated this situation is very, very important to the process of our undertaking this task force and determining whether impeachment is an appropriate step.

And then lastly, let me ask you about section 642 of the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996 which bars State and local governments from restricting their law enforcement officers from communicating with the Department of Homeland Security about the immigration status of individuals.

Despite this law, many so-called sanctuary cities continue to prohibit law enforcement from checking the immigration status of criminal aliens that they encounter. The results can be tragic. There have been many reported cases where the immigration status of criminal aliens was not checked because of sanctuary poli-

cies. They were released back into society to murder American citizens.

Is the Administration committed to enforcing section 642 and stopping cities from using these sanctuary policies to refuse to cooperate with law enforcement and the Immigration Service?

Mr. HOLDER. Well, I think we have to look at—the immigration problem is one we have to look at holistically. We have substantial numbers of people that are in this country on an undocumented basis, because we have not come up with a policy that really deals with border security and deals with what the status is of those people who are presently here.

Mr. GOODLATTE. But we very definitely come up with a very clear policy on the requirement that communities cooperate with the Department of Homeland Security in their investigation of criminal aliens and their access to information so that they can determine, when somebody is charged with a crime, whether they should be subject to deportation from the country, and other measures to protect society, and yet some cities are using their own internal policies to flout Federal law that requires their cooperation with the Department of Homeland Security and the question whether the Justice Department will work to enforce section 642 and stop cities from using these sanctuary policies when it comes to the issue of protecting citizens from criminal aliens.

Mr. HOLDER. The responsibility that I have as the chief law enforcement officer in this country—and I am very honored to have that position—is to enforce all the laws that are on the books. And that is obviously what we will do. But I do think, as I said, that one has to look at this immigration problem in its totality. And I think it is incumbent upon us as a Nation to try to deal with all of the issues that make up the immigration issues that we——

Mr. GOODLATTE. I agree with you. We do need to address a variety of immigration issues. But would you commit to enforcing the law as it pertains to something that the Congress has already passed and spoken on and signed into law by President Clinton to make sure that there is cooperation with law enforcement, to make sure that criminal aliens are not released back into communities to commit more crimes?

Mr. HOLDER. As I said, as the chief law enforcement officer, I will be responsible for enforcing the law, do what I can to ensure that Federal laws are in fact enforced, use the resources that we have to do that.

Mr. GOODLATTE. Thank you. I appreciate that answer, Mr. Chairman. Thank you very much.

Mr. CONYERS. Zoe Lofgren, Chairwoman on the Committee of Immigration.

Ms. LOFGREN. Thank you, Mr. Chairman. And it is good to see you, Mr. Attorney General.

I would just note that I opposed the 1996 reform—so-called Reform Immigration Act. But 642 does not place an affirmative obligation on States and localities to enforce the immigration laws.

There is a provision, however, I would like to talk to you about, 287(g), which does allow localities at their option to enforce immigration laws, and it is within the Department of Homeland Security. But it involves your Department because there have been a

few problems. And I am aware that the Department is investigating a sheriff in Arizona for alleged civil rights violations.

We recently had a hearing in the Subcommittee and heard a number of issues where Americans had been pulled over and harassed because of their ethnicity in an alleged immigration effort.

What resources does the Department need to make sure that serious civil rights violation allegations are pursued relative to this program?

Mr. HOLDER. Well, I think that the civil rights division is a division that needs additional resources, and in the 2010 budget there is a pretty substantial increase in the amount of money that will flow to the civil rights division to deal with the issues that you have talked about. The division has not gotten the attention that it has needed in the immediate past. There have been inspector general reports that have talked about the politicization of the division. It is a place that I spent a lot of time and a lot of energy and focused on it quite a bit to make it the civil rights division that, frankly, has existed under Republican as well as Democratic Attorneys General. And I want to return that division to its proud history.

Ms. LOFGREN. That is very good news. I saw that the Department had requested $14 million for an additional 28 immigration judge teams, and I am glad that you have.

I want to explore that further. We actually have one less judge today, immigration judge, than we had in the year 2002. And we have just had a very substantial increase, as you know, in activity. In fact, immigration judges on average receive 334,000 items a year. I mean, it was just stunning. Up from 290 in 2002 as compared to district court judges who get about 483 matters a year. Not to say that they are equivalent in terms of complexity, but I mean it is way off the charts.

And some of the chief—well, the chief judge for the Second Circuit has said really that he thinks the number of judges, immigration judges, probably needs to be doubled.

Are you planning a series of requests to get the personnel up to the numbers—the numbers up so they can actually handle these cases and give proper attention to each matter?

Mr. HOLDER. There has been a budget increase, as you indicated. But I think that is something we will have to look at and make a determination about whether additional resources are needed, but really be pretty cold and calculating in trying to determine the number of matters that these judges are handling. These are obviously important matters, and we want to make sure that they are not working in a way that is—the way they are overburdened.

The numbers you have cited are extremely striking and it may be that in the next year's budget we will have to continue to give more resources to that area.

Ms. LOFGREN. I would encourage you to do so unless there is a change in the volume. It is just impossible to pay attention to that many matters.

Along those lines, former Attorney General Ashcroft purged 10 members of the Board of Immigration Appeals and changed matters in an alleged streamlining effort which resulted in an explosion of appeals to the circuit courts. The circuit courts are very un-

happy about this. As I am sure you are aware, they have just been swamped.

Are you going to revisit the Board of Immigration Appeal's so-called streamlining effort so that we can get proper attention paid to these matters and relieve the circuit courts?

Mr. HOLDER. That is something that I want to look at. It is interesting that my chief of staff is the person who used to run that part of the Department. And I think in combination with him and others who are familiar with the needs of that part of the Department, we want to make sure that they are adequately funded, that there are sufficient numbers of judges, and that they are allowed to do the kind of job that we want them to do. That is something I expect we will be looking at.

Ms. LOFGREN. Just before he left, Attorney General Mukasey advised in a January 2009 decision that, contrary to a long history, there was no constitutional or statutory right to effective assistance of counsel in immigration proceedings. It is a radical departure from the state of the law.

I understand you had indicated an interest in revisiting that policy when you were before the Senate during your confirmation process. However, I am advised that Compean is still being cited by your lawyers in proceedings today, which is a problem. And we are going to end up with litigation around that.

I am wondering, number one, when we will have your decision—I am assuming you will want to go back stare decisis—and if in the interim we couldn't avoid future litigation by settling this with the Department's lawyers?

Mr. HOLDER. As I indicated during my confirmation hearing, we are looking at the decision that was made by former Attorney General Mukasey, and I expect that within a matter of—in a very, very short time, I will be issuing the decision I made with regard to what we ought to be doing in that regard. We have completed our review and we are just working on a release that I will be making very shortly.

Ms. LOFGREN. All right. I have sent you two letters. I won't go through them here today. One has to do with the situation in Postville in light of the unanimous Supreme Court decision relative to the identity theft issue. The other is a letter signed by a number of us in the House on the Wilberforce Act and the efforts that will be necessary to fully implement that act. And rather than go through them, I am just hopeful that we can get a positive response in the near future. They have just been sent recently. I am not complaining about the length of time, but I am eager to hear back from you.

Mr. HOLDER. I will try to get a response back to you as quickly as I can.

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

Mr. CONYERS. The gentleman from Ohio—Iowa. Steve King.

Mr. KING. Thank you, Mr. Chairman. And I thank you, Attorney General Holder, for testifying before this Committee today. And I know that there were a lot of people on this panel looking forward to this, but I would have wondered if you were actually looking forward to it.

But I would like to first raise the issue—I have in my hands two letters that have been sent to you by Senator Sessions of Alabama, one dated April 2nd of this year, and the other one May 4th of this year, where he inquires as to your position on especially the Uyghurs, the 17 Uyghurs that have been brought up.

He makes a point that in the case, the District of Columbia Circuit held in the case of *Kiemba v. Obama*—and that is a 2009 case—that Federal courts lacked the constitutional authority to order the release of the Uyghur detainees into the United States, and that it also held that the power to order an alien held overseas, brought into the sovereign territory of a nation, and released into the general population has never existed.

And so with regard to the 2003 case, this appears to overturn that 2003 case and put this back in, I will say, your responsibility on the Uyghurs. So I would ask you if you are prepared to respond to these letters today or if you would like to comment on these unanswered letters from Senator Sessions?

Mr. HOLDER. I know I have signed or approved a response to at least one of the letters that Senator Sessions has sent to me. I am not sure if it is one of those two. He is right with regard to the Kiemba case, the court said that there was not a basis for the judiciary to order the executive branch to release people into the United States. By the same token, there is a court order that requires that either all or 17 of the Uyghurs have to be released, they cannot be considered—they cannot held. And as I indicated, the Bush administration had made that decision that with regard to 17 of the Uyghurs, they would not be treated—as they called them—enemy combatants.

Mr. KING. Then within the confines of the definition you have given, can you assure this Committee that the Uyghurs will not be released into the United States?

Mr. HOLDER. At this point, we have not made any determinations, any final decisions as to what is going to happen with regard to any of the 241 people——

Mr. KING. Do you believe you have the power, then, to waive the Federal statute that prohibits them from being released into the United States that is the subject of this litigation?

Mr. HOLDER. Well, Kiemba I think really just says that the courts cannot order the executive branch to release people into the United States. I am not sure the court went so far as to say that the executive branch did not have sufficient authority to bring people into the United States. I am not talking about the Uyghurs.

Mr. KING. But I am asking if you believe you have the authority, then, to waive and bring them into the United States, the Uyghurs as an example?

Mr. HOLDER. I think in a letter that I am sure that I think I approved that goes to Senator Sessions, it indicates that there is authority on the—the parole authority that I guess resides in the Secretary for the Department of Homeland Security, that there is a basis there for bringing people into the——

Mr. KING. The prohibiting statute would have to be waived, and we can go into the definitions a little deeper perhaps in a less formal fashion. I was interested in your testimony that you can look at the files of the 241 detainees and determine whether they are

terrorists. And I would ask you then how quickly you might be able to review those files; and when that task is accomplished, will you announce then to the public how many of the 241 are terrorists? Is that something you expect that could happen within the next 30 to 60 days, since we know the clock is ticking on the January 22nd executive order?

Mr. HOLDER. Believe me, I know better than anybody that the clock is ticking. We use this term "terrorist" I think in a way that is kind of explosive. It is incendiary. Our focus is on whether or not these people are going to present a danger to the American people. And that is what guides us, not necessarily how they are labeled, though I think there is a value in making a determination.

Mr. KING. I thank you, Attorney General. And just a quick question as the clock ticks down. There has been a significant amount of controversy across this country with regard to ACORN. There have been at least investigations in at least 12 States, indictments that came down not just against their employees but against ACORN itself, in Nevada in particular, I believe also in Pennsylvania, perhaps other States—the hundreds of thousands of voter registration forms that are fraudulent, admittedly fraudulent by ACORN, and the roughly 8-plus billion dollars of Federal tax dollars that are available to ACORN today in part as they go forward with more of the same, as near as we can tell, plus being named as an organization to assist in the United States Census.

Are you committed to those investigations and are you committed to reining in this organization that has been getting more and more Federal funding, even though the evidence out there is that they can't be trusted with the integrity of the electoral process, let alone the Census and the redistricting?

Mr. HOLDER. Well, I do not know the extent of any investigations the Department is doing into that organization. Clearly, if there is an investigation ongoing, I will support that. With regard to the running of the Census, that is something that Commerce will have to do. But I will try to get back to you with regard to whether or not—if I can—whether or not ACORN is under Federal investigation. I don't know.

Mr. KING. I would thank you on that and I hope the Chairman changes his mind on that. And again, I would yield back.

Mr. CONYERS. Thank you.

The Chair recognizes Bill Delahunt, former Massachusetts prosecutor and Oversight Subcommittee Chairman on Foreign Affairs.

Mr. DELAHUNT. Welcome, Mr. Holder. We have heard some reference to the Uyghurs this morning. I think it is important to define the Uyghurs. And it is my understanding that it is a minority group that has existed in the past in the northeastern section of China. Is that your understanding as well?

Mr. HOLDER. Yeah. The Uyghurs are from China. And the best indication that we have so far as we looked at their files, they went to Afghanistan not to take up arms against the United States—this is not to excuse that—but to oppose the Chinese Government.

Mr. DELAHUNT. In fact, the truth is that they have been a suppressed and persecuted minority within China. Is that a fair statement?

Mr. HOLDER. That certainly is, I think, the view of the Uyghur population. They feel they have not been treated fairly by the Chinese Government.

Mr. DELAHUNT. Have you come across reports that Uyghurs have been tortured and actually killed and murdered in Communist China?

Mr. HOLDER. I have certainly seen reports that indicate that Uyghurs have not been treated—have not always been treated fairly or appropriately by the Chinese Government.

Mr. DELAHUNT. In fact, some make the analogy between the Tibetans and the Uyghurs in terms of being persecuted for not just simply their political views, but because of their religious beliefs; is that a fair statement?

Mr. HOLDER. I have seen reports of that as well.

Mr. DELAHUNT. I would indicate to you that, in fact, it would appear to be the belief of the United States Congress, since there was a resolution that was passed encouraging a change in attitude and behavior by the Communist Chinese Government toward the Uyghurs, in the whereas clauses it listed, and enumerated major human rights violations directed against the Uyghurs. I think it is important to understand who the Uyghurs are.

You indicated that it is not a threat to the United States. Now, I don't know if you can say the same thing—maybe it is a threat to Communist China, I don't know that, I don't intend to waste my—spend my time defending the Chinese Communist regime in Beijing that has a human rights record that at best can be described as abysmal.

What I am concerned about is the attitude of at least the previous Administration. The Chairman indicated that I chair Oversight on the Foreign Affairs Committee, my Ranking Member is my good friend and colleague, Mr. Rohrabacher. We have requested a visit to Guantanamo to actually interview the Uyghurs. And this was with the understanding that we will have secured releases to that effect. The previous Administration denied that request in our effort to secure the truth. And yet we discovered that it was the previous Administration that allowed Chinese Communist security agents to go to Guantanamo and interview the Uyghurs. Is this a policy that you intend to continue?

Mr. HOLDER. Well, I am not aware of any requests that any Members of Congress have made to go to Guantanamo. And, obviously, we would look at that and make that determination. I am also not aware of any representative of foreign governments who have gone into the detention facility there. I am just not aware of that.

Mr. DELAHUNT. Well, I would respectfully request that you review that. I would like to have a report back to this Committee, or at least to myself in my position as Chair of Oversight on Foreign Affairs, as to the rationale and the basis for the reported visit by Chinese Communist agents that were allowed to go to Guantanamo to interview Uyghurs that were detained down there.

It is also my understanding that those that were detained there, again given the hostility that exists between the Uyghur community and the Chinese Communist Government, were told—were threatened and intimidated. I think it is important that we get

that information out into the larger context of the issue surrounding the Uyghurs.

I just read recently where a former Speaker of the House of Representatives, Mr. Gingrich, suggested that the Uyghurs be returned to China. Can you tell me if that would be an appropriate initiative under our treaty obligations on the convention against torture? Because I would submit to you that undoubtedly they would be tortured and persecuted and most likely murdered if they were returned to Communist China.

Mr. HOLDER. One of the things we have to do in trying to make these transfer-and-release determinations is where these people can be released to. Your initial reaction is always to return them to their home country. And yet as you indicate, one of the things we have to take into consideration is how would they be treated were they to be returned to their home country.

I note that five Uyghurs have already been released in 2006, and those people were placed in Albania, which perhaps reflects an indication on the part of the prior Administration about the concerns that you raised. But it will not be the policy of this——

Mr. DELAHUNT. I would suggest, Mr. Attorney General, you contact the Albanian authorities and ask them what the response was from the Communist Chinese Government about the resettlement of those five Uyghurs, whom by the way I understand are doing very well in Albania; one of whom just recently was granted political asylum in Sweden.

Mr. HOLDER. Right. One thing I would say with regard to the Guantanamo question, that is a facility that is run by the Department of Defense. And so in terms of access to Guantanamo, that is something that the Secretary of Defense or his subordinates would control.

Mr. DELAHUNT. I would respectfully request that you contact the Department of Defense on behalf of myself and Mr. Rohrabacher. We would like to visit and interview those people ourselves. If the Chinese Communist agents can interview detainees at Guantanamo, then Members of the American Congress ought to. I can see my friend from Texas, Mr. Poe, agreeing by shaking his head.

And with that I yield back.

Mr. CONYERS. The distinguished gentleman from Virginia, Randy Forbes.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Attorney General, thank you for being here today. And I would like to revisit the Guantanamo issue again. I have heard some of your responses today. As I understand it, you mentioned that when you came over to the Department you realized there was a larger national security component, I believe you said, than when you left. One of the real issues is things changed quite a bit after 9/11. And when you are looking at some of the detainees, your Department deals with a lot of knowledge and information. Some of that is evidence that is factually admissible in a court of law. There is a lot of other evidence that you have that are just bits and pieces and tidbits that help formulate your assessment of a particular security risk,

The question for you is this: If you have a Guantanamo detainee and you determine from the information that is presented to you

that an individual or group of individual detainees would, in your opinion, pose a threat to the United States based on the totality of information you have, but you do not have adequate admissible evidence to accuse them of a crime, and no other country will take them, will you release them in the United States?

Mr. HOLDER. We will not release anybody into the United States who we think would pose a danger to the American people. We will go through a process to try to make the determination as to who can be released, who can be transferred, who can be tried in a variety of places, either in Article 3 court, the military courts, or perhaps the military commissions, with the enhanced procedures that I have pretty consistently talked about.

And then there is the potential for a third category of people who, for whatever reason, cannot be tried, but who we make the determination cannot be released because they pose a danger to this Nation. With all kinds of due process protections, it is entirely possible that we could end up with people in that third category. But we don't know that yet. We are looking at——

Mr. FORBES. My question is simply this. You feel it would be appropriate, and it would be your position that if you could make a determination from the totality of evidence that you had, even though that is not evidence that would be admissible in a court of law to prove a crime, that you felt one of those detainees or a group of those detainees could pose a risk to the United States, you would continue to detain them?

Mr. HOLDER. We are not going to do anything, anything, that will endanger the American people. We will use all the tools that we have.

Mr. FORBES. Mr. Attorney General, I just respect—please understand that I respectfully am asking this question the best I can. But can you just give me a yes or no? If you determine, you determine and your Department determines, from the totality of evidence that you have, that that individual would pose a risk to the United States, to residents in the United States, but you do not have adequate evidence to be admissible in a court of law to prove a crime, do you believe it would be appropriate to continue to detainee that individual?

Mr. HOLDER. I think that that possibility exists. That is what I was trying to say; that there is that third category of people who, if there were a sufficient basis for us to conclude that they posed a danger to the American people, to the United States, we would not release those people.

Mr. FORBES. So again, would I be fair to say that you believe it would be appropriate if you made that conclusion from the totality of evidence that you had, that that individual could pose a risk to the United States, that you would continue to detain that individual even though you did not have adequate admissible evidence to convict them of a crime?

Mr. HOLDER. If we had sufficient factual intelligence—I don't know whatever quantum of proof, however you want to describe it, to believe that a person posed a danger to the United States, we will do all that we can to ensure that that person remains detained and does not become a danger to the American people.

Mr. FORBES. And all you can do, if you have the power to keep that person in detention and, and you conclude—you conclude—beyond a reasonable doubt in your mind, from the totality of evidence that you have, that that individual posed a risk to the United States, can you definitively tell us that it would be your position that they should be detained and no released?

Mr. HOLDER. It is my definitive position that the American people will be protected. Somebody who poses a danger to the United States will not be released. I am answering your question directly——

Mr. FORBES. But I——

Mr. HOLDER. And I am giving you a direct answer. I am telling you that the people who pose a danger to the United States will not be released by this——

Mr. FORBES. Okay, then they will not be released.

The second question I have as a follow-up, have you made, or your Department made, an assessment of the potential risk to localities if we relocate individuals here and put them in detention in the United States?

Mr. HOLDER. We have not gone to that level of analysis because we have not made any determinations about where anybody is going to be placed. The focus of our emphasis at this point, 3 months into this Administration, is to look at those 241 people and figure out who they are, and then what categories they can go into.

Mr. FORBES. Mr. Attorney General, with all due respect, you are going to close it in 8 months, as I understand. And at this particular point in time, a lot of countries are saying we don't want them. We don't have exactly a great venue to send them other places, so it looks like they are coming to the United States, at least some of them.

At this particular point in time, we haven't even made an assessment of potential risk that might be posed to a locality if we do relocate them here; is that what you are saying?

Mr. HOLDER. What I am saying is before any type of determination is made, whether a person is sent to France, Germany, all those kinds of things, information will be shared so that determinations can be made, assessments made. We would not foist upon anybody, any country, any locality——

Mr. FORBES. And the only one I am interested in is the United States. But at this particular point in time, we have not made an assessment of the risk those localities would face in the United States. That is what you are saying at this time.

Mr. HOLDER. At this point we have not made that kind of determination because we have not had an ability yet to decide exactly who will be going where.

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

Mr. CONYERS. The distinguished gentlelady from California, Los Angeles, Maxine Waters.

Ms. WATERS. Thank you so very much, Mr. Chairman. I really do appreciate this hearing today. And I would like to welcome our new Attorney General, Mr. Holder.

I would first like to thank him for the strong leadership that he has already demonstrated in taking this most important position in our government. I am particularly appreciative for the direction he

has signaled already on the crack cocaine issue and getting rid of those disparities. Many of us have been working for many years to try and deal with this, the Families Against Mandatory Minimums that works with me, and we hold a workshop on it every year, and one young lady who is in the audience, Ms. Taepa, who has spent countless hours working on this issue. And we are so pleased that you are there and moving in the right direction.

I have a few other things I would just like to mention. I am sure that it has not come up today, but what you did with Senator Stevens' case really does define your commitment to justice. It doesn't matter—Democrat, Republican, whomever—have been denied justice. And with the withholding of information by the prosecution, you threw that case out. And I want you to know that that really is what justice is all about, and I appreciate it very, very much.

And I hope the people of this country understand that it took courage to do that but you did it. But you are here today and let me just ask you about a few other things.

I am very concerned about police misconduct. The last time the FBI came, there were 857 cases, 34 of them in Los Angeles. We really don't find out what the outcome is of these police misconduct cases. And I am just wondering if there is some way we could get updated. I don't know if anybody else is interested, but my staff certainly would like to have the opportunity to get with whomever you identify and help us to understand what happens to these cases.

Mr. HOLDER. That is a difficult thing. Once an investigation is opened, it becomes difficult to share information outside the Department. But to the extent that we can, you know, we will try to do so. I understand your frustration, though, where an investigation is open, perhaps charges are brought or reforms are required, but then there are other instances where the case simply seems to go away, it gets closed.

To the extent that we can come up with a mechanism to make you and the members of the public and certainly the members—the citizens of the locality where the police department is being investigated, to the extent that we can share that kind of information, I will try to find ways in which we can do that, while protecting privacy interest that might exist with regard to specific individuals.

Ms. WATERS. I appreciate that. I am particularly interested in the city of Inglewood where we have made countless attempts to have an investigation, and thankfully since you have been there there is an investigation going on. And we would like to follow it as much as we can, with whatever way that you can share information or whatever. We will be trying to do that.

Let me just go into mortgage fraud. As you know, some of us that have been working on the Financial Services Committee dealing with predatory lending, mortgage fraud and the subprime meltdown have discovered there was a lot of fraud that was going on by the loan initiators and sometimes by the recipients, the homeowners. But we have seen cases where incomes were inflated and that information was placed on the applications without the homeowner's knowledge, and on, and on, and on, and it just falls

through the cracks. We see it when we are working loan modifications with the services.

I understand you are not going to do a task force. But can you do something to work with the city attorneys who are trying—who have very little resources—to help us deal with this mortgage fraud?

Mr. HOLDER. Yeah. Actually, we are going to be rolling something out pretty soon with regard to how to approach this whole question of financial fraud, and a component of that will certainly be mortgage fraud and how we are going to be dealing with that. And we will be working with our State and local partners in that regard.

Earlier I had said I wasn't sure about the number of mortgage fraud cases that the FBI had under investigation. I wasn't sure if it was 1,200 or 2,100. Just for the record, it is 2,100 cases that the FBI has under investigation now. In order for us to be effective in those mortgage fraud cases, we need something that is going to be pretty extensive and that also involves people at the State and local levels. And our hope is—our intention is to work with them.

Ms. WATERS. Thank you.

And finally on the crack cocaine issue, I will get back to it. I would not like you to answer this, but would you consider taking a look at the possibility of pardons for some people who have been sentenced under these crack cocaine laws, particularly those who have never been involved in crime before, this is a first time offense, have good backgrounds, come from, you know, environments with supportive parents and all of that—don't answer now—will you take a look at the possibility of considering this for recommendation to the President of the United States?

Finally U.S. attorneys. Many jurisdictions are waiting desperately to see what is going to be done. As we understand it, the protocol has been that U.S. attorneys would hand in their resignations and would give the new Administration an opportunity to make new appointments. We don't see that happening quite fast enough and there are many of these jurisdictions where there are real complaints against U.S. attorneys, such as in Louisiana, Mississippi, Alabama. What are you doing about that and how fast are you going to move on that? Or have you changed how it is normally done?

Mr. HOLDER. No, we are working as quickly as we can to put new U.S. attorneys in place. I expect that we will have an announcement in the next couple of weeks with regard to our next batch of U.S. attorneys. I have met with some of the candidates whose names I expect we will be announcing pretty soon. They came to Washington as part of the process. And so we will have our people in place, I think, relatively soon.

One of things we didn't want to do was disrupt the continuity of the offices and pull people out of positions where we thought there might be a danger that that might have on the continuity—the effectiveness of the offices. But it is our intention—elections matter—it is our intention to have the U.S. attorneys that are selected by President Obama in place as quickly as we can. As I said, our first batch will be announced very, very soon.

Ms. WATERS. I thank you very much. I would just like to say there is a danger with some of them being left there, so whatever you can do to move them, we appreciate it. Thank you.

Mr. CONYERS. The Committee will once again stand in a brief recess.

[Recess,].

Mr. CONYERS. The Committee will come to order. The Chair recognizes Dan Lungren, its only ex-attorney general, from California.

Mr. LUNGREN. Thank you very much. I appreciate that.

Mr. Attorney General, it is good to see you. I haven't seen you since Selma, Alabama.

Mr. HOLDER. It has been a while. Good to see you.

Mr. LUNGREN. I also appreciate the statement that you had on page 7 when you talked about the Fraud Enforcement Recovery Act which had the language on money laundering that I authored; and also the False Claims Act which I think should be a bipartisan approach, starting with the Lincoln law and then becoming the Reagan alteration of that when that was necessary, and now.

But let me get into a couple of other areas of serious concern of mine. One following on the questions of Mr. Forbes—and I know what your statement is now, and I am not going to ask you to reiterate that—that you believe that you should take all action to ensure that those who pose a threat to the United States who are now in Guantanamo would not be released.

However, if we remove them from Guantanamo and they come to the United States, other countries are not accepting them—for whatever reason they come to the United States—as you know, their being in the United States gives them an attachment to the Constitution that they might not otherwise have, and arguably they may have the full panoply of constitutional rights.

That means there is a conceivable scenario in which you would take the position, the Administration would take the position that people that you have incarcerated in some State in the United States, have been coming from Guantanamo; that they are a clear and present danger to the United States. But that would be subject to a Federal court review, a Federal court review leading to a Federal judge issuing an order that they be released.

Under those circumstances isn't it correct under the law that you would have no recourse but to release them?

Mr. HOLDER. It would seem to me that there are a couple of things there that I think are kind of missing from the question. The first is that we would work with Congress I think to come up with a scheme, the means by which we would do anything with regard to the basis for the detention of these people.

Mr. LUNGREN. You don't disagree in my argument, though, that having them on U.S. soil at least gives them a stronger opportunity to argue that they have the full panoply of constitutional rights vis-a-vis not being held in the United States. At least that has been the traditional of the Federal courts, correct?

Mr. HOLDER. Well, I think they can certainly argue that. But I think if you also look at the way in which the courts have progressively dealt with detainees at Guantanamo, the progression there was pretty obvious. Although they were not on American soil, they

were getting more and more rights given to them, starting with habeas and cases like that.

Mr. LUNGREN. We eliminate that by bringing them to the United States, correct, as opposed to staying Guantanamo?

Mr. HOLDER. I am not sure about that. I am not sure.

Mr. LUNGREN. Well, they certainly don't have a weakened position, do they?

Mr. HOLDER. Put it like this. There is certainly an argument a lawyer is going to be able to put in a brief, I suppose. Yeah.

Mr. LUNGREN. Okay. So you will make every effort you can to make sure they are not released, but still you are subject to the authority and direction of the United States courts all the way up to the Supreme Court, correct?

Mr. HOLDER. Yes, as is true now. I mean, we have a district court—or I guess we have a court decision now that is indicated—for instance, we were talking earlier about the fact that the Uyghurs have to be released.

Mr. LUNGREN. Right. As so you make judgments as to whether appeals should be brought when you have things like that, correct?

Mr. HOLDER. Yeah. I mean, we certainly appealed the decision made by district court here, I think, in the District of Columbia, that they had to be paroled or had to be placed in the United States and that resulted in the Kayumba opinion.

Mr. LUNGREN. Well, let me ask this question then. The President of the United States just made a determination I think it was today or yesterday, that he does not believe we ought to release pictures showing presumably inappropriate activity by American personnel with respect to prisoners that we have held in Guantanamo and other places. And yet it is my understanding that is in response to an appellate court decision that you, or at least your Department, had made a determination you would not appeal; is that correct?

Mr. HOLDER. I think that what we had made the decision to do was before the President had had the opportunity to sit down and have, I think, the in-depth conversations that he obviously had with the field commanders. And on the basis of his determination that it would place our troops at risk, we have now taken a different position in court.

Mr. LUNGREN. So the original position was not to take an appeal; is that correct?

Mr. HOLDER. I think that is technically right. I am not sure, but now——

Mr. LUNGREN. Would it be appropriate for us to ask if we could see the internal Justice Department memorandum with respect to that decision?

Mr. HOLDER. To not?

Mr. LUNGREN. Would it be appropriate for this Committee to ask that Congress have an opportunity to view the internal Justice Department memorandum which led to the decision not to appeal?

Mr. HOLDER. I will say as a matter of course that I want to work with this Committee, but I have great reluctance in saying I will share internal Justice Department memoranda that deal with decision making in particular cases.

Mr. LUNGREN. Okay. You have made the statement publicly that you believe that waterboarding is torture; is that correct?

Mr. HOLDER. That is correct.

Mr. LUNGREN. If that is the case, is it currently the position of the United States when we submit our Navy SEALs and other special operations military personnel to waterboarding as a part of their training, that we are currently subjecting them to torture?

Mr. HOLDER. No, that is not—not in the legal sense. I think that is a fundamentally—fundamentally different thing. We are doing something for training purposes to try to equip them with the tools to perhaps resist torture techniques that might be used on them. There is not the intent to do that which is defined as torture, which is to inflict serious bodily or mental harm. It is training, it is different.

Mr. LUNGREN. My question is: If we are causing them to undergo waterboarding, even under the guise of training them, aren't we subjecting them to torture if you have defined waterboarding as torture?

Mr. HOLDER. No, it is not torture in the legal sense, because we are not doing it with the intent of harming these people physically or mentally. All we are trying do is train——

Mr. LUNGREN. So it is the question of intent?

Mr. HOLDER. Intent is a huge part.

Mr. LUNGREN. If the intent was to solicit information but not do permanent harm, how is that torture?

Mr. HOLDER. Well, one has to look at—it comes down to a question of fact as one is determining what is the intention of the person who is administering the waterboarding. When the Communist Chinese did it and when the Japanese did it and when they did it in the Spanish inquisition, we knew then that that was not a training exercise they were engaging in. They were doing it in a way that is violative of all the statutes that recognize what torture is. When we are doing it to our own troops to equip them to deal with an illegal act, that is not torture.

Mr. LUNGREN. So the context is important?

Mr. HOLDER. Well, context is important; but it is not context, it is what is the intention of the person who is administering the technique.

Mr. LUNGREN. I think my time is up. I appreciate it.

Mr. COHEN. [Presiding.] Thank you sir. I hope you don't consider the water that we put next to you some type of intimidation.

Mr. HOLDER. As long as it is not poured down my nose, I think I am okay.

Mr. COHEN. I will recognize myself for 5 minutes. It is my turn in the questioning.

I am very concerned about racial and ethnic disparities that exist in the criminal justice system. And I was pleased to see you raised this in your testimony. As you noted, these disparities are eroding public confidence in the system, not to mention causing injustice, which is the most serious grievance.

I was pleased the Department is convening a working group on sentencing policy, which I think will be very valuable. But I think it is much larger than simply sentencing. Disparities exist in law

enforcement policies and prosecutorial decisions and other aspects of the criminal justice system as well.

Shouldn't we be engaging in a full-scale review of the entire Justice system and not simply the sentencing portion?

Mr. HOLDER. Well, I want to do that which I think is possible. My time as Attorney General is limited. And there are priorities that I think we have to set. That does not mean, however, that I don't agree with you that we as a society have to focus, I think, on the larger questions that you raise to ensure that our criminal justice system, viewed in its entirety, is perceived as fair and actually is fair.

I tried to chop off those parts that I think we can get done during the time that I am Attorney General.

Mr. COHEN. Possibly this Committee could look at some of those other factors and we could work hand in glove. I hope that we can, and that won't be looked as "render unto Caesar," et cetera, and we will work together.

Mr. HOLDER. I will be glad to work with you on that.

Mr. COHEN. Thank you, Mr. Attorney General.

The issue of deferred prosecution is one that comes within the bailiwick of my Subcommittee, Commercial and Administrative Law, and also is one that comes to me as an attorney and as one who has a company within my district that has been the subject of one of the major deferred prosecution cases in New Jersey, in the medical field.

Many issues have been raised. The New York Times had an article by Mr. Ashcroft, I think on the 5th of this month, and there were three letters to the editor on the 11th of May really condemning this practice. And it raises many issues.

And I guess the big issue I would like to ask you is: Do you plan to continue this policy of having deferred prosecutions and having what I understand the benefits are to corporations, but also it is a double—it seems like a double type of justice where corporations get to continue on and not have to plead guilty, while individuals get sent to the gulag.

Mr. HOLDER. Well, I think we want to keep open to ourselves the full range of tools that we have in dealing with corporate wrongdoing. Very frequently if you prosecute a corporation, you end up punishing innocent people who did not engage in that wrongdoing; shareholders, other employees. And so I think you want to have a full range of possibilities.

There are guidelines that we have in the United States Attorneys Manuals as to when a deferred prosecution or a decision not to prosecute is appropriate. And as long as we follow those guidelines, I think it is good to maintain that tool.

Mr. COHEN. Are those the guidelines that were issued in August?

Mr. HOLDER. I am not sure exactly when they issued, but they reside in the U.S. Attorneys Manual.

Mr. COHEN. I think Mr. Mukasey had something in August that was certainly an improvement on deferred prosecutions. How is it determined on who gets to be the prophet of the monitor? The monitors have been very lucrative. And Mr. Christie, I think, a former attorney general in New Jersey, who was, I think, was one time hired by Mr. Ashcroft, employed Mr. Ashcroft. And Mr. Ashcroft's

bill in that case came to, I believe, $54 million—$52 million for Zimmer Holdings in the case where he was appointed.

Should there not be some type of neutral and detached individual to oversee and to act as an ombuds-type person to make sure that the corporation isn't subject to any type of charges that may be levied by these monitors?

Mr. HOLDER. Well, typically, the person who makes the decision is the person who was in charge of the case, perhaps the U.S. attorney, maybe the head of the criminal division at the Justice Department, but ultimately it seems to me the Attorney General is responsible for who is picked. And so I think that to the extent that we have concerns about who is being picked as a monitor, what charges the monitor is incurring, it is incumbent upon me to investigate, to look into those things and to come up with systems so that we ensure that we are picking the right people and they are acting in an appropriate way. I mean, this is something that you raised with me earlier. And I think the concern that you raised is a legitimate one and one that I will look into.

Mr. COHEN. I have a bill, I am an original cosponsor of H.R. 1947, the Accountability in Deferred Prosecution Act of 2009. It requires among other things that the Department use guidelines providing for judicial oversight of the agreements. And I think that is a really important thing to have the judiciary involved, and it requires public disclosure of deferred prosecution agreements and any agreement or understanding between independent monitoring and the organization monitors.

So the Department would support that, I presume, because it promotes transparency, uniformity, and accountability in deferred and non-prosecutions?

Mr. HOLDER. Well, I want to look at the bill and will work with you on it. I wouldn't want to preclude or in any way circumscribe the ability of the Department to be as creative as we can in formulating or using these tools.

Mr. COHEN. The New York Times reported in May that 30 of the 41 monitors appointed in deferred prosecutions since 1994—which goes back to the time I guess when you were at the Justice Department with Mr. Clinton—were government officials, and 23 were prosecutors.

Why is it the former prosecutors and government officials are more likely to be named monitors and receive lucrative monitoring contracts? Should that be the case?

Mr. HOLDER. I don't think—that is an interesting statistic, one that I was not aware of. I don't think we should be favoring one class of person, one class of lawyer over another. On the other hand, it may be that people who have—you want people who have the relevant experience, knowledge of the industry. So I think you want to look for people who are qualified, people who are going to understand the serious nature of their jobs. But I do not think that we should kind of reflectively look to one group of lawyers or a group of lawyers who have only one kind of professional experience.

Mr. COHEN. And let me ask you one last question. The hate crimes law which has passed through this Committee, there have been questions posed as to whether or not it could in any way infringe upon a minister's ability to preach against sexual conduct,

particularly homosexuality or other sexual conduct they may find abhorrent.

Is there anything in the bill that you have seen, or any time in history of hate crimes laws that have been on the books for years, and decades and decades, even involving sexual orientation, that have ever seen a preacher taken for his words and prosecuted; or for that matter, during the civil rights days, when preachers used to preach against civil rights or against integration or for integration or against *Loving v. Virginia* and all that?

Mr. HOLDER. I am not aware of anything like that. And obviously there are first amendment issues that you run into when you come to making those kinds of determinations. You also have to have prosecutors who are going to use the tools that are given to them in an appropriate way. Prosecutors have a great amount of discretion. But just looking at the statutes that I think the House has passed and the Senate has passed, I don't see that situation that you have described as being problematic.

Mr. COHEN. First amendment, that is good. Thank you, sir, Mr. Attorney General.

The gentleman from Texas State, a distinguished former judge, is recognized. Mr. Gohmert.

Mr. GOHMERT. Thank you. And I appreciate that, and thank you for subjecting yourself to this torture. The intent is not to torture you there, so apparently it is not.

I will follow up on the hate crime issue. You are aware of 18 U.S.C. 2(a) that basically says if you aid, encourage, induce someone to commit a crime—"induce" is one of the verbs in that statute—then you are as guilty of the crime as the one who actually committed it. You are familiar with the law of principle surely?

Mr. HOLDER. Yes.

Mr. GOHMERT. And so you may not be aware, but after the Matthew Shepherd killing, in which I would have been open to the death penalty as appropriate in that case, but they got life sentences, so there is nothing the hate crime bill proposed would do to affect that case, or the James Byrd case where the two main guys got the death penalty. But after the Matthew Shepherd case, there were mainstream media people like James Dobson who had said homosexuality was wrong, had actually—and they used the word "induced" this crime.

So it is possible, and even under the definition or the provision in the hate crimes bill that says you can't use constitutionally protected speech in a prosecution under this act, there is a comma, and it says unless it applies to the underlying offense.

If the underlying offense is inducing someone to commit the crime, then certainly a preacher's sermons would be used in evidence if it was deemed by the prosecutor that that was evidence that he induced someone to commit a crime, correct?

Mr. HOLDER. It seems to me that that inducement is a little attenuated. The notion that you would go after - the prosecutor would go after a preacher who was saying things that I would not agree with, hateful things about somebody's sexual orientation, I don't see how that in and of itself is going to be enough to bring that——

Mr. GOHMERT. Even if the shooter said, I was induced by the preacher telling me these things in his sermon, and even if the sermon were based on the Bible, the Tanaka, or the Koran.

Mr. HOLDER. Again, that seems a little attenuated to me.

Mr. GOHMERT. But it could happen, couldn't it?

Mr. HOLDER. It is hard for me to imagine a fact situation where that could happen.

Mr. GOHMERT. So you are saying as Attorney General there is not a case where you could see use of 18 U.S.C. 2(a) against anyone who is alleged to have induced someone else to commit a hate crime?

Mr. HOLDER. I am not saying that at all. If somebody is on the scene, for instance, and says get that, use a negative word, and kill him, shoot him, do that, that is a fundamentally different thing than a preacher expressing a religious view on a Sunday.

Mr. GOHMERT. So someone would have to be on the scene before you would use the law of principles?

Mr. HOLDER. No, I am not saying you would have to be on the scene.

Mr. GOHMERT. You said on the scene.

Mr. HOLDER. I gave that as an example. Just an example. There are a variety of ways in which speech can be used to induce crimes that might be criminally cognizable, but the example that was used——

Mr. GOHMERT. Well, the example I used is the one I am asking about. And if you wanted to determine whether a preacher did induce someone, you would have to subpoena sermons and see if there was language that you felt was inflammatory enough to induce someone to commit the crime, correct?

Mr. HOLDER. It might be as part of the case that you were bringing against the person who actually committed the act, and you wanted to show the intent.

Mr. GOHMERT. Now you are back to—but I am not talking about them, I am talking about one who may be considered an investigative—or inducing another to commit a hate crime.

Mr. HOLDER. As I said, I just—I find it hard to believe that a good prosecutor would go after a preacher on a Sunday, spewing——

Mr. GOHMERT. So you are not aware of preachers being arrested in Norway for supposedly using language from the Bible about homosexuality? You are not familiar with that?

Well, let me move on. In your testimony you said that you are establishing direct ties and personal relationships so that our counterpart law enforcement agencies may use them, talking about foreign legal policies and procedures. Are foreign law enforcement going to be allowed access to our FBI files? The procedure you are talking about here?

Mr. HOLDER. We share intelligence with our foreign counterparts on a regular basis.

Mr. GOHMERT. But my question is about the FBI files. I just don't know the extent to which you are willing to share.

Mr. HOLDER. There is information that comes from the FBI that we share with our allies and with our foreign law counterparts on

a regular basis; not only intelligence but other law enforcement information.

Mr. GOHMERT. Well, I was just trying to determine what the pronoun "them" included, when you may use "them," what records that includes. You are saying they are not going to come in and peruse the FBI files; you will provide them just such information as necessary, correct?

Mr. HOLDER. Yeah. Typically we don't let law enforcement people from other countries, or even from other States or from State and locals, come in and just look at files at the FBI. We make determinations as to what we can share with them.

Mr. GOHMERT. And I ask for unanimous consent for the extra 2½ minutes, like the Chairman had, for one more question?

Mr. COHEN. With unanimous consent, I will give you an extra 30 seconds like the Chairman had. It is the former prosecutor from California who had the extra 2½ minutes.

Mr. GOHMERT. Whether waterboarding is torture, you say, is an issue of intent. If our officers, when waterboarding, had no intent to do permanent harm, and in fact knew absolutely they would do no permanent harm to the person being waterboarded, and their only intent was to get information to save people in this country, then they would not have tortured under your definition; isn't that correct?

Mr. HOLDER. No, not at all. I mean, it depends—intent is a fact question; it is a fact-specific question.

Mr. GOHMERT. So what kind of intent were you talking about?

Mr. HOLDER. Well, what is the intention of the person? In doing the act, was it logical that a result of doing the act would have been to physically or mentally harm the person?

Mr. GOHMERT. I set that out in my question; the intent was not to physically harm them, because they knew there would be no permanent harm; there would be discomfort, but no harm, they knew that for sure. So is the intent—are you saying it is in the mind of the one being waterboarded, whether they felt they were being tortured, or is the intent in the mind of the actor who knows beyond any question that he is doing no permanent harm, that he is only making them think he is doing harm?

Mr. HOLDER. The intent is in the person who would be charged with the offense, the actor, as determined by a trier of fact looking at all of the circumstances. That is ultimately how one decides whether or not the person has the requisite intent. I mean, I am speaking to a judge so I say that with due respect.

Mr. GOHMERT. But—I am speaking to the Attorney General with complete respect—but you know that prosecutors bring cases to grand jury, so it is what is the intent of the prosecutor as far as going forward. And if it is your intent that someone has to believe that they are doing harm to someone in order to be torture, then if your intent—and in fact you knew without any question there was no harm being done, then there is no torture, correct?

Mr. HOLDER. No, I wouldn't say that. You know——

Mr. GOHMERT. Then what was the intent?

Mr. HOLDER. You can delude yourself into thinking that what I am doing is not causing any physical harm or is not causing any mental harm. And somebody, a neutral trier of fact——

Mr. GOHMERT. I didn't say mental harm, because you want them to think that there is harm.

Mr. HOLDER. Physical harm. For that matter. You can think that that, in fact, is what you were trying to do or trying not to accomplish. And, in fact, a trier of fact could look at that and make the determination that in spite of what you said, that what you have indicated is not consistent with the facts, not consistent with your actions, and therefore you are liable under the statute for the harm that you caused.

Mr. GOHMERT. Thank you, Mr. Chairman. I feel sorry for our guys out in the field trying to discern their actions based on what you just said. Thank you, though.

Mr. COHEN. You were accurate, I went 2½ minutes and you went 3½, so we went beyond fairness.

Mr. HOLDER. One thing, just to respond, I mean, the concern you raise is a good one in the sense that we want to make sure we are clear with those men and women who serve us in the field, that we are clear to them about what the standards are and what we expect of them. And I think that is one of the reasons why President Obama, early on, ruled off the table certain interrogation techniques. And we have tried to be very clear about the way in which we would view their conduct so that they would have an ability to know what is on the right side and what is on the wrong side. So we tried to be clear.

Mr. COHEN. The gentleman from the broad shoulder city is recognized, Mr. Quigley.

Mr. QUIGLEY. Thank you. The President's hometown.

Mr. HOLDER. That would be correct.

Mr. QUIGLEY. An issue of great interest to my hometown, the President's hometown, gun violence, particularly as it relates in recent days, recent months, automatic weapons. So this harkens back to I believe was your February statement relating to the interest and reinstituting the ban on assault weapons.

Can you tell us if you know where the sequencing is as you made reference to at this point?

Mr. HOLDER. Well, I think that what we want to do is look at all the ways we can reduce gun violence in this country. One of things I think that we have done in our budget is to give our State and local counterparts really sufficient amounts of money so that they can enforce their laws. We want to share information, we want to enforce the laws that we have on the books. I think there are a whole variety of ways we can get at the problem of gun violence. And we are determined to do that in conjunction with our partners and in conjunction with Members of Congress.

Mr. QUIGLEY. There is still an interest out there to address assault weapons in particular.

Mr. HOLDER. Well, I mean we have to look at those tools that are being used by criminals and try to come up with ways with which we keep guns out of the hands of criminals, certainly guns that are flowing into Mexico; assault weapons, we have to figure out ways in which we stop that. I mean, there is a particular problem in Chicago just from what I see on the television about young people who are the victim of gun violence. And I think we have to look at what

is driving that issue, that problem in a particular city, and then come up with ways in which we deal with that.

Mr. QUIGLEY. You mention Mexico and, again, the Secretary of State talked about the violence as it relates to Mexico and the United States in terms of the insatiable use of—demand for drugs in this country, and the fact that most of the crimes that are taking place in that confrontation are purchased here in the United States; obviously, a second purchaser, or an automatic weapon that has been passed on. So I am just not sure if the general notion of keeping it out of people's hands is going to do it. If you can buy machine guns, they are going to get down there.

Mr. HOLDER. You mean in Mexico?

Mr. QUIGLEY. If you can buy them here, they are going to be—that is where they are coming from. So if you can buy automatic weapons here in the United States, they are going to be in Mexico and they are going to be used against our citizens as well.

Mr. HOLDER. Yeah. At least some of the research indicates that store purchasers purchase these weapons and then transfer them in some form or fashion. The Department of Homeland Security is working with our Mexican counterparts, as well as the Justice Department, to come up with ways in which we monitor the traffic from the United States to Mexico.

We think a large number of these weapons are carried in cars, and there are tools that DHS has that are going to be employed at the border crossings to try to make determinations as to what is actually in these cars, have the ability to inspect them.

And so we have also moved resources, ATF agents, to the border, 100 or so, in an attempt to stop that flow of weapons into Mexico.

Mr. QUIGLEY. I appreciate that.

I guess, in conclusion, to the extent the President can help push toward a reinstitution of the ban on assault weapons, automatic weapons, we in Chicago would appreciate it.

Thank you for your time. I yield back my balance.

Mr. COHEN. I now recognize the other distinguished jurist from the State of Texas—that is just the way it is—Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. And there are probably only two distinguished jurists in Texas, be that as it may.

Thank you, Mr. General, for being here. I have been to Guantanamo Bay I know you have been as well, and seen the prison there. I tell you this. There are Texas sheriff's that wish they had that type of facility in their jail because of the way that inmates seem to have amenities that aren't in other places in the State.

Have any States asked you to send detainees from Guantanamo to their State?

Mr. HOLDER. Not that I am aware of.

Mr. POE. Have any told you, don't let them come to our State?

Mr. HOLDER. I think I might have read some things in the newspaper. I am not sure about—I have not had any official—anything officially sent to me, but I think I have read things in the newspapers about that.

Mr. POE. But you don't know of any States that want detainees from Guantanamo Bay?

Mr. HOLDER. I have not asked or talked to any Governors or Senators or Congressmen. I know that there are a fair number of Members of your party who have indicated what their desires are.

Mr. POE. But nobody has told you that they want them?

Mr. HOLDER. I am sorry?

Mr. POE. Nobody has told you they want them. No State, no official, nobody, no government agency has said let them come to our place.

Mr. HOLDER. No, I have not asked anybody that question.

Mr. POE. And no one has volunteered that information. What is your personal definition of a terrorist?

Mr. HOLDER. That is an interesting question. I guess a person who uses violent means to inflict harm upon innocent people or uses the threat of violence to achieve unlawful ends. With a little more time, I would probably come up with a better definition, but I think that is about the way I would describe a terrorist.

Mr. POE. Okay. I would request that you come up with your definition and submit it to the Chairman of the Committee.

Mr. HOLDER. That is fine.

Mr. POE. Thank you.

Last month several top secret security papers were released to the public, and apparently in them we learned that Khalid Sheikh Mohammed, the 9/11 individual, after being waterboarded, started talking. And he claimed that there was going to be an airplane cash into a skyscraper in Los Angeles; disclosed a 17-member terrorist cell; and he also talked about a terrorist cell in New York plotting to destroy the Brooklyn Bridge; is that correct? Is that information correct?

Mr. HOLDER. I feel a little uncomfortable. I don't necessarily think I am in a position, given the forum in which we are open, to answer questions that might involve the disclosure of classified information.

Mr. POE. Well, somebody disclosed this information. I read this in the Washington Post.

Mr. HOLDER. Well, someone probably shouldn't have.

Mr. POE. That is a different issue.

If that information is true, and he started talking only because he was waterboarded, do you think maybe waterboarding was a good idea to save American lives in those two cases?

Mr. HOLDER. The question really is, you can't——

Mr. POE. No, I don't want your question; I want my question answered.

Mr. HOLDER. I was going to answer.

Mr. POE. My question is simple. Assume that is true, assume it is true hypothetically, and he was waterboarded; and, but for being waterboarded, we would have never known about this. Do you think maybe waterboarding was a good idea in that case or not?

Mr. HOLDER. I think the question is whether or not other techniques might have gotten the same result that may have taken us down the road that I think is inappropriate, and that is the use of a technique that I consider to be torture.

Mr. POE. No other——

Mr. HOLDER. No question about that.

Mr. POE. No other techniques appeared to work, if they were used; this one did. So you would just rule it out automatically because it is waterboarding, even if it saved American lives? That is my question.

Mr. HOLDER. The question is how are we going to save American lives.

Mr. POE. No, excuse me, I am sorry. My question is real simple. But for waterboarding, we would not have known this information. Assume that is true. Do you think waterboarding should have been used or not used in this example?

Mr. HOLDER. I reject the hypothesis. There is not a basis for anyone to conclude that, but for the use of waterboarding on a particular person, you could not have gotten the same information from that person. We heard testimony from a very sophisticated and experienced FBI interrogator just yesterday about the success that he had using non-waterboarding techniques on Abu Zubaydah.

Mr. POE. Of course he didn't get this information by talking to him and telling him to give us the information. The only way we got the information was by waterboarding.

Mr. HOLDER. The testimony of the person who testified yesterday was that he got information that was very useful, including the identity of Khalid Sheikh Mohammed and including the identity of Jose Padilla, using non-waterboarding techniques, techniques approved by the FBI. That was the testimony of the person yesterday.

Mr. POE. Well, but for waterboarding, there is absolutely no evidence in your Department or by anybody in your agency that you control that you would have received this information that there were two planned attacks on America; and, but for waterboarding, they did not occur.

Mr. HOLDER. Well, actually you do have testimony from somebody who was formally a member of the organization that I now head. That is an FBI agent who is part of the Justice Department. He testified in the contrary way yesterday.

Mr. POE. So we would have gotten this information anyway is your position?

Mr. HOLDER. I don't know if we would have gotten it anyway, but I certainly know that I have great faith in the techniques that the FBI uses. And the testimony of that FBI agent yesterday, also consistent with interactions I have had with retired intelligence officers from the military who have indicated that you don't have to go to techniques such as waterboarding in order to get good, useful intelligence from detainees or from suspects.

Mr. POE. So you would take the risk that we wouldn't get this information, because you are so hellbent on not using waterboarding; is that what you are saying?

Mr. HOLDER. No. I would never put the American people at risk. Nor would I put what is great about this country, and that is the values that defines us and separates us from the very people who we are trying to fight. That is something also that I will not put at risk: the safety of the American people and who we are as Americans.

Mr. POE. So you would use whatever means was necessary to not put Americans at risk?

Mr. HOLDER. I will use means that are consistent with our values. George Washington in 1776, when he won the Battle of Trenton at Christmas, told the people who were taking British prisoners that regardless of how the British treated our prisoners, we will not treat British prisoners in the same way. We are better than that. That is our Founding Father.

Mr. POE. I understand that. Excuse me, I yield back the balance of my time.

Mr. HOLDER. If we are looking for a guide, I think that is where I think we should start. George Washington, faced with a similar question, came up with that answer.

Mr. POE. Well, that is a completely different scenario. This is preventive medicine, and people have been apparently saved by waterboarding. And it is not the same as the situation you mentioned. I yield back.

Mr. HOLDER. We will have to disagree about that.

Mr. COHEN. We now recognize a gentleman who skates on frozen water and intimidates goalies, the gentleman from New York, Mr. Weiner.

Mr. WEINER. Thank you. I am not sure I want to get used to these little introductions you have been doing, Mr. Chairman.

Mr. Attorney General, do you share the views of your five predecessor Attorney Generals that the COPS program has been a success?

Mr. HOLDER. Yes, I certainly believe it has been a success.

Mr. WEINER. Do you want to expand on that at all? I see there is a billion dollars in the stimulus program that you mentioned in your testimony. And I know that the President is committed to hiring 50,000 additional police officers in the COPS program. Yet in the budget that was released last week or the week before, only funds—funds were only put in sufficient to hire 1,500 police officers. Is that going to change? Is this going to be, I guess, a 15-year program as opposed to the way it has been reauthorized? What is the position of the Justice Department and the Administration on the COPS program?

Mr. HOLDER. I think as you look at the budget, I think the number actually is about 5,500 for that first batch of hiring. I think the COPS program has been successful, something that I know you have supported a great deal, something that I think we learned from the New York City experience. So our ultimate aim is to have 50,000 new officers on the street over time.

Mr. WEINER. Over what period of time?

Mr. HOLDER. I would have to get back to you on that. I am not sure exactly.

Mr. WEINER. Because I don't want to confuse the two things. One is the stimulus bill that has a billion dollars in it. The other is the language that is in the President's budget that refers to 50,000 police officers and has $298 million for fiscal year 2010. Those numbers only give us enough for 1,500 police officers, and the bill that we passed out of this Committee and passed on the floor envisioned $1.8 billion a year. So if you do the math, we are not going to get to the 50,000 cops in your first term.

And I just want to know—and the President mentioned on Tuesday, again, in the ceremony honoring police officers, his intention

to hire 50,000 police officers. So I am not sure how we make those two numbers meet.

Mr. HOLDER. What I would like to do, then, is perhaps get back to you with the precise information and how it breaks down in terms of money expended and the time frame, the timeline in which it would take to get to that 50,000 officers. But it is certainly the intention of this Administration to put 50,000 additional police officers on the streets.

Mr. WEINER. Before I change the subject, do you want to say anything gratuitously complimentary of the sponsor of that reauthorization?

Mr. HOLDER. Yes, I do. I think the person who did that viously should be commended.

Mr. WEINER. Thank you.

Mr. HOLDER. And of great intelligence.

Mr. WEINER. That is quite enough. You can submit any additional remarks for the record.

Can I talk to you a little bit about DNA and the backlog of evidence? You know, it seems that we have had some great success in that we have gotten the Federal Government into the game of helping States and localities clear out some element of the backlog that existed in some police departments.

But we still have, it seems to me, some structural problems as we, with the help of Mr. Schiff and others, as we now expand the number of offenders that are going into the database, more evidence is being collected, that we still seem to be having a problem keeping up; meaning that we are not producing an enough labs that are certified, the cost is not what it should be.

We heard testimony yesterday about some of the problems with DNA collection that still needs to exist—that still exists. We know, for example, that the turn-around for rape kits in the United States is about 30 weeks, and it is about 33 days in England.

Is this going to be an era of emphasis for your Department to try to figure out how we take the next step in making this tool—which everyone, as you know, looks at DNA evidence and collection through their own lens. Some people see it as a way to put bad guys in jail. Some people see it as a way to exonerate those who are innocent. It is a valuable tool, and I am concerned that we are reaching a point that we have got a choke now. We have so many evidence kits, so many offenders being put in the database, if we are not careful it is going to lose its value because we are unable to process all that information.

Mr. HOLDER. You are exactly right. And we have to come up with a system, and that is why there is contained in our budget, money to try to get at that backlog. But we have to be mindful of the fact that as we do the necessary tests to establish a basis to use this wonderful technique, we have to not only deal with the backlog, we have to come up with ways in which we stay current.

When you have statistics, as the one that you have cited, as compared to what is going on in England, there is no reason why there should be that disparity. So I think we should focus on using the limited resources in the way that we can be most effective, and I think the uniformity the people have of the view of the value of

DNA testing, that is a place where we should be spending our limited resources.

Mr. WEINER. And one final question. Do you support having anyone that is arrested for a Federal crime having to submit their DNA for a match? Arrestees.

Mr. HOLDER. I think that is certainly something that we ought to consider. We take fingerprints from people who are arrested. And in some ways I think DNA is a 21st century fingerprint. The tests that we can now do in order to get DNA samples are not necessarily intrusive as they once were. You don't have to take blood from somebody, for instance, in order to get necessary samples. And so I think that that is something that we certainly ought to consider.

Mr. COHEN. [Presiding.] Thank you.

Mr. WEINER. Thank you, Mr. Chairman.

Mr. COHEN. I have been instructed that I need to be more like Bud Collier on Beat the Clock, because in 15 minutes we are going to be back for votes.

Mr. Chaffetz from Utah, you are recognized.

Mr. CHAFFETZ. Thank you. And thank you, Mr. Attorney General, I appreciate it. It is a privilege and I appreciate you being here.

As we get going, I just want to pass on the word that I have spent considerable time in ride-alongs with the United States Marshals, in particular the JCAT program, the Joint Criminal Apprehension Team. I would encourage you to continue to push for that program. It works wonderfully within the State of Utah. I appreciate the good work those men and women are doing and just want to add a vote of confidence and support to that program as it moves forward.

I had the opportunity, as I know you did, to go to Guantanamo Bay. I was very fortunate to go there. I appreciate the great work that the men and women are doing there. But I do have some questions and concerns about the Administration's policy as it relates to terrorism and terrorists. I just can't, for one, see what possible benefit the American people would have by bringing one of these terrorists to the United States of America.

Mr. HOLDER. Well, I mean, the focus that we have is on closing Guantanamo which has served as a recruiting tool for al Qaeda around——

Mr. CHAFFETZ. But my question is, what is the benefit—what possible benefit could there be to bringing any one of those people to the United States of America?

Mr. HOLDER. You see, I think the question—the focus is on what we do with Guantanamo. That is——

Mr. CHAFFETZ. My question is, what benefit—you said that you would not implement anything, anything that would pose a risk to the United States of America. Now, it seems to me that there would be zero risk if we brought zero of the people to the United States of America. So what possible benefit is there to the American people to bring one of those detainees to the United States of America?

Mr. HOLDER. You have to look at the question in a larger sense. The question really, from my perspective, is what benefit do the

American people get by emptying the cells in Guantanamo, a facility that is now run I think in an appropriate way, but I think that has, as I said, served as a recruiting tool for al Qaeda and it has alienated us from many of our allies. And then once we empty those cells, we have to find places for these people to go. And so I think that is the benefit that the American people get from closing Guantanamo.

Mr. CHAFFETZ. So it is a PR effort, right? Is that right? Is that a fair—it is a public relations effort, right, to try to persuade the world that we are more humane than what we have done in the Bush administration years; is that accurate?

Mr. HOLDER. It is not a PR effort. It is a return to, I think, practices and values that have always defined this Nation. And I mean that under Republican as well as Democratic Presidents. It is a recognition or a signal to the world that the United States is back in a substantial way. And I don't think we can underestimate the impact of that, as I have been to other countries——

Mr. CHAFFETZ. My time is so short. My apologies for cutting you off. Can you assure the American people that no one who is currently detained in Guantanamo Bay and who has received military training at a camp run by known terrorists will be released in the United States absent an order to do so by the Supreme Court of the United States?

Mr. HOLDER. What I can assure the American people is that nobody from Guantanamo who would pose a danger to the United States will be admitted into——

Mr. CHAFFETZ. If we want to have the smallest risk and the smallest amount of danger, wouldn't that mean bringing zero of them to the United States of America?

Mr. HOLDER. I think if we want to maximize the benefit that we get, we want to close Guantanamo in the timetable that the President has given us, and then use the enhanced relationships that we will have around the world as a result.

Mr. CHAFFETZ. But if we want a lower risk—you answered it with a question about maximizing benefit. I am saying what are we going to do to make sure that the risk is at its absolute lowest.

Mr. HOLDER. We do that by what we are doing now, which is to go into those files, 241 of them, painfully, one by one, and make sure we make determinations that the only people put up for release or for transfer are people who will do no harm to the citizens of this country.

Mr. CHAFFETZ. But the lowest risk would be if none of them came to the United States; am I wrong in that?

Mr. HOLDER. I think the lowest risk is really looking at these people, making those determinations, and then figuring out where they can best be placed.

Mr. CHAFFETZ. But what benefit would there be for placing any one of them anywhere within the United States of America? What is the benefit?

Mr. HOLDER. Again, as I said, I think the benefit comes from the closing of Guantanamo. That is where the benefit comes. You cut out a recruiting tool and you start up—you end the alienation of our relationship with our allies.

Mr. CHAFFETZ. I happen to disagree with that assessment, having been to Guantanamo. I would ask unanimous consent, Mr. Chairman, to be able to submit a letter I sent to the President after my return from Guantanamo Bay, and I would appreciate if I could submit that for the record.

Mr. COHEN. Without objection.

Mr. CHAFFETZ. I am sorry. I can't see the clock. I hope—is it red?

Mr. COHEN. It is red. Thank you for yielding back your time. Thank you, sir.

Mr. CHAFFETZ. Thank you. Thank you. I appreciate it.

Mr. COHEN. He is good on that. He is a field goal kicker, so he is used to kicking in the last few seconds.

I now recognize the lady from Texas, the distinguished Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Mr. General, it is a pleasure. Thank you very much. I had double duty today in the Homeland Security Committee and in here, and it shows how much of our work overlaps.

I wanted to applaud the Administration for its work, since part of it was court-involved, of the release of the young reporter from Iran. I think the strategy was effective and I am glad that she has returned back to her family. In that instance, was it a combination of lawyers going to a court, obviously after the court had been softened, if I can use in quotes? We know that she was sentenced to a very long sentence, and it was in essence a level of finality.

But with the, I think, appropriate statements by the Administration, it shows that the bully pulpit is appropriate. It also shows that people do watch what the United States does.

Let me again pose, very quickly, questions dealing with waterboarding, simply to say that as I understand it, it has been defined internationally as torture. Is that not correct?

Mr. HOLDER. I am not sure about whether it—there is a list of techniques internationally and waterboarding would be one of them.

Ms. JACKSON LEE. How would you characterize it?

Mr. HOLDER. As I look at the definition of torture and, given the history of the use of that technique, it seems clear to me that waterboarding is torture.

Ms. JACKSON LEE. And in the assessment and defining aspects of treatment that might be considered torture, you don't in any way discard the ultimate responsibility of securing the United States of America?

Mr. HOLDER. Not at all. That is the primary responsibility I have as the Attorney General of the United States. It is something that I wake up thinking about. It is something that I think about as I go to bed at night. And I will use all the tools that are at my disposal.

Ms. JACKSON LEE. Sorry, just for the time. And if it was to come to your attention, either by various intelligence agencies, the FBI, your military consultations, which I know—and because of the President's sort of bringing together the National Security and Homeland Security team, you would not hesitate in any way to first, of course, brief the President and then, of course, if congressional action was needed to approach us and brief us for action?

Mr. HOLDER. In terms of——

Ms. JACKSON LEE. If in any way you felt the actions we have just taken or will be taken as we define what we will continue to do or not do in securing intelligence, if you were to be briefed to determine that our national security was in jeopardy, you would respond accordingly, first to the President, I would hope, and then of course to the appropriate congressional oversight committees?

Mr. HOLDER. Yes. One of the task forces that the President created in his January 22nd executive order is a detention and interrogation—an interrogation task force that is charged with the responsibility of looking at what techniques are effective, what techniques should be used by our government beyond perhaps those that are contained in the Army Field Manual. And that group is supposed to report back in July of this year.

Ms. JACKSON LEE. I am aware of that and you are being constantly vigilant. I know you were down in Guantanamo Bay. I was down in Guantanamo Bay. We know that the President still has as his position that that facility will close.

Again, let me ask the question on Guantanamo Bay, and of course I have been there a number of times, I have watched interrogation. So the question is: If you were to determine ultimately—not projecting your final determination—that there was some jeopardy to the Nation's national security, in your role as Attorney General would you then provide, as you have been asked to do, the appropriate briefing and ensure that the national security of the United States would not be jeopardized?

Mr. HOLDER. I would obviously bring any concerns I had to the President, would brief the appropriate committees to the extent that I had concerns, and then try to work with those committees to try to alleviate the concern.

Ms. JACKSON LEE. So we are somewhat precipitous in suggesting that our national security is at a collapse, because we do have individuals who have been tasked to determine that?

Mr. HOLDER. Yeah. I mean, that is one of the things I swore to do, as did the President, as did all the Members of this Committee, to preserve, protect and defend the United States.

Ms. JACKSON LEE. And I thank you. Let me quickly move to Harris County where I have submitted a number of letters regarding a 10-year period in Harris County Jail where about 100 people died; comments being made by individuals that were custodians when someone was bleeding, an inmate, and they said, do you want me to get a Band-Aid?

I believe we have entered into an investigation after many, many letters and calls. I would appreciate that if we have a newly elected sheriff, we are attempting to put in place the kind of procedures that would incarcerate people but allow them to live and leave. Can I find out when you might have some report on that investigation?

Mr. HOLDER. I will try to get back to you with that. It is always difficult to report on ongoing investigations. But I think, as I indicated earlier, to the extent that we can share information that will result in better practices being instituted, we want to share that information and we will find a way that we can do that.

Ms. JACKSON LEE. Might I take you up on that offer, separate and apart from the investigation, to be able to have the new sheriff and small numbers of his team visit on best practices or be able

to work through those issues? I think that would be enormously helpful. Let me if I can——

Mr. HOLDER. I would glad to work with you.

Ms. JACKSON LEE. I would appreciate it.

Let me just conclude on this issue of drug addiction and the abuse of drugs, the border, et cetera. I hope that I can get the same sort of complementary approach as my good friend did on his authorization bill on COPS.

But I have H.R. 265 which talks about one-to-one, and I know there are many different discussions on this, but also to the high-value cartel, actors if you will, enhances their sentencing. So it sort of balances the question.

I would raise this question about the Department of Justice's interests in a broader discussion about the impact of drugs as relates to internationally—you have an international component, Afghanistan, the border, the drugs here in the United States—so that we can look at the big picture. And then the response to the question of working with the little guys that are one-on-one, but yet not ignoring the bad actors who continue to fuel and to kill and to produce and to see no ending to their bad acts that now impact all of, or a large part, of the United States.

Mr. HOLDER. That is exactly the approach that we would take. You and I have talked about this for years. In focusing on street crime and what happens in our communities, we can never lose sight of the fact that there are these big players, both within this country and outside this country, who make millions of dollars, billions of dollars, on the backs of people in this country, people who are addicted to drugs. So our focus has to be not only on keeping our streets safe, but also interdiction and punishing those bringing narcotics into our country.

Ms. JACKSON LEE. Let me thank you. Don't forget the Community Relations Office that I said could be a great asset. It was not used properly in Gina 6. It was not listened to. And I would like to discuss with the Department of Justice about some enhanced requirements that when there is conflict, either tied to Federal funding as relates to the district attorney or local law enforcement, that the community relations vehicle be an asset and be utilized. It was not used there. It turned into a crisis, and I think you know the whole story of Gina 6 where some youngsters were incarcerated and others were not, and the community relations person was there but was not listened to.

I thank the gentleman, Chairman, for his kindness. And, Mr. General, maybe we can follow up on that conservation. Maybe you want one sentence about that as I close. I yield back, and maybe you could just——

Mr. COHEN. Thank you, thank you. We are going to have to limit everybody to 5 minutes to get everybody in. So thank you, sir.

Mr. Franks from Arizona, you are recognized.

Mr. FRANKS. Well, thank you, Mr. Chairman. Thank you, Mr. Holder, for being here.

Mr. Holder, I am a Member of both the Judiciary Committee and the Armed Services Committee, so I get a lot of information about Gitmo. And some of the hearings, you know, we talk about the enemy combatants from both directions in heavy doses.

And I have got a couple of questions about what is commonly known as lawfare. Not warfare, but lawfare. The term "lawfare" describes the growing use of legal claims, usually bogus in my opinion, that are used as tool of war. The goal is to gain the moral advantage over one's enemy in the court of public opinion and, potentially, legal advantage in international tribunals. And I guess I would like to get your perspective on this.

As was reported by Jed Babbin in Human Events in June 2008, you gave a speech to the American Constitution Society where you spoke of the Supreme Court's decision in *Boumedienne v. Bush,* which for the first time granted habeas corpus rights to terrorist detainees held at Guantanamo. Justice Scalia in his dissent said the decision, quote, will almost certainly cause more Americans to be killed.

In your speech you said of the Boumedienne decision, quote, the very recent Supreme Court decision by only a 5-to-4 vote concerning habeas corpus in Guantanamo is an important first step, but we must go much further, unquote.

Now, Boumedienne in my judgment was a radical departure even from earlier Supreme Court decisions on the subject and from the law of war, going back to the founding of the United States.

So I would like to ask you, sir, how much farther specifically—how would you like the law to go much farther in that regard; specifically, what more constitutional rights should we grant to terrorist detainees?

Mr. HOLDER. In that speech I was talking about—when I said going further, it meant not with regard to the detainee; I was talking about a whole range of things that I disagreed with what that Administration was doing with regard to unauthorized surveillance of American citizens, the interrogation policies in place. That is what I was talking about in terms of where we needed to go farther.

Mr. FRANKS. Okay. Well, during the hearing before the House Armed Services Committee in 2007, witnesses identified many dangers associated with allowing terrorists to wage lawfare against the United States from within the United States judicial system.

One expert witness testified before the Committee, and he was Associate Deputy Attorney General Greg Katsas. In speaking at one point about the proposals for habeas corpus rights for detainees, Mr. Katsas opined as follows: Quote, if you have the enemy combatant determination being done by a court in this country, where there would be stronger arguments on the other side for the application of full constitutional protections, then we would be in the nightmare world of arguing about Miranda warnings for Mr. Mohammed before his interrogation and the, quote, knock-and-announce rules before we go into caves in Afghanistan. Those are all risks attendant with habeas corpus.

So is the President's Department of Justice prepared to extend Miranda rights to terrorists on the battlefield or before interrogations?

Mr. HOLDER. We have not said that that is our position. And when it comes to picking people up off the battlefield, I think you are looking more to the laws of war than the criminal laws of the United States. I do note that as you indicated, that a Supreme

Court, not a liberal Supreme Court, ruled that the right of habeas corpus did attach to people who were detained at Guantanamo. And in spite of what Justice Scalia said, five of his counterparts disagreed with him.

Mr. FRANKS. Last question. Al Qaeda's training manual, seized by British authorities in Manchester, England, openly instructs detained al Qaeda fighters to claim torture and other types of abuse as a means of obtaining a moral advantage over their captors. That advice has been routinely followed by detainees at Guantanamo Bay who have succeeded in generating incessant demands from international actors or for the base's closure, for their own liberation, unquote.

That is what was in their manual.

So Mr. Rivkin laid out the al Qaeda lawfare game plan, and there are two objectives, and it seems to be coming to pass, just as the terrorists had planned.

Isn't the Administration's closure of Gitmo and the removal of enemy combatants, possibly to the United States, a complete victory of lawfare for al Qaeda? I mean, what else could they possibly ask for if this is in their book and we are following to the letter? What more could they ask for us to do? And what is our plan next?

Mr. HOLDER. I don't think it is a victory. I think it will be a victory for our country and a victory for the causes that we fight for by closing Guantanamo and taking from al Qaeda the ability to recruit and point to that place as a place where inappropriate things happened, true or not. I mean, that has become a symbol of practices that this Administration has decided not to use.

As I said also, it will allow us to interact with our allies in a way that we presently cannot if we close Guantanamo. So I don't see the closing of Guantanamo as a victory at all for al Qaeda. I think it is going to be a victory for the American people and for our allies.

Mr. FRANKS. I am out of time. But I certainly think al Qaeda sees it as a victory.

Mr. COHEN. Thank you. I recognize the gentleman who represents the Rose Bowl, Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. And thank you, Attorney General, for the superb job you are doing. None of these questions are easy or they would have been answered already. And what I find remarkable about some of the comments and questions that have been made about Guantanamo today is my colleagues on the other side of the aisle seem to assume there is no risk inherent in keeping Guantanamo open; that somehow you can assure the American people that we can keep it open, we can detain people indefinitely, we can torture them if necessary, we can ignore the courts if possible, and somehow this won't have any adverse impact on the American people, what we stand for, or serve as a recruiting tool for people who want to attack us.

There is no simple answer here, and I appreciate the methodical way that your Department and the Defense Department are going through each, detainee by detainee, to figure out what the proper recourse is procedurally and what forum, et cetera. And I don't hear any suggestion, frankly, coming from my colleagues on the other side, any constructive suggestion about what ought to be

done with these people. So anyway, I reiterate my interest in working with your—with you and your office on these issues.

Today I wanted to just follow up a little bit on the DNA issue. When the FBI Director testified last year before the CJS Appropriations Committee, where I also said—I expressed concern that the existing backlog would increase with the new law that was requiring more samples to be taken before, and I was assured that the fiscal year 2009 request of 30 million would eliminate the backlog. In subsequent meetings with the Justice Department last year, I was assured that that was all that they needed, the backlog would be gone. I think we may have even made a wager over lunch or dinner; or maybe I said I would simply eat my hat if we didn't have a backlog a year later.

The backlog is much worse than I think it was a year ago, and I think it is going to require serious resources to get it under control. I appreciate the fact that the Department has resumed funding backlog in terms of State and local governments which are also having this problem. But I would like to work with you also on addressing the DNA backlog, but also addressing a broader issue that a lot of the forensics capacity in the country, certainly on the State and local level, maybe on the Federal level as well, is also hurting—fingerprint labs, ballistic labs.

So it is not just the DNA issue. I think we are facing an aging infrastructure in terms of forensics, certainly an aging workforce, not a whole lot of people going into the field. I would love to work with you on those issues.

I have one very specific question in terms of the government's handling of DNA, and that is I am from Los Angeles. We have probably the biggest backlog anywhere. And in the case of rape kits, we have thousands of untested rape kits in Los Angeles, maybe as many as 10,000 between LAPD and LA Sheriff's Office. Some of those now are beyond 10 years old, and even if the evidence identifies the rapist, may be barred by the statute of limitations. That is just an unthinkable situation.

They are now adopting new policies of testing every kit, and not saying, well, we will test some and not others. I know that the incidents of rape on military facilities or on tribal lands, the jurisdiction of the Federal Government is limited. But I wanted to ask whether the Federal Government has a policy of testing every rape kit for rapes committed on Federal lands, and I don't know if you know the answer for you don't. I would love to follow up with you and make sure that kind of policy is instituted.

Mr. HOLDER. I think it is a good policy. I don't know, frankly, if it is the policy of the Federal Government. But I will look into that and get you a written response, get a response back to you.

But I think the point you make is, in fact, a good one. Given the power of DNA evidence, you can—just by doing that, you can solve crimes. So I think that the testing of those kits makes an awful lot of sense.

Mr. SCHIFF. And we have seen, unfortunately, where there has been a delay in testing in particular rape kits. Where they are tested and you are able to make a positive ID, we learn that in the interim between the time the kit was taken and the time, years later, when it was tested, the suspect has gone on to rape other

women. Had you tested it promptly—and I don't mean you-you—but had law enforcement, it would have meant rapes not occurring and murders not occurring.

And given the fact that the DNA is converted to a unique numeric identifier that doesn't betray information about hair color or propensity for colon cancer or carry anything like that, I think the privacy interests are much less, frankly, than the privacy interests of someone not to be raped or murdered. And I look forward to working with you on it.

Thank you, Mr. Attorney General.

Mr. HOLDER. I look forward to working with you as well.

Mr. COHEN. Thank you, sir. Lawyers, rape kits and money.

I recognize the gentleman from Florida, Mr. Rooney.

Mr. ROONEY. Thank you, Mr. Chairman. You know, one of the advantages of being a freshman is that I get to listen to all my colleagues, and get butt in front of about 30 times, before it is actually my turn. But thank you for your testimony and for your service to our country.

My questions are kind of open-ended. And the one thing that I am concerned about is you made the statement that we have only been here for a few months, and that the President has ordered the closure of Guantanamo Bay within 8 months. Where are we exactly? I know you talked about possibly Article 3 courts, possibly military courts. Where are we with regard to criminal procedure?

And, by the way, I want to thank you for offering that you would work with Congress to help you with any of these procedures, and I want to express my willingness to help as we move forward.

But where exactly are we? Because time is—8 months is not that long. When you are talking about 241 people that need to be moved by that closure, where exactly are we with regard to procedure?

Mr. HOLDER. Well, we are moving along with regard to those reviews. I don't have the precise number that we have completed at this point. But I think we are on track to have this done within the time frame that the President has given to us. But he has also given us an indication that to the extent I need—we need more people to do the job that he has set out before us, that we have that ability. So we have about 80 lawyers now, 80 lawyers—people, I guess, altogether who are involved in this process with regard to the detention review process. But we need to put more people on it. We are prepared to do that.

Mr. ROONEY. When that is established and we are moving forward, whatever that procedure may be, do you—will you assume or speculate today that that standard, whatever criminal procedure we use there, will be the same standard—I am just trying to get some kind of response that there won't be this sort of haze or fog about where we are when we move forward. If there are detainees taken off the battlefield that we pose a threat in Afghanistan or wherever, and they are not taken to Gitmo, wherever they are used, what due process are they going to get? Is it going to be this same due process or do you foresee this is sort of a fluid——

Mr. HOLDER. That is actually an excellent question, and one of the things that the President anticipated in forming that detention review committee task force. One of the things they are charged with doing is coming up with what are the standards going to be

for people who are detained going forward, be it in Iraq, Afghanistan other places, how are we going to deal with those people, how are they going to be detained, what are the appropriate ways in which we should interact with them?

So that task force has a responsibility of reporting back in July. But that is something that, as I said, I think that is an excellent question and one that has caused the formation of a separate task force.

Mr. ROONEY. And finally, you know, I was down in Guantanamo Bay recently, as have you been, and one of the things that kind of dawned on me as we were driving around there was that there is—they are actually still building there. There are still dollars appropriated. And you saw the facility and what it is capable of.

And I understand what your argument is about the recruitment tool and the stigma that Guantanamo Bay, Cuba has psychologically, worldwide, and I am not going to debate on that. But one of the things that kind of dawned on me is one of the reasons for the stigma is possibly that, as the gentleman from the other side of the aisle pointed out, that they are detained indefinitely, I believe, as he was inferring, without due process.

Assuming they do go through the due process in the next year, inevitably some of them are going to be found guilty or need continued detainment. Is there any consideration given to the possibility of Guantanamo Bay, Cuba being reopened as a prison—I think that there is one person down there that is actually considered a prisoner out of the 241. Is there any consideration to Guantanamo Bay as a prison after due process, or is that stigma so crippling that is not even in the cards either?

Mr. HOLDER. That is not something that has been discussed. I think that all the negatives that are attached to Guantanamo, inconsistent I think with kind of the Guantanamo that now exists—I think that stigma, as you put it, probably will still be attached to the facility. But as I said, we have not discussed the possibility of the continuing role for Guantanamo after January of next year.

Mr. ROONEY. Thank you, Mr. Chairman. I yield back. Thank you, sir.

Mr. COHEN. Thank you, sir. I recognize Mr. Sherman from California, the golden State.

Mr. SHERMAN. Thank you. Five and a half hours of talking about Gitmo under the lights in this building in this room strike me as well beyond what the Army Field Manual will allow. And so I am going to ask you questions on a completely different subject; and that is the subject of what your relationship with the other departments of the Federal Government, your colleagues in the Cabinet, and what you should do or would do if you saw that those other Cabinet departments were clearly violating the law.

There are a couple of instances I want to bring to your attention and that I hope that you would have your lawyers review to see if you agree with me that these are violations of the law.

The first is the Iran Sanctions Act, which among other things requires the State Department to name those oil companies and others that are investing in the oil sector in Iran. Now, for 10 years, the State Department has refused to do so, explaining to me that our friends in Europe would be offended if they were to follow that

statutory requirement. It seems to me a deliberate failure to carry out the law would be something that the Justice Department would be concerned about.

The second issue is of more recent vintage and deals with the TARP, the bank bailout bill, in which the Secretary of the Treasury has announced that whatever moneys are repaid by the banks will then be recycled into other bailout expenditures or investments, even though the statute is very clear that that money is supposed to go into the general fund of the Treasury.

And so my questions for you are: Will you have the Justice Department look at these two legal issues and get back to me, and will you inform your colleagues of the results of that review? And what action should your Department take if it is not, in your opinion, a grey area, but you see another Cabinet official, in the view of you and your lawyers, just clearly failing to follow the law?

Mr. HOLDER. I will certainly look at the two fact situations that you described and we will get back to you with regard to an answer. And if there is a problem that we identify, then share that concern or do more, whatever is appropriate, with the two other departments.

With regard to your larger question, to the extent that we in the Justice Department see a deficiency that another department—a legal deficiency that another department has, we would certainly share that view with them. Obviously, to the extent that we saw crimes occurring in other departments, we would investigate them. And that is why—I think that is——

Mr. SHERMAN. If a Cabinet officer or subCabinet officer just takes money that is appropriated for one purpose and spends it on another purpose or takes funds that are supposed to be in the general fund or returned to the general fund, and just decides to do something else with it, obviously if they are in the grey zone—I mean, different lawyers can differ on some things, but we have to agree that some things are clear enough that you can say something is clearly a violation—what penalties are imposed on a Cabinet officer? And is Congress basically just an advisory body where Cabinet officers can just do what they want and face no penalties for violating or failing to follow statute?

Mr. HOLDER. Every Cabinet officer is responsible for, obviously, following the law, the regulations that exist. And to the extent there is a grey area in the questions, the Office of Legal Counsel at the Justice Department is, I think, entrusted with the final say as to what the law is. If there is a dispute between State, for instance, and the Interior Department and Justice—I don't know—the dispute can be—it is a legal question. The Office of Legal Counsel can view the fact, apply the law, and then come up with a determination and issue an opinion.

Mr. SHERMAN. But if somebody just ignores the opinion, or if in the predecessor Administration there were people who did things that were clearly illegal and spent money that was clearly not appropriated by Congress for that purpose, are they civilly liable, criminally liable, or do we just sweep it under the rug?

Mr. HOLDER. A lot of it is—so many of those questions are fact-specific. You have to know—there is the possibility, I suppose, of personal liability. There is the question of personal criminal liabil-

ity. There is the possibility of personal civil liability. There are potentially institutional issues that just have to be worked out. If, in fact, one of the institutions of government is conducting itself, and has for years, in a way that is inconsistent with statutes or regulations, and that is brought to my attention, then the President will ultimately have to get involved. Congress has the ability to conduct oversight hearings.

Mr. SHERMAN. Well, oversight hearings don't actually force anybody to do anything. As to the two issues you are going to resolve, I realize that the Administration can waive imposing sanctions on companies that invest in the Iran oil sector, but they have to be publicly named. And as to the TARP legislation, I will get you my legal analysis and you can tell me whether it is right or wrong.

Mr. HOLDER. That is fine.

Mr. COHEN. Thank you. Mr. Jordan from Ohio will graciously ask one question, and then we are going to run up and vote, do the votes immediately, and if you are so inclined and willing to stay, the people will run back here immediately, like Bob Hayes and get it over with.

Mr. HOLDER. Thank you.

Mr. JORDAN. Thank you, Mr. Chairman. And, Mr. Attorney General, thank you. I know you have been here long. I appreciate that.

Congress passed a defense—I am only just going to read this, but I edited out some of the—passed the Defense of Marriage Act in 1996, a solid bipartisan vote, 342-to-67 in the House, 85-to-14 in the Senate. President Clinton signed it.

Look, the act makes clear that marriage is what marriage has always been. But this definition has been challenged in Federal district court by GLAAD. They filed suit in March. We sent you a letter, 77 House Members, including the Ranking Member of this Committee, myself, many other Members of this Committee. The Minority Leader sent you a letter back in March of this year, seeking your assurance that you would vigorously defend the law in its entirety in accordance with the responsibilities of your office.

So in light of what we have seen happen recently in Iowa and in Maine, just last week here in the District with what the Council did relative to the institution of marriage, and frankly, in light of President Obama's expressed opposition to this legislation, I just wanted to ask you about will you defend the constitutionality of this act? Will you vigorously defend it? And if you so choose, your thoughts on the institution of marriage?

Mr. HOLDER. Well, I think we have—there is a case—I have to search my memory. We have a case that we are presently engaged in. I have to look at that. I might have to get back to you on that one. I am not sure what the status of that case is. And so I am not sure I am able to answer the question about where the Department stands with regard to the enforcement of the act. But I think we have a pending case.

Mr. JORDAN. Right. The case that was filed in March by the Gay and Lesbian Advocates and Defenders, the GLAAD case?

Mr. HOLDER. I am not sure.

Mr. JORDAN. If you wouldn't mind—we sent you the letter March of this year—responding to that letter and getting back to me on this question, we would appreciate that.

Mr. HOLDER. Okay.

Mr. JORDAN. Okay. Thank you, Mr. Chairman.

Mr. COHEN. Thank you. And in the interest of domestic tranquility, we will not ask you to give your personal definition of marriage.

And we will return here, if you would be so kind to stay with us, in about 12 minutes. Thank you, sir.

Mr. HOLDER. Thank you.

Ms. WASSERMAN SCHULTZ. [Presiding.] I would like to call the meeting back to order. I am going to recognize myself for 5 minutes.

Mr. Attorney General, it is a pleasure to be with you. First of all, let me tell you that I truly believe that there is no one more qualified to serve as Attorney General of the United States of America than you.

Mr. HOLDER. Thank you.

Ms. WASSERMAN SCHULTZ. And I was thrilled when you were nominated and feel confident that you can bring the Department of Justice back from ruin and politization that we have endured for the last number of years.

In your prepared remarks you said that the Department will serve the cause of justice and not just the fleeting interest of politics. And I know that you have mentioned that you are committed to reinvigorating the traditional missions of the Department, which includes fighting crime, and I couldn't agree with you more about both of those items.

What I would like to talk about and ask you about is the Department's commitment to pursuing child exploitation, particularly the exploding crisis of child pornography trafficking. Last year in this Committee we heard evidence that law enforcement is able to identify more than 500,000 unique computers in the United States alone that are actively engaged in distributing videos and photographs of the rape and torture of children, and those images include young toddlers and infants.

Conservative estimates indicate that at least one in three of these pornography trafficking suspects is also a hands-on abuser with real local child victims. I mean, these are crime scene photos, not the traditional pornography as you know. We are talking about real children that are out there waiting to be saved. And we have the technology to prevent child sexual abuse on a massive scale just by tracking child pornography traffickers.

We also heard that last year fewer than 2 percent of those cases are actually being investigated, and that was due both to the lack of resources as well as the failure of the Justice Department to make it a priority. In 2008, I was proud to work with then-Senator Joe Biden to pass the Protect Our Children Act into law, and that was signed into law last October. And there are a few key provisions that I would like to focus on with you, if you could help me with the Department's plans.

The law authorized increased appropriations to the Internet Crimes Against Children task forces from the 2008 levels of $15.9 million to $60 million. And as you know, the ICAC task forces are the backbone of our national capacity to combat this crisis. In the 2009 appropriations bill, the ICAC funding was included in the bill

for $70 million for NCMIC. Only $21 million of that, though, was allocated by Justice to the ICAC program.

Now in fiscal year 2010 that actually dropped from 70 million—NCMIC's budget was cut from $70 million to $60 million, and it is unclear how much of that is going to be dedicated to the ICAC funding. But knowing how poorly we are doing in investigating these crimes with 15.9 million, clearly if we have less than 15.9 million or we have flat funding, to me that seems like the Administration is also not going to make the Protect Our Children Act and pursuing child pornographers and child exploitation a priority.

So could you tell us where you are on that issue? And in particular, the law also requires the creation of a National Strategy for Child Exploitation Prevention as well as the appointment of a high-level official within DOJ for child exploitation prevention. So if you can tell us where you are on the appointment of that official and the development of the national strategy as well.

Mr. HOLDER. Thank you for your kind remarks. First, with regard to the appointment of that official, the Protect Our Children Act 2008, we are in the process of doing that and I am hopeful that I will have somebody relatively soon for that position.

The area that you have described is a priority of the Department—it is a priority of mine. When I was the Deputy Attorney General, one of the things that I kind of carved out as a responsibility of mine was the whole question of children and how they are impacted by—frankly, ignored by our criminal justice system. And one of the things I want to do as Attorney General—I have only been there about 3 months or so and there has been a lot of stuff, a lot of incoming. As we get things more in place with more of our people in place, that is certainly one of the areas that I want to continue my work.

And it is interesting because I think you really hit an important point, that it is different from the issues that were of concern to me when it came to children 9 years or so, 10 years or so, when I left the Department are different than the ones that exist. The Internet, a wonderful tool, is something that now has been used to perpetrate, foment, keep going child pornography. And it is something that we have to dedicate ourselves too.

Ms. WASSERMAN SCHULTZ. We can't just think about child pornography in a bland, general sense. When we are talking about trafficking of child pornography, these are real child victims. The resources that we don't spend are the children that we do not save.

Mr. HOLDER. I don't disagree with you. And you know, I think that too often we focus on these Internet images without giving thought to the fact that these are images of real live human beings, real live children. The question is—you certainly have to focus on the Internet component, but you also to have determine where is that child, what is happening to the welfare of that child? And that is something that, as I said, will be a priority for this Justice Department.

Ms. WASSERMAN SCHULTZ. Can I ask whether you will be committed to making sure that we can fully fund the Protect Our Children Act going forward and make sure that that we can get the resources? Because literally it is the resources that are going to make sure that we can fund the ICAC network and get the law enforce-

ment investigations going. We know that we can rescue a child 30 percent of the time if they are given the resources to investigate.

Mr. HOLDER. I will fight. Lots of people have different priorities. But when I identify as my small list of priorities the things that I need to have fully funded, and if I make this one of them—and I will—my hope that I will have a response of OMB listening to me.

Ms. WASSERMAN SCHULTZ. Thank you. And just before—my time has expired but there is one more piece of this—it is nice to Chair the Committee—but the last piece of my question is on the national ICAC data network. Part of the law called for the creation and proper funding ofthat. It is a law enforcement controlled platform. We don't want to let the ICAC data network move into the private sector; we need it to remain as a public backbone.

And right now what has occurred, apparently, is that the Department—the Office of Juvenile Justice and Delinquency Prevention put out a solicitation to create the system before the appointment of a high-level official and prior to the appointment of the steering committee that is mandated by the law. We are going to move forward with that before there is any coordination or development of a plan or a high-level official is in place.

Is there any way to delay that so that we can have the other thing in place first, so this can be the coordinated effort that we intended when we passed the law?

Mr. HOLDER. That is actually a good point. Let me look into that. There is obviously a responsibility on my part to appoint that person, and we will do that as quickly as we can. And you raise a legitimate concern about not putting in place the very things that person is supposed to coordinate.

Ms. WASSERMAN SCHULTZ. Exactly.

Mr. HOLDER. Let me look into that and we will get back to you both with regard to the name of the person and how we are going to proceed in formulating the plan.

Ms. WASSERMAN SCHULTZ. Thank you so much. The gentleman from New York is recognized for 5 minutes.

Mr. MAFFEI. Thank you very much, Madam Chairman. Mr. Attorney General, I also want to echo my colleagues in thanking you for your service at a very crucial time. We needed an Attorney General with your kind of background who would be able to reestablish accountability and veracity in the office. And I very much appreciate you being here today, also. I know it is late.

One thing that has been brought to my attention by a number of constituents is the issue of some of the immigration raids that have occurred across the country. And I know that this is mainly the Immigration and Customs Enforcement and therefore falls mostly under the Department of Homeland Security's jurisdiction.

However, some of these reports have been quite disturbing and do have aspects that might concern the Department of Justice. I have been told of a number of cases in which ICE agents have boarded buses in Syracuse, Rochester, Buffalo, and other upstate New York communities and targeted people based on their ethnicity or skin color for searches. In some cases agents waited outside the bus station and singled out those who appeared to be Hispanic. These people are often detained and questioned. In some some cases they are taken into custody. A large number of these

people are legal immigrants and many searched and detained are citizens of the United States, entitled to the same constitutional protections that you or I are.

Are you at all aware of this practice either occurring now or having occurred in the prior Administration?

Mr. HOLDER. I am not aware of those specific procedures you have talked about. On the other hand, there is, I think, clearly a need for vigilance in that area, and there is also a need for coordination between DHS and DOJ with regard to this whole question of immigration enforcement.

Too frequently in the past, I think DHS has done things without regard to the impact it has on Justice Department resources. The Justice Department has not maybe communicated as well with DHS as it should have. Secretary Napolitano and I have tried to sit down and talk about a whole variety of immigration issues: work site enforcement; how ICE conducts itself. And I think we are going to be in a better place. But the concerns that you raise about the procedures you mention are very legitimate and inappropriate.

Mr. MAFFEI. Certainly that would not be the policy of this Administration?

Mr. HOLDER. No, it would not.

Mr. MAFFEI. I appreciate that answer and work with Homeland Security particularly in this area. If it comes to my attention that these raids are still occurring, how should I proceed? Should I get in touch with Secretary Napolitano only, or because of some civil rights concerns is it also under the auspices of the DOJ as well?

Mr. HOLDER. I will leave to you, Congressman, how you decide to do that. But I would suggest on the basis of what you said in the latter part of your answer about the civil rights concern, that perhaps a letter that went to both of us might be appropriate, because I think it is the kind of thing that Secretary Napolitano and I would want to discuss. She and I go back a long ways to when we were U.S. attorneys together in the Clinton administration. I think it would be something that we probably would both want to look at at.

Mr. MAFFEI. I appreciate that. I too believe that this Administration will be taking a very, very different approach in terms of tactics. I believe a more effective approach, by the way, both for reducing undocumented immigrants, but also preserving American civil liberties and also people's human rights.

However, I am concerned just about bureaucratic inertia. So I would appreciate any help you and your office would provide us in the Congress as we try to help identify and let you know in the Administration about these instances.

Mr. HOLDER. That would be fine. I look forward to working with you on that. I hope there will not be other instances along the lines that you described, but to the extent that you come into possession of that kind of knowledge I hope you will share it with me and also Secretary Napolitano.

Mr. MAFFEI. Thank you. I thank you for your answers. I yield back the balance of my time.

Mr. COHEN. I want to thank Mr. Attorney General for your courtesy and your time that you spent with us, which has been quite generous. And that concludes our questioning.

Without objection, Members will have a minimum of 5 legislative days to submit additional written questions as if you need such. And we would appreciate you being kind enough to answer those as promptly as you can. They will be made a part of the record.

Without objection, the record will remain open for 5 legislative days for the submission of any other materials.

This has been useful in our efforts to ensure that the Nation's premier law enforcement agency is dedicated to being a shining example not only of how effectively it pursues its case, but equally how it respects the fundamental questions and issues of freedoms and law in our country. Like Caesar's wife, the Justice Department should be and will be beyond reproach.

With that, this hearing is adjourned.

[Whereupon, at 4:35 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

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18TH DISTRICT, TEXAS

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Congress of the United States
House of Representatives
Washington, DC 20515

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CRIME, TERRORISM, AND HOMELAND SECURITY

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TRANSPORTATION SECURITY AND INFRASTRUCTURE PROTECTION
BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

FOREIGN AFFAIRS
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AFRICA AND GLOBAL HEALTH
MIDDLE EAST AND SOUTH ASIA

STEERING
DEMOCRATIC CAUCUS
WHIP
CONGRESSIONAL BLACK CAUCUS
CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS
CO-CHAIR
PAKISTAN CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

STATEMENT BEFORE THE COMMITTEE ON THE JUDICIARY

OVERSIGHT HEARING: ERIC HOLDER ATTORNEY GENERAL U.S. DEPARTMENT OF JUSTICE MAY 14, 2009

Mr. Chairman, thank you for holding this very important hearing. In addition to holding the seat of my hero, role model, and predecessor, the incomparable Barbara Jordan, one of the reasons that I have been so proud to be a member of the Committee on the Judiciary throughout my terms in Congress is that this Committee has oversight jurisdiction over the Department of Justice, which I have always regarded as the crown jewel of the Executive Branch.

In recent years the reputation of that Department, which has done so much to advance the cause of justice and equality for all Americans through the years has been tarnished. Now, under the Obama Administration, which marks the first time that an African-American male has stood at the helm of Presidential leadership in this country, this country also now has its first African-American Attorney General: Eric Holder. I am expectant and hopeful that this Administration and that Attorney General Holder will turn around over eight years of misuse and abuse in the Department of Justice.

This Committee has no greater challenge and obligation to the nation than to help restore the Department of Justice to its former greatness. I believe that the present Administration can do it.

It is in that spirit that I welcome our witness, the Attorney General of the United States, the Honorable Eric Holder. Welcome Mr. Attorney General.

Anyone who has observed this Committee over the years knows that I have a deep and abiding passion about the subjects within its jurisdiction: separation of powers, due process, equal justice, habeas corpus, juvenile justice, civil liberties, antitrust, and intellectual property.

CIVIL RIGHTS ENFORCEMENT

Mr. Chairman, the Department of Justice is the nation's largest law enforcement agency and it is no exaggeration to state that its Civil Rights Division used to be the nation's largest civil rights legal organization. It wields the authority and the resources of the federal government on difficult and complex issues and has helped bring about some of the greatest advances for civil rights. However, the Department's record under this Administration indicates that it is not living up to its tradition of fighting for equal justice under law and championing the rights of the powerless and vulnerable. Under the Bush Administration, the Civil Rights Division has simply neglected to bring challenging cases that could yield significant rulings and advance the cause of civil rights in our country.

The Bush administration has abdicated its responsibility to enforce the nation's most critical laws. For example, since January 20, 2001, the Bush Administration has filed 32 Title VII cases, an average of approximately 5 cases per year. In contrast, the prior Administration filed 34 cases in its first two years in office alone, and 92 in all, for an average of more 11 cases per year. I would like to learn how the present Administration is working to address the years of abuse, mismanagement, and neglect.

U.S. ATTORNEY FIRINGS

Mr. Chairman, I would also like to discuss the highly publicized issue of the on-going investigation into the U.S. attorney firings in 2006. Excluding changes in Administration, it is rare for a United States Attorney to not complete his or her four-year term of appointment. According to the Congressional Research Service, only 54 United States Attorneys between 1981 and 2006 did not complete their four-year terms. It has now been confirmed that at least eight United States Attorneys were asked to in December 2006. What is the present Administration doing on that score?

DESTRUCTION OF CIA INTERROGATION TAPES

Mr. Chairman, I am extremely concerned the recent revelation that tapes of CIA interrogations have been destroyed, and the reports that the CIA has engaged in the practice of waterboarding. I am very curious to learn how the present Administration will address these issues.

I am also curious to know what the Attorney General will do to address the crack-cocaine and powder cocaine sentencing

disparity. I have a bill, H.R. 265, that attempts to address this issue and will be discussed at hearing next week. I am hopeful that the Administration and the Attorney General will give serious consideration to the enactment of my bill.

I am eager to learn of the Administrations position on immigration. I would like to know whether comprehensive immigration reform will be an agenda item for this Administration.

I am interested to hear the Attorney General's views on these matters. Again, thank you Mr. Chairman for holding this hearing. I yield the remainder of my time.

PREPARED STATEMENT OF THE HONORABLE MIKE QUIGLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND MEMBER, COMMITTEE ON THE JUDICIARY

Statement of Rep. Mike Quigley
Judiciary Committee Oversight Hearing on the
Department of Justice
May 14, 2009

Thank you, Chairman Conyers and Ranking Member Smith, for holding this oversight hearing on the Department of Justice today.

I'd also like to thank you, Attorney General Holder, for coming here to testify before us on your work thus far.

Our road ahead is long and our workload daunting – and for a new Administration and a new Congressman like myself – our focus must remain on our constituents and their needs.

Our constituents have tasked us with coming here to provide them a voice.

My friends in the Boystown neighborhood of Chicago have asked me to stand up to the social injustices facing the LGBT community, and to grant them the opportunity to be counted as a domestic partnership in the upcoming Census, to repeal "Don't Ask Don't Tell" and to be sure they won't be discriminated against at any level – local, state or Federal.

My friends of Polish descent have asked that they have the opportunity to join the list of Eastern European countries who have the ability to be granted a visa-waiver.

As an ally of the US in both Afghanistan and Iraq it's the least we can do.

My friends, and importantly, my family have asked me to come here and ensure that automatic weapons are pulled off our streets where they have no business.

I know that many people agree with me that these seriously deadly and rapid fire instruments contribute to only the worst possible outcomes.

So, today, we have a long list of important issues to discuss with the Attorney General.

However, I come here today with the same hope and optimism that my constituents elected me with, and I am positive that our work today can move us toward a better, and more just, future.

LETTER FROM THE HONORABLE JASON CHAFFETZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND MEMBER, COMMITTEE ON THE JUDICIARY

JASON CHAFFETZ
3D DISTRICT, UTAH

COMMITTEE ON
NATURAL RESOURCES

COMMITTEE ON
THE JUDICIARY

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

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www.chaffetz.house.gov

May 5, 2009

Dear Mr. President:

Last Friday I had the honor of visiting the Guantanamo Bay, Cuba, detention facility administered by Rear Admiral David M. Thomas, Jr., USN. First and foremost, let me say that I am in awe of the amazing work, dedication and commitment of our soldiers who serve in Guantanamo Bay. They have successfully created an atmosphere and reality on the base that is safe, humane, legal and transparent.

After visiting the facility, I feel strongly that closing Guantanamo Bay would be a mistake. At the very least it should be kept open as a prison, holding detainees until due process is served. I recognize the promises you have made during your campaign. I also respect your desire to maintain the high ground with regard to the treatment of detainees. However, Guantanamo Bay has been inaccurately portrayed as a site of ongoing detainee torture and mistreatment – nothing could be further from the truth.

We have done a grave injustice by allowing widespread misperceptions of the facility to be perpetuated. There are three key facts that I think would surprise most Americans.

First, contrary to popular belief, waterboarding never happened at Guantanamo Bay. Our own military personnel were not involved in these techniques on this base. The closure of this detention facility would not prevent a single instance of waterboarding.

Second, people should understand that our troops go to great lengths to treat detainees with respect. In many ways these people are treated better than they would be in federal or state prison systems. Among the examples I witnessed on my visit:

- Detainees are given opportunities to pray freely 5 times a day;
- They are able to have 5 books at any given time from a library of more than 10,000 titles;
- They have access to hundreds of movies such as *Oceans 13*, *Liar Liar,* and *Finding Nemo*;
- They have outdoor recreation facilities that include a soccer field, basketball hoops, and access to weight training equipment;
- There is no solitary confinement;
- Our troops maintain a disciplined and calm demeanor, even in the face of abuse by detainees;

- Detainees receive more than 2,000 calories of food per day, monitored quarterly by the International Red Cross;
- We go to great lengths to see that their nutritional needs are met, even offering a variety of flavored liquid nutrients to detainees participating in hunger strikes;
- They have regular access to and interaction with their individual legal counsel.

Third, the public may not realize how unique and irreplaceable this facility is. There is no match for it anywhere. Should we close it, there is no equivalent alternative. Guantanamo Bay has natural geographic barriers which keep detainees far from American civilians. The remote location also provides a necessary barrier against anyone who may wish to do harm to detainees—or attempt to set them free.

The American taxpayers have made a substantial investment, spending hundreds of millions of dollars over the years. We have built a fully functional facility that is safe for our detainees and provides positive working conditions for troops who serve in a challenging environment. We should not simply walk away from the investment the American people have made in this facility because we're more concerned about the politics of appeasement than with the dangerous realities of the situation.

Based on my experience there and my discussions with our military personnel, I feel strongly that the American people have made the right investment. It's the right facility, the right location, the right public policy. There is no viable alternative.

The treatment of the detainees is directed by the President. If your goal is to change the world's view of this facility, perhaps a policy change is all that is required. Closing an irreplaceable facility is a public relations move that does nothing to decrease enhanced interrogations. The cost of such a closure is to threaten the lives of Americans by likely requiring us to bring detainees – many of whom are terrorists – to American soil. Detainees would inevitably be brought to facilities that do not have the geographical and structural advantages of Guantanamo Bay.

There should certainly be a legitimate discussion and debate about enhanced interrogation techniques. I believe that the President should have sole authority to make decisions about enhanced interrogation.

However, while Guantanamo Bay may suffer from a public relations problem, bringing these detainees to American soil is clearly not an acceptable solution. These detainees are responsible for some of the most egregious terrorist attacks in our nation's history, including 9/11, the bombing of the USS Cole, and the beheading of journalist Daniel Pearl. These are the very people who want nothing but death and destruction for the United States of America. Today they still represent one of the largest and most active Al Qaeda terrorist cells in the world.

I believe our nation is more secure when these detainees are kept off our shores in an isolated and secure location. We are better off keeping detainees separate from U.S. prison populations. Clearly they would not mesh well in such an environment.

Furthermore, our trained military is far better equipped to oversee the imprisonment of terrorist detainees. I also believe military tribunals are much more appropriate than trials based in our federal courts.

As public policy makers, we should be rooted in reality rather than the politics of public relations perceptions. We cannot allow our military men and women to be maligned by those who would perpetuate misinformation and exploit widespread fallacies in pursuit of their own agendas. Nor should our foreign policy be dictated by a public relations campaign. Whether we are Republicans or Democrats, our number one goal must be the safety and security of the United States of America.

I understand that these are difficult decisions. I trust that you have, as I do, the best interests of the American people at heart. I appreciate your willingness to consider input from a variety of perspectives. Please put our nation's security first by reconsidering the closure of the detention facility at Guantanamo Bay.

In closing, I would encourage you to do as you have so successfully done in Iraq. Please carefully weigh the input from our military leaders on the ground. Let's not hastily close a facility that serves a key purpose in the defense of this country.

Thank you,

Jason Chaffetz (UT-03)
Member of Congress

POST-HEARING QUESTIONS SUBMITTED TO THE HONORABLE ERIC HOLDER, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

June 18, 2009

The Honorable Eric H. Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Attorney General:

Thank you for your recent appearance before the House Committee on the Judiciary at its May 14, 2009, oversight hearing on the Department of Justice. Enclosed you will find additional questions from members of the Committee to supplement the information already provided at the hearing.

Please deliver your written responses to the Committee on the Judiciary by July 6, 2009. Please send them to the Committee on the Judiciary, Attention: Renata Strause, 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Renata Strause at (202) 225-3951.

Sincerely,

John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Ronald Weich

Enclosure

QUESTIONS FOR ATTORNEY GENERAL ERIC HOLDER
APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE
May 14, 2009

QUESTIONS SUBMITTED BY CHAIRMAN JOHN CONYERS, JR.

Committee Requests for Information and Questions for the Record

1. During the 110th Congress, responses to post-hearing questions by the Department of Justice and the FBI routinely were not returned to the Committee for six months or more following their submission. Such delays hinder the Committee's efforts to fulfill its oversight responsibilities in a timely manner. Will you review the process by which Committee questions are answered and approved and seek to lessen the delay?

Waste, Fraud and Abuse

2. A report by the Office of the Inspector General Audit Division in March 2009 found that the Department's Litigation Case Management System (LCMS) project is significantly behind schedule and over budget. The OIG recommended that the viability of implementing LCMS in all of the Department's litigating divisions be reevaluated. Has a reevaluation of the LCMS taken place? If so, what was the result of the reevaluation?

3. An April 2009 report by the OIG on an audit of the procedures and policies used by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in awarding discretionary grants for fiscal year 2007. The report also addressed allegations of misconduct by the office's former head, J. Robert Flores. The OIG report raised significant concerns with the peer review process for OJP and OJJDP grant proposals, as well as with the bureau's record-keeping practices, and made nine recommendations for improving the transparency and integrity of the OJJDP's grant making process. What, if any, action has been taken within OJP and OJJDP in light of the OIG report?

   a. Have the OIG's recommendations been implemented?

Deferred Prosecutions

4. During the hearing, Congressman Cohen asked whether the Department of Justice would support his bill, H.R. 1947 the Accountability in Deferred Prosecution Act of 2009, which "promotes transparency, uniformity, and accountability in deferred and non-prosecutions." You responded that you would "want to look at the bill and will work with [Congressman Cohen] on it."

   a. After looking at the bill, how do you plan to work with Congressman Cohen on this proposed legislation?

Harris County, Texas

5. During the hearing, Congresswoman Jackson Lee asked about the status of an investigation into the Harris County Jails where, over "a 10-year period... 100 people died." You responded that you would "try to get back to [her] on that."

   a. Can you respond to Congresswoman Jackson Lee? What has your examination of this investigation revealed?

Investigation of CIA Tape Destruction

6. During the oversight hearing, Congressman Nadler inquired as to the status and time line of Justice Department prosecutor John Durham's investigation of the destruction of CIA interrogation video tapes. You responded that Mr. Durham is "still proceeding with his investigation."

   a. Are you able to provide us with an update of the status or time line of the investigation?

Sentencing Disparities

7. During the hearing, Congressman Watt raised the issue of the disparity between crack and powder sentencing. The Congressman pointed out that the current approach is problematic because while there is an appointed task force investigating the issue, "[the investigation] becomes an excuse for people not to do anything until the task force comes back." The Congressman proposed a temporary solution, to which you replied that you "would want to... make these changes in their totality."

   a. What progress has the Department of Justice made in addressing the crack and powder sentencing disparity? How will the task force accelerate its investigation to level the playing field as quickly as possible?

QUESTIONS SUBMITTED BY REP. MAXINE WATERS

SCAAP (State Criminal Alien Assistance Program)

6. I was very disappointed to see SCAAP funding eliminated from the Department's budget request for FY 2010. The SCAAP is a reimbursement program that helps defray the costs of jailing criminal aliens. I appreciate your testimony today and the plans to strengthen boarder security – it is long overdue. But that's moving forward, what do you propose we do about the thousands of criminal aliens already here? Counties like Los

Angeles rely on these funds so they can be reimbursed for costs of incarcerating criminal aliens in county and local jails. Simply cutting off these funds in FY2010 leaves these municipalities in a terrible position. What can be done to provide funds needed now, while a new policy is developed?

Mortgage Fraud Prosecutions

7. First, related to my work as Chair of the Housing Subcommittee of the Financial Services Committee, I am pleased with your testimony today and the FY Budget Request to increase resources at the Department of to better enforce the laws already on the books – particularly the civil rights statutes to ensure fair housing. I want to see the strongest message possible sent to those criminally responsible for this mortgage mess.

   I know offices within the Department of Justice have participated, in some degree, with the work of the FBI, the Department of Treasury, the Federal Reserve, SEC, FDIC and other agencies. One of the biggest challenges is that so many federal agencies are involved and play various roles. Will the Department of Justice take a leadership role in coordinating federal prosecution of financial crimes? From mortgage fraud, to foreclosure prevention scams, to the financial scams of Bernie Madoff – these crimes cross multiple jurisdictions and effective coordination is critical. Please tell me about the Department's plans to ensure that everyone who broke the law will be aggressively prosecuted for their role in this mortgage crises?

Unanswered Questions from Previous DOJ Oversight Hearings

Housing - Subprime Lending Mortgage Crisis

8. There have been number of reports indicating that minorities were targeted for subprime loans. Lower income African Americans received 2.4 times as many subprime loans as lower income whites, while upper income African Americans received 3 times as many subprime loans as do whites with comparable incomes. At the same time, lower income Hispanics receive 1.4 times as many subprime loans as do lower income whites, while upper income Hispanics receive 2.2 times as many. Has the Housing Section of the Civil Rights Division brought any Fair Housing Act cases to respond to the growing concerns about predatory lending against minorities? If so, how many? Would you consider such cases a priority for the Department?

Fair Housing Enforcement - Low Number of Lending Cases

9. Less than ten fair lending cases were filed between FY2002 and FY2007. This is in spite of the fact that numerous studies have shown the link between predatory and subprime lending and race. With the current foreclosure crisis being a clear indication of the devastating impact that subprime lending has had on our economy, one would have

expected to see an increase in these cases by DOJ. Fortunately we have new leadership at the Department. What is the plan to investigate and prosecute predatory lenders?

Decreasing Number of Cases and Changes in Priorities

10. Over the years, the number of cases that DOJ's Housing and Civil Enforcement Section has filed overall has precipitously decreased. One major drop off in case handling has been with race cases. By contrast, disability cases have retained their numbers, even though the overall number of cases filed by DOJ has decreased. Between FY02 and FY06, overall case filings decreased by 29%. During the same period of time, the number of race cases the Section filed fell drastically by 43%. How do you account for this?

Refusal to Take Disparate Impact Cases

11. In 2003, DOJ announced that it would no longer file disparate impact cases involving housing discrimination - a sharp break from DOJ's decades-long, bipartisan policy to aggressively litigate these cases. Disparate impact cases are crucial in the fight against housing discrimination. Many rental, sales, lending and insurance policies are not discriminatory on their face, but have a disparate impact on members of protected classes, which can have just as detrimental an effect on individuals and families trying to find housing. Do you intend to reconsider this policy?

Gulf Coast Concerns - Complaints of Race-Based Resistance to Affordable Housing

12. After Hurricane Katrina, during field hearings of the Financial Services Housing Subcommittee in Mississippi and Louisiana, a number of witnesses complained about local actions to keep African American renters out of their communities (St. Bernard Parish) and local resistance to the development of affordable housing that appears to be based on the racial make-up of the prospective tenants as much as it is to objections to affordable housing. These actions and resistance are having a serious adverse impact on the ability of hurricane-ravaged communities to provide and rebuild the affordable housing stock in their communities and contributing to the ongoing housing crisis for poor and minority people. At least one private Fair Housing Act lawsuit against St. Bernard Parish has been brought.

    a. Has the Civil Rights Division initiated any such lawsuits? Is the Civil Rights Division investigating any allegations that such resistance to affordable housing projects violates the Fair Housing Act?

Race-Based Internet Advertising for Housing

13. Two years ago, in February 2006, the Housing Subcommittee also heard testimony about an important Fair Housing Act issue concerning whether discriminatory housing advertising on the internet is not actionable because of language in the Communications Decency Act which is alleged to provide broad immunity to internet companies which newspapers do not have. At that time, I expressed my desire to see DOJ weigh in on this issue. Although there are two cases raising this precise issue – one in the 7th Circuit involving Craigslist and one in the 9th Circuit involving roommates – I am not aware of DOJ taking a position on this issue despite the fact that HUD publicly announced at the February 2006 hearing that it would accept and investigate complaints about such advertising. This lack of action in the fair housing arena is disappointing since DOJ sued an internet company in 2003 for discriminatory advertising and obtained a consent decree.

    a. Can you confirm that there have been requests for DOJ to file amicus briefs supporting plaintiffs in these cases but DOJ has not acted? Can you tell us why?

    b. Can you tell us whether the Department's position is that the Communications Decency Act protects internet companies from Fair Housing Act cases? If that is the Department's position, would you support an amendment to the Communications Decency Act which would prohibit such discrimination?

Discrimination Complaints at DOJ

14. Mr. Attorney General, I continue to hear complaints about discrimination against employees working at offices and agencies at the Department of Justice. In the 1990's we dealt the Good Old Boys and Roundups, but unfortunately, just last year, we heard whistle-blower testimony in the Crime Subcommittee about FBI agents who faced discrimination that affected not only their professional career, but also could jeopardize our national security.

    a. Can you tell me how many discrimination complaints are currently pending against the department today?

    b. Can you tell me out of the approximately 12,000 agents serving in the FBI, how many are African American? And how many are female?

QUESTIONS SUBMITTED BY REP. BILL DELAHUNT

1. On pages 183-184 and in footnote 134 of U.S. Department of Justice Inspector General Report dated May 2008, your Inspector General stated that while at Camp X-Ray "some

Chinese officials visited [Guantanamo Bay] and were granted access to these [Uighur] detainees for interrogation purposes." Please confirm for me the accuracy of this Inspector General Report. Please elaborate on why and under what circumstances a foreign agency is allowed to interrogate American detainees. Please explain with particularity why Communist, Chinese agents were allowed to visit Uighur detainees when the U.S. Department of State has consistently reported human rights abuses Uighurs suffer in China.

2. In the event your Inspector General Report is correct and Communist, Chinese agents indeed visited and interrogated the Uighur detainees please give a detailed explanation why U.S. Congressmen have not been allowed to visit and interview Uighur detainees despite repeat requests. Please explain why Chinese agents are granted more access than a U.S. Congressional delegation or the U.S. House Foreign Affairs Oversight Subcommittee.

3. Please explain to me you understanding of the process by which foreign terrorist organizations are classified. Please confirm for me any Communist, Chinese involvement in the classification of the East Turkistan Islamic Movement ("ETIM") as a terrorist group.

4. There have been recent reports that the Communist, Chinese regime in Beijing has requested that the United States return the 13 remaining Uighur detainees to China. Please confirm for me whether the Chinese request has been made. Please confirm for me what future actions our Department plans to take in respect of this request. Specifically, please explain the Department's position on the legality of the U.S. complying with such a request, under our domestic laws, as well as our obligations under the Convention Against Torture ("CAT") which expressly states that "No State Party shall…return…or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture." Convention Against Torture, art. 3.

QUESTIONS SUBMITTED BY REP. ADAM SCHIFF

1. As of December 2008, as you know, we're now collecting samples from all federal arrestees and detainees. Even before we started that vast new effort, labs were already struggling to keep up with the demands for DNA processing. About a year ago, it was reported that the FBI offender backlog was about 180,000 samples. The demands are growing on our crime laboratories, and I am not convinced that we have the resources in place to deal with this tsunami of data.

   a. What is the current federal backlog of offender, arrestee, and detainee samples?

b. How many additional samples have been uploaded into CODIS since the order to collect DNA from all arrestees and detainees has gone into effect?

c. How do you intend to reduce the backlog number and process the growing numbers of incoming cases? How do you plan on getting this down to zero?

d. If an arrestee sample was collected today, how long would it take for the sample to make it into CODIS?

e. In the FBI's budget request, how much is being requested for their DNA program/laboratory? Is the capacity in place to deal with the growing demands on the FBI to process DNA samples in a timely fashion?

MAY 14, 2009, OVERSIGHT HEARING ON THE U.S. DEPARTMENT OF JUSTICE

QUESTIONS FOR THE RECORD
REPRESENTATIVE TRENT FRANKS
Submitted June 2, 2009

I understand that my colleague, Congressman Frank Wolf, the Ranking Member on the Commerce, Justice, Science Appropriations Sub-Committee, has written to you about his concerns regarding the failure of this Administration to clearly define what a terrorist is and which of those individuals being held in Guantanamo are terrorists according to your definition. Additionally, he has called upon you to declassify and release information regarding the capture, detention, and threat assessment of any detainees scheduled for release. I would like to reiterate his questions and request a response, which I understand he has not received after three specific letters requesting this information.

1. What is your definition of a terrorist?

2. Who are each of the individuals held at Guantanamo Bay that this Administration does NOT consider to be terrorists?

3. Why are these individuals not considered terrorists?

4. I have information indicating that all current detainees are considered medium to high-security threats;

    a. Is this correct?

    b. If so, specify why each person is categorized as such.

5. With regard to information for which the Department of Justice is the classifying agency, will the Department declassify and release information with regard to the capture, detention, and threat assessment of all detainees scheduled for release?

RESPONSE TO POST-HEARING QUESTIONS FROM THE HONORABLE ERIC HOLDER, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 7, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Attorney General Eric H. Holder, Jr., following the Attorney General's appearance before the Committee on May 14, 2009. The Committee's hearing was entitled "Hearing on the Department of Justice with Attorney General Eric Holder." We hope this information is helpful to the Committee.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of these responses. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Lamar Smith
Ranking Minority Member

Questions for the Record
Attorney General Eric H. Holder, Jr.
House Judiciary Committee
May 14, 2009

QUESTIONS FROM CHAIRMAN JOHN CONYERS, JR.

Committee Requests for Information and Questions for the Record

1. **During the 110th Congress, responses to post-hearing questions by the Department of Justice and the FBI routinely were not returned to the Committee for six months or more following their submission. Such delays hinder the Committee's efforts to fulfill its oversight responsibilities in a timely manner. Will you review the process by which Committee questions are answered and approved and seek to lessen the delay?**

Response: The Department regrets the delays in providing responses in the last Congress, and we would be pleased to confer with Committee staff about how we can work together to minimize delays and respond to the Committee's needs more efficiently. The Department has reviewed the process by which Committee questions for the record of its hearings are answered in an effort to provide our responses more quickly. In each of the past few years, the Department has received literally hundreds of questions for the record of hearings, some with multiple subparts, from the House and Senate Judiciary Committees. These questions usually require responsive information from a variety of Department components, which is carefully reviewed in an effort to assure the accuracy and completeness of our responses. Thereafter, we must obtain OMB clearance of our proposed responses, which often involves additional deliberations within the Executive Branch. We are committed to improving the Department's response time.

Waste, Fraud and Abuse

2. **A report by the Office of the Inspector General Audit Division in March 2009 found that the Department's Litigation Case Management System (LCMS) project is significantly behind schedule and over budget. The OIG recommended that the viability of implementing LCMS in all of the Department's litigating divisions be reevaluated. Has a reevaluation of the LCMS taken place? If so, what was the result of the reevaluation?**

Response: It is important to have an effective litigation case management system that works throughout the Department. The OIG recommended that six areas be addressed in the overall reevaluation. Progress has been made in all areas and Department leadership is actively involved in the reassessments. New work has been deferred, near-term expenditures are being carefully scrutinized, and current work has tight oversight, all of which is producing higher quality results. At this time, the overall project re-evaluation is still in progress.

3. **An April 2009 report by the OIG on an audit of the procedures and policies used by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in awarding discretionary grants for fiscal year 2007. The report also addressed allegations of misconduct by the office's former head, J. Robert Flores. The OIG report raised significant concerns with the peer review process for OJP and OJJDP grant proposals, as well as with the bureau's record-keeping practices, and made nine recommendations for improving the transparency and integrity of the OJJDP's grant making process.**

   a. **What, if any, action has been taken within OJP and OJJDP in light of the OIG report?**

Response: Let me assure you that the Department is committed to maintaining the highest standards of fairness, transparency, and accountability in the administration of its grants programs.

Even prior to the issuance of the OIG's April 2009 report, OJP had already taken action to establish uniform peer review policies and procedures, which apply across all OJP program offices and bureaus. In July 2008, new peer review policies were issued which utilize a sound and consistent methodology for scoring applications and created a common peer review form for all program offices. The new policies were implemented to ensure peer reviews are rigorous, cost-effective, and transparent across all OJP program offices and that funding decisions are clearly documented and justified.

Also in 2008, OJP implemented a policy issued by the Associate Attorney General requiring DOJ grant-making components to maintain documentation to support all discretionary funding recommendations and decisions. On March 10, 2009, OJP Acting Assistant Attorney General Laurie Robinson issued a memorandum to all OJP bureaus and program offices, which continues the requirement that all discretionary grant recommendations must include clear explanations of the funding choices made, the reasons for the choices, and the policy considerations on which the decisions were based. The OJP bureaus and offices, including OJJDP, now maintain records detailing and supporting their grant recommendation decisions.

Additionally, to further the goals of transparency and accountability, all award recommendations or decision memos must be approved by the final decision maker of the bureau or program office and the approved memo must be posted in the official grant file in the Grants Management System. The peer review scores must also be entered into the Grants Management System to allow review of all the factors, which led to a grant determination.

   b. **Have the OIG's recommendations been implemented?**

Response: Many of the recommendations have been implemented and are in practice; however, the report will not be closed until OJJDP includes appropriate procedures in its internal guidance manual. OJJDP anticipates completing the updated internal guidance manual in the fall of 2009.

OPR Report on OLC Memos

4. **The Office of Professional Responsibility (OPR) is currently completing a report concerning an investigation into the Department's Office of Legal Counsel attorneys who wrote several key memos on waterboarding and other troubling interrogation tactics. As of the hearing, you indicated that the final report by OPR would be produced in "a matter of weeks."**

    a. **Are you able to provide an updated time frame for the expected release of the OPR report?**

    b. **After it is publicly released, will you arrange for a representative of the Department to testify before this Committee regarding the report, as I requested?**

Response to subparts a and b: I regret that I cannot be more precise with respect to the timing of the release of any information to the Committee regarding the OPR report. Nonetheless, I understand the Committee's strong interest in this matter, and the Department will work to satisfy the information needs of the Committee as soon as possible. However, until the report is complete and the Department has determined what disclosures are appropriate, it would be premature to commit to making a Department representative available to testify regarding the report. It is possible that the eventual disclosures will satisfy the Committee's need for information regarding the Department's final assessment of the work of the OLC attorneys in question, but we will certainly consider requests for further information or witness testimony once the Committee has had a chance to review the disclosures we ultimately deem to be appropriate.

Deferred Prosecutions

5. **During the hearing, Congressman Cohen asked whether the Department of Justice would support his bill, H.R. 1947 the Accountability in Deferred Prosecution Act of 2009, which "promotes transparency, uniformity, and accountability in deferred and non-prosecutions." You responded that you would "want to look at the bill and will work with [Congressman Cohen] on it."**

    a. **After looking at the bill, how do you plan to work with Congressman Cohen on this proposed legislation?**

Response: Although the Department recognizes the value of transparency, uniformity, and accountability in deferred and non-prosecution agreements, we oppose H.R. 1947, entitled the "Accountability in Deferred Prosecution Act of 2009," for several reasons. The legislation relates to the judgment and discretion of Federal prosecutors, a core prerogative of the Executive Branch. The bill would regulate DPAs and NPAs in a uniform fashion, although we believe it is not advisable to adopt rigid rules relating to the resolution of complex corporate criminal cases, which vary greatly and rightly depend on the exercise of judgment by the Federal prosecutors.

Further, in the current climate of economic crisis, the bill would impede the Government's critical enforcement efforts against corporate and financial frauds by limiting our discretion in appropriately prosecuting cases. We also believe H.R. 1947 is unnecessary in light of the Department's pre-existing written guidance governing the principles that apply to prosecutorial decisions regarding Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs).

In addition, the Department has concerns about specific provisions of the legislation. Importantly, by requiring judicial review of NPAs, this bill would impose limitations on prosecutorial discretion concerning whether, when, and under what circumstances to conduct a criminal prosecution. Section 5(d) of the bill would impose a national fee schedule for monitors. The monitor's fees are typically based upon a contractual relationship between the monitor and the underlying business organization. To impose constraints and limitations on a monitor's fees may interfere with the legitimate contract discussions between the two parties. Furthermore, because each case is unique and the requirements of the monitor will differ from case to case, a pre-determined "fee schedule" would not be feasible to accommodate the numerous variations of monitorships.

Section 6(b) of the bill would prohibit prosecutors involved in the prosecution of the relevant case from a role in the selection of the monitor. Attorneys prosecuting a particular case frequently have the most extensive knowledge of the underlying criminal conduct committed, a keen awareness of the problems facing the business organization, an understanding of compliance or other deficiencies that may have played a contributing role, and a deep appreciation for the negotiations with defense counsel. Furthermore, prosecutors also have an understanding of the qualifications and credentials required for an effective monitor to address the needs of the business organization. To exclude the prosecutor from such a process would significantly curtail the inclusion of valuable information in the monitor selection process. The Department believes that the knowledge, experience, expertise, and understanding of a prosecutor are not only invaluable to the monitor selection process, but they are essential. Such input should be an integral part of the process.

Harris County, Texas

6. During the hearing, Congresswoman Jackson Lee asked about the status of an investigation into the Harris County Jails where, over "a 10-year period... 100 people died." You responded that you would "try to get back to [her] on that."

a. Can you respond to Congresswoman Jackson Lee? What has your examination of this investigation revealed?

Response: On June 4, 2009, the Civil Rights Division issued a letter notifying Harris County officials of the findings of its investigation of the Harris County Jail pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. The Division's investigation revealed constitutional deficiencies in medical care, mental health care, protection from physical harm, and protection from life safety hazards. A copy of the Division's findings letter is attached. The

letter is also available on the Special Litigation Section's website, www.usdoj.gov/crt/split. The Division's investigation remains open and ongoing.

Investigation of CIA Tape Destruction

7. **During the oversight hearing, Congressman Nadler inquired as to the status and time line of Justice Department prosecutor John Durham's investigation of the destruction of CIA interrogation video tapes. You responded that Mr. Durham is "still proceeding with his investigation."**

   a. **Are you able to provide us with an update of the status or time line of the investigation?**

Response: Mr. Durham has been working diligently to complete his investigation. Any time line we might provide, however, easily could be affected by unforeseen developments. Mr. Durham is conducting the investigation thoroughly and as expeditiously as possible. I am concerned that it would be unfair to him and his team and unhelpful to the investigation to suggest a time line that he might subsequently feel obligated to meet at the expense of completeness and accuracy. For these reasons, I cannot, unfortunately, provide a time line that would be meaningful other than to affirm that he will complete the investigation as soon as he can.

Sentencing Disparities

8. **During the hearing, Congressman Watt raised the issue of the disparity between crack and powder sentencing. The Congressman pointed out that the current approach is problematic because while there is an appointed task force investigating the issue, "[the investigation] becomes an excuse for people not to do anything until the task force comes back." The Congressman proposed a temporary solution, to which you replied that you "would want to... make these changes in their totality."**

   a. **What progress has the Department of Justice made in addressing the crack and powder sentencing disparity? How will the task force accelerate its investigation to level the playing field as quickly as possible?**

Response: The Department of Justice is committed to eliminating the disparity in sentencing between federal crack cocaine and powder cocaine offenses. We are in the process of reviewing approaches that address the widespread concerns about existing sentencing disparities involving cocaine while promoting public safety, as part of a wider comprehensive review of federal sentencing policy. I recently asked the Deputy Attorney General to convene and chair a Department-wide Sentencing and Corrections Policy Working Group that is examining cocaine sentencing policy among other issues. The Crack/Powder Issue Team is working under an accelerated timeline, and its review will not only include discussions within the Department of Justice, but also input from beyond the Executive Branch.

Unless and until Congress makes changes to the current statutes, however, courts are bound by existing statutory penalties. Prosecutors have been instructed to charge threshold quantities of crack cocaine required to trigger applicable statutory penalties where those quantities are readily provable and to ask sentencing courts to adhere to those statutes. Prosecutors have also been instructed to inform courts that the existing sentencing guidelines are advisory only, that courts can sentence outside the guidelines in appropriate cases, and that the Administration is working to develop a proposal to eliminate the crack/powder sentencing disparity.

QUESTIONS SUBMITTED BY REP. MAXINE WATERS

SCAAP (State Criminal Alien Assistance Program)

1. **I was very disappointed to see SCAAP funding eliminated from the Department's budget request for FY 2010. The SCAAP is a reimbursement program that helps defray the costs of jailing criminal aliens. I appreciate your testimony today and the plans to strengthen boarder security – it is long overdue. But that's moving forward, what do you propose we do about the thousands of criminal aliens already here? Counties like Los Angeles rely on these funds so they can be reimbursed for costs of incarcerating criminal aliens in county and local jails. Simply cutting off these funds in FY2010 leaves these municipalities in a terrible position. What can be done to provide funds needed now, while a new policy is developed?**

Response: The Department of Justice shares your concern about securing the nation's borders and addressing threats posed by criminal aliens. As I mentioned during the hearing, the President's Fiscal Year (FY) 2010 Budget Request proposes to eliminate funding for SCAAP because the program does not directly help communities address crime. SCAAP provides a partial subsidy for the cost of incarceration in state prisons and county jails of criminal aliens who have already committed crimes, but the program was not designed to help states and communities prevent crime. In addition, past program assessments have not been able to demonstrate that this program generates any measurable impact on crime. Instead the President's FY 2010 Budget supports a comprehensive approach to enforcement along our borders that combines law enforcement and prosecutorial efforts to investigate, arrest, detain, and prosecute illegal immigrants and other criminals.

However, in FY 2009 Congress appropriated $400 million for assistance through SCAAP. In addition, $31 million was also appropriated for the Southwest Border Prosecution Initiative. This program provides funding for local prosecutors' offices in the four Border States (California, Arizona, New Mexico, and Texas) and provides payments to support approved prosecution and pre-trial detention costs for cases formally referred to local prosecutors by the U.S. Attorneys' Offices and cases diverted from federal prosecution by law enforcement pursuant to a locally negotiated agreement.

Finally, through the American Recovery and Reinvestment Act of 2009, Congress provided $30 million for a new program, the Assistance for Law Enforcement along the

Southern Border. This Program provides grants to state, local, and tribal law enforcement agencies to combat drug-related crime in jurisdictions along the Southern Border and in High Intensity Drug Trafficking Areas.

Mortgage Fraud Prosecutions

2. **First, related to my work as Chair of the Housing Subcommittee of the Financial Services Committee, I am pleased with your testimony today and the FY Budget Request to increase resources at the Department of to better enforce the laws already on the books – particularly the civil rights statutes to ensure fair housing. I want to see the strongest message possible sent to those criminally responsible for this mortgage mess.**

   I know offices within the Department of Justice have participated, in some degree, with the work of the FBI, the Department of Treasury, the Federal Reserve, SEC, FDIC and other agencies. One of the biggest challenges is that so many federal agencies are involved and play various roles. Will the Department of Justice take a leadership role in coordinating federal prosecution of financial crimes? From mortgage fraud, to foreclosure prevention scams, to the financial scams of Bernie Madoff – these crimes cross multiple jurisdictions and effective coordination is critical. Please tell me about the Department's plans to ensure that everyone who broke the law will be aggressively prosecuted for their role in this mortgage crises?

Response: As many Americans face the adverse effects of a devastating economy and an unstable housing market, the Administration announced a new coordinated effort across federal and state government and the private sector to target mortgage loan modification fraud and foreclosure rescue scams. The new effort aligns responses from federal law enforcement agencies, state investigators and prosecutors, civil enforcement authorities and the private sector to protect homeowners seeking assistance under the administration's Making Homes Affordable program from criminals looking to perpetrate predatory schemes. In addition, the Department of Justice has been investigating and prosecuting financial crimes aggressively and has been very successful in identifying, investigating and prosecuting massive financial fraud schemes, including securities and commodities market manipulation and Ponzi schemes. While the Department must amass and carefully review the evidence before it can seek criminal charges against any individual or entity, we intend to aggressively prosecute mortgage fraud and other forms of financial fraud. United States Attorneys' Offices continue to work daily with the FBI and over 60 mortgage fraud task forces throughout the country to identify, investigate, and prosecute those who have perpetuated mortgage fraud.

Housing - Subprime Lending Mortgage Crisis

3. **There have been number of reports indicating that minorities were targeted for subprime loans. Lower income African Americans received 2.4 times as many subprime loans as lower income whites, while upper income African Americans**

received 3 times as many subprime loans as do whites with comparable incomes. At the same time, lower income Hispanics receive 1.4 times as many subprime loans as do lower income whites, while upper income Hispanics receive 2.2 times as many. Has the Housing Section of the Civil Rights Division brought any Fair Housing Act cases to respond to the growing concerns about predatory lending against minorities? If so, how many? Would you consider such cases a priority for the Department?

Response: Combating discrimination in lending is a priority for the Department. The Housing and Civil Enforcement Section of the Civil Rights Division enforces the Fair Housing and Equal Credit Opportunity Acts, each of which prohibits discrimination based on race, color, or national origin, as well as other prohibited bases, in home mortgage lending. In recent years, the Housing Section has brought, and resolved by consent order, cases involving discrimination in the pricing of both home mortgage (*United States v. First Lowndes Bank* (M.D. Ala.)) and auto loans (*United States v. Springfield Ford* (E.D. Pa.); *United States v. Pacifico Ford* (E.D. Pa.); *United States v. Compass Bank* (N.D. Ala.)); refusal to lend to borrowers who live on Indian reservations (*United States v. Nationwide Nevada* (D. Nev.)); redlining (*United States v. Centier Bank* (N.D. Ind.)); and sexual harassment by a bank vice president of female borrowers (*United States v. First National Bank of Pontotoc* (N.D. Miss.)). All of the complaints and consent orders are available on our website, at http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm#lending. The Section is currently conducting investigations involving allegations of discriminatory loan pricing, predatory lending, redlining and steering minority borrowers to higher priced loans. Several of our current investigations involve major national lenders.

The Housing Section has focused considerable fair lending resources on investigations and lawsuits attacking discrimination in mortgage lending. And, during my tenure as Attorney General, we will do even more. In addition to our own investigations of subprime and predatory lenders who may have engaged in discriminatory lending practices, the Housing Section also works closely with staff at HUD and the FTC to coordinate shared enforcement responsibilities and with the staff of the federal bank regulatory agencies responsible for addressing mortgage fraud and other lending issues that fall outside of the Division's jurisdiction.

One way that the Housing Section can address the problem of predatory lending within its Fair Housing Act and Equal Credit Opportunity Act jurisdiction is by investigating and bringing "redlining" cases. Redlining practices deny residents of minority communities equal access to residential, consumer, or small business credit. When prime lenders choose not to do business in minority neighborhoods because of the race, color or national origin of the people who live there, they deny minority borrowers – including many with good qualifications – the opportunity to borrow and build equity on favorable terms. And when communities are abandoned by prime lenders through redlining, those communities become fertile ground for less scrupulous lenders who may target minority neighborhoods for abusive products or loans.

Lawsuits challenging redlining practices thus are an effective means to combat predatory lending. For each redlining investigation the Division undertakes, we conduct extensive

statistical comparisons of the bank's residential lending patterns to the lending patterns of other banks and home mortgage lenders in that geographic area.

For example, in the fall of 2006, we filed and resolved a lawsuit against Centier Bank in Indiana, alleging violations of the Equal Credit Opportunity Act and the Fair Housing Act. In this case, we alleged Centier unlawfully refused to provide its lending products and services on an equal basis to residents of minority neighborhoods, thereby denying residential and small business loan opportunities to hundreds of prospective African-American and Hispanic borrowers. Under the consent order the bank has opened new offices and expanded its lending operations in the previously excluded areas. The order also requires the bank to invest $3.5 million in a special financing program and spend at least $875,000 on outreach, marketing, and consumer financial education in these previously excluded areas over five years. In addition, in prior years, we brought similar cases against First American Bank and Mid America Bank, both Chicago area banks.

Fair Housing Enforcement - Low Number of Lending Cases

4. **Less than ten fair lending cases were filed between FY2002 and FY2007. This is in spite of the fact that numerous studies have shown the link between predatory and subprime lending and race. With the current foreclosure crisis being a clear indication of the devastating impact that subprime lending has had on our economy, one would have expected to see an increase in these cases by DOJ. Fortunately we have new leadership at the Department. What is the plan to investigate and prosecute predatory lenders?**

Response: During my tenure as Attorney General, the Civil Rights Division will use all available means to uncover, investigate and litigate the enforcement actions needed to root out discrimination in all aspects of credit transactions -- from residential real estate-related transactions, such as mortgages, refinancings, home improvement loans; to consumer loans, including automobile lending; to business lending. In addition, as we announced on April 6, the Department is taking a lead role in the multi-agency federal and state effort to crack down on loan modification fraud, which includes reviewing loan servicing practices, loan modifications and foreclosures for possible discrimination. In these endeavors, the Division will cooperate and collaborate actively with other federal agencies that share responsibility for fair lending and consumer protection enforcement.

The Division opens fair lending investigations based either on DOJ's own pattern or practice authority, or based on a referral from a bank regulatory agency. Sources of information for our self-initiated pattern or practice investigations include our review of Home Mortgage Disclosure Act (HMDA) and other available data, review of media reports, citizen complaints, private attorney or advocacy group referrals and referrals from other agencies, such as the Federal Trade Commission (FTC) or the Department of Housing and Urban Development (HUD). During an investigation, we attempt to get an accurate picture of the relevant lending policies, practices and procedures by reviewing documents (including loan files), analyzing data, and conducting interviews.

Fair lending investigations are typically time and resource intensive, as most involve complex statistical analysis of lending patterns, as well as extensive document review, research, interviews, and expert evaluation. Since January 20, 1993, the Civil Rights Division has filed 30 lawsuits involving allegations of "pattern or practice" lending discrimination, four of which were contested; and entered into 30 settlements, almost all in the form of a consent order entered by the court. This is an average of about two such cases per year. In light of the current crisis, we must do more. Therefore, I have requested additional resources for fair lending enforcement in the FY 2010 budget, and I can assure you that this Department of Justice is committed to vigorous enforcement of the fair lending laws.

Decreasing Number of Cases and Changes in Priorities

5. **Over the years, the number of cases that DOJ's Housing and Civil Enforcement Section has filed overall has precipitously decreased. One major drop off in case handling has been with race cases. By contrast, disability cases have retained their numbers, even though the overall number of cases filed by DOJ has decreased. Between FY02 and FY06, overall case filings decreased by 29%. During the same period of time, the number of race cases the Section filed fell drastically by 43%. How do you account for this?**

Response: Race and national origin discrimination in housing clearly is an ongoing problem, and it is a priority for the Civil Rights Division. In fiscal year 2008, 39% of all cases filed by the Housing Section involved race discrimination claims, as did 45% of our pattern or practice cases. A recent study of cases brought by fair housing organizational members of the National Fair Housing Alliance reported that, as of December 31, 2008, 21% of the open cases filed by these independent fair housing organizations had race as the primary basis for the legal action, whereas 37% of the open cases had disability as the primary basis. Many of the Housing Section's pattern or practice cases have been successfully resolved by consent order. To give just one example, in May 2008, the court in *United States v. Henry* (E.D. Va.) entered a consent order requiring the landlord of a subsidized housing complex to pay up to $361,000 to settle the Division's lawsuit alleging that the defendant imposed more restrictive rules and regulations on African-American tenants than on other tenants; verbally harassed African-American tenants with racial slurs and epithets; and evicted tenants by enforcing a limit of two children per family.

This administration is committed to doing even more. We have a renewed focus on bringing Fair Housing Act cases that address patterns of discrimination based on race, national origin, disability or any other protected class. The Division can initiate these "pattern or practice" cases under our independent authority, and we are not required to wait for a referral from HUD. For example, the Housing Section currently is litigating several pattern or practice cases involving race and national origin discrimination, including *U.S. v. Sterling* (C.D. Cal.), which involves allegations of rental discrimination against one of the major landlords in Los Angeles, and *U.S. v. Sturdevant* (D. Kan.), in which we allege that more than 35 African-American residents of an apartment building were subjected to pervasive and egregious racial harassment by the building's property manager.

These "pattern or practice" cases, however, are only one component of the overall number of Fair Housing Act cases brought by the Housing Section. The Section's total number of cases includes both pattern or practice cases and "election" cases based upon referrals from HUD. Thus, the total number of fair housing cases we file is dependent on the number of charges HUD issues pursuant to 42 U.S.C. § 3610(g)(2)(A), and the number of those charges for which a party "elects" to have the matter decided in federal court pursuant to 42 U.S.C. § 3612(a). The number of these "election" cases varies from year to year; however, over time there has been a downward trend in election cases from an average of 27.5 election cases per year in Fiscal Years 1999-2002 to an average of 16 cases per year in Fiscal Years 2003-2008.

Refusal to Take Disparate Impact Cases

6. **In 2003, DOJ announced that it would no longer file disparate impact cases involving housing discrimination - a sharp break from DOJ's decades-long, bipartisan policy to aggressively litigate these cases. Disparate impact cases are crucial in the fight against housing discrimination. Many rental, sales, lending and insurance policies are not discriminatory on their face, but have a disparate impact on members of protected classes, which can have just as detrimental an effect on individuals and families trying to find housing. Do you intend to reconsider this policy?**

Response: The Housing Section considers and relies upon evidence of disparate impact in applicable cases. I am aware that all the federal circuit courts of appeal that have addressed the issue have found that there is a disparate impact standard under the Fair Housing Act. During my tenure as Attorney General, the Division will use all tools that the law allows to fight housing discrimination.

Gulf Coast Concerns - Complaints of Race-Based Resistance to Affordable Housing

7. **After Hurricane Katrina, during field hearings of the Financial Services Housing Subcommittee in Mississippi and Louisiana, a number of witnesses complained about local actions to keep African American renters out of their communities (St. Bernard Parish) and local resistance to the development of affordable housing that appears to be based on the racial make-up of the prospective tenants as much as it is to objections to affordable housing. These actions and resistance are having a serious adverse impact on the ability of hurricane-ravaged communities to provide and rebuild the affordable housing stock in their communities and contributing to the ongoing housing crisis for poor and minority people. At least one private Fair Housing Act lawsuit against St. Bernard Parish has been brought.**

   a. **Has the Civil Rights Division initiated any such lawsuits? Is the Civil Rights Division investigating any allegations that such resistance to affordable housing projects violates the Fair Housing Act?**

Response: Yes. In June 2009, the Civil Rights Division filed a lawsuit alleging race discrimination by the owner of a mobile home park in Mississippi against an African-American family who had lost their home to Hurricane Katrina. This case was referred to the Division by HUD as an "election" case on behalf of that family, and based on the evidence we added a "pattern or practice" claim of race discrimination in evicting African-American residents of the mobile home park. *U.S. v. Indigo Investments* (S.D. Miss.). The Housing and Civil Enforcement Section also has brought cases and has ongoing investigations involving allegations that resistance by local jurisdictions to affordable housing projects violates the Fair Housing Act.

Race-Based Internet Advertising for Housing

8. **Two years ago, in February 2006, the Housing Subcommittee also heard testimony about an important Fair Housing Act issue concerning whether discriminatory housing advertising on the internet is not actionable because of language in the Communications Decency Act which is alleged to provide broad immunity to internet companies which newspapers do not have. At that time, I expressed my desire to see DOJ weigh in on this issue. Although there are two cases raising this precise issue – one in the 7th Circuit involving Craigslist and one in the 9th Circuit involving roommates – I am not aware of DOJ taking a position on this issue despite the fact that HUD publicly announced at the February 2006 hearing that it would accept and investigate complaints about such advertising. This lack of action in the fair housing arena is disappointing since DOJ sued an internet company in 2003 for discriminatory advertising and obtained a consent decree.**

   a. **Can you confirm that there have been requests for DOJ to file amicus briefs supporting plaintiffs in these cases but DOJ has not acted? Can you tell us why?**

   b. **Can you tell us whether the Department's position is that the Communications Decency Act protects internet companies from Fair Housing Act cases? If that is the Department's position, would you support an amendment to the Communications Decency Act which would prohibit such discrimination?**

Response to subparts a and b: The Fair Housing Act, 42 U.S.C. § 3604(c), makes it unlawful to "make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination." Persons who place discriminatory housing advertisements in newspapers or on the Internet may be held liable under this provision.

Indeed, "the publication of discriminatory classified advertisements in newspapers was precisely one of the evils the [Fair Housing] Act was designed to correct." *United States v.*

Hunter, 459 F.2d 205, 211, *cert. denied*, 409 U.S. 934 (1972). Internet advertising has become more and more common, and there is a question as to how the prohibitions in § 3604(c) apply to Internet service providers and websites. In 2003, DOJ filed a case against an Internet service provider based on discriminatory advertising: *United States v. Spyder Web Enterprises* (D.D.C.) (race, national origin, sex & familial status), which was resolved by consent decree in 2004. The Communications Decency Act issue was not litigated in that case.

The Communications Decency Act (CDA), 47 U.S.C. § 230(c), states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Courts have consistently held that this provision means that a website cannot be liable for information posted by a third party. Until recently, this provision had not been applied in a Fair Housing Act case.

Recent decisions by the Seventh and Ninth Circuits have addressed the application of the Fair Housing Act and the Communications Decency Act to discriminatory housing advertisements on the Internet. Both of these cases were fully briefed and decided before I became Attorney General. The decisions in these cases illustrate the complexity of the issues involved. The Seventh Circuit in *Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008), found that the Communications Decency Act provided immunity from suit for any cause of action that required Craigslist to be treated as a publisher, including the Fair Housing Act claims at issue. The en banc Ninth Circuit in *Fair Housing Council of San Fernando Valley, et al. v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008), agreed that the CDA applies to Fair Housing Act claims but held that Roommates.com did not enjoy the CDA's protections because its on-line questionnaire required users to state their preferences, making Rommates.com liable as an "information content provider" for publication of these statements. On remand, the district court ruled that the conduct of Roommates.com that the Ninth Circuit ruled was not covered by the CDA did violate the Fair Housing Act. *Fair Housing Council of San Fernando Valley, et al. v. Roommates.com, LLC*, Case No. CV 03-9386 PA (RAX), (C.D. Cal. Nov. 7, 2008). That order has been stayed pending appeal. We are considering whether to participate as *amicus curiae* in the court of appeals, although the current appeal does not address the applicability of the CDA to Fair Housing Act complaints.

Discrimination Complaints at DOJ

9. Mr. Attorney General, I continue to hear complaints about discrimination against employees working at offices and agencies at the Department of Justice. In the 1990's we dealt the Good Old Boys and Roundups, but unfortunately, just last year, we heard whistle-blower testimony in the Crime Subcommittee about FBI agents who faced discrimination that affected not only their professional career, but also could jeopardize our national security.

a. Can you tell me how many discrimination complaints are currently pending against the department today?

Response: As of 6/25/09, the FBI has 341 pending discrimination complaints in various investigative stages, 26 additional cases pending appeal at the Equal Employment Opportunity Commission, and 20 additional cases pending civil action in various district courts.

b. Can you tell me out of the approximately 12,000 agents serving in the FBI, how many are African American? And how many are female?

Response: As of 6/9/09, there are 13,170 FBI Special Agents, of whom 642 are African Americans, 2,493 are women, and 146 are African American women.

QUESTIONS SUBMITTED BY REP. BILL DELAHUNT

1. **On pages 183-184 and in footnote 134 of U.S. Department of Justice Inspector General Report dated May 2008, your Inspector General stated that while at Camp X-Ray "some Chinese officials visited [Guantanamo Bay] and were granted access to these [Uighur] detainees for interrogation purposes." Please confirm for me the accuracy of this Inspector General Report. Please elaborate on why and under what circumstances a foreign agency is allowed to interrogate American detainees. Please explain with particularity why Communist, Chinese agents were allowed to visit Uighur detainees when the U.S. Department of State has consistently reported human rights abuses Uighurs suffer in China.**

Response: The Inspector General's Office stands by the accuracy of its Report. The Department of Justice does not control visitor access to the Guantanamo Bay Naval Base or access for interrogation purposes to detainees in Department of Defense custody. Such access is controlled by the Department of Defense.

2. **In the event your Inspector General Report is correct and Communist, Chinese agents indeed visited and interrogated the Uighur detainees please give a detailed explanation why U.S. Congressmen have not been allowed to visit and interview Uighur detainees despite repeat requests. Please explain why Chinese agents are granted more access than a U.S. Congressional delegation or the U.S. House Foreign Affairs Oversight Subcommittee.**

Response: The Department of Justice does not control visitor access to the Guantanamo Bay Naval Base. Such access is controlled by the Department of Defense.

3. **Please explain to me you understanding of the process by which foreign terrorist organizations are classified. Please confirm for me any Communist, Chinese involvement in the classification of the East Turkistan Islamic Movement ("ETIM") as a terrorist group.**

Response: It is my understanding that the East Turkistan Islamic Movement (ETIM) has not been designated by the Secretary of State as a "Foreign Terrorist Organization" pursuant to section 219 of the Immigration and Nationality Act (INA), but was designated as a "Specially Designated Global Terrorist" organization (SDGT) by the Secretary of State pursuant to Executive Order 13224 in September 2002.

Section 219 of the INA authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate an organization as a "Foreign Terrorist Organization," a designation which has criminal law, immigration, and other implications. Executive Order 13224, as amended, blocks the assets of and prohibits certain financial transactions with individuals or entities listed in an annex to the order or designated by the Secretary of State or Secretary of the Treasury pursuant to the order. Certain designations authorized under that order are made by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Attorney General, and other designations are made by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General. As the lead agencies in designating individuals or entities as FTOs or SDGTs, the Department of State and the Department of the Treasury are better positioned to address the processes for making those designations.

4. **There have been recent reports that the Communist, Chinese regime in Beijing has requested that the United States return the 13 remaining Uighur detainees to China. Please confirm for me whether the Chinese request has been made. Please confirm for me what future actions our Department plans to take in respect of this request. Specifically, please explain the Department's position on the legality of the U.S. complying with such a request, under our domestic laws, as well as our obligations under the Convention Against Torture ("CAT") which expressly states that "No State Party shall...return...or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture." Convention Against Torture, art. 3.**

Response: It is the policy of the United States "not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." 8 U.S.C. § 1231 note. The Department will continue to work with interagency partners to determine the disposition of the 13 remaining Uighur detainees consistent with that policy, considering with respect to each detainee whether it is more likely than not that their return or transfer to a particular country will result in their being subjected to torture.

QUESTIONS SUBMITTED BY REP. ADAM SCHIFF

1. **As of December 2008, as you know, we're now collecting samples from all federal arrestees and detainees. Even before we started that vast new effort, labs were**

already struggling to keep up with the demands for DNA processing. About a year ago, it was reported that the FBI offender backlog was about 180,000 samples. The demands are growing on our crime laboratories, and I am not convinced that we have the resources in place to deal with this tsunami of data.

a. What is the current federal backlog of offender, arrestee, and detainee samples?

Response: As of 06/26/09, the number of samples received but not entered into CODIS is approximately 313,000. Of that total, 195,000 samples have been analytically processed and are awaiting the required data review before being uploaded into CODIS.

b. How many additional samples have been uploaded into CODIS since the order to collect DNA from all arrestees and detainees has gone into effect?

Response: To date, the FBI has provided 57,000 kits to agencies consistent with the recently enacted arrestee/detainee legislation, and 718 samples have been submitted to the FBI Laboratory, all from arresting agencies. These samples have not been processed or uploaded into CODIS.

In April 2009, the FBI Laboratory began using Expert System software, which increases laboratory efficiency by automatically interpreting DNA profiles during the data review process. In the less than two months during which this software has been used, the amount of time required to review DNA profile data has decreased dramatically, allowing more than 10,000 samples to be uploaded into CODIS and increasing the total from approximately 65,900 to approximately 76,000.

c. How do you intend to reduce the backlog number and process the growing numbers of incoming cases? How do you plan on getting this down to zero?

Response: The FBI's Laboratory Division will be reorganized to create a Nuclear DNA Analysis Unit (nDNAU), which will focus exclusively on evidentiary submissions, and a Federal DNA Databank Unit (FDDU), which will focus solely on fulfilling the legislative mandates regarding Federal arrestees, detainees, and convicted offenders. Funding and staffing enhancements received in Fiscal Year (FY) 2009 support this reorganization; instrumentation supplies and equipment have been procured and candidates for 38 of 39 new positions have been selected and are undergoing the security clearance process.

The FBI has developed and implemented an automated system that facilitates quicker submission of DNA analyses to the databank program. Since its implementation in April 2009, the automated system has increased throughput to over 30,000 samples per month, and it is designed to be scalable to increase the capacity of databank operations to 60,000, 90,000, and ultimately 120,000 samples per month by the summer of 2010. We anticipate that the increase in the capacity of databank operations will enable the FBI to eliminate the backlog in our analysis of incoming databank samples (offenders, arrestees, and detainees).

d. If an arrestee sample was collected today, how long would it take for the sample to make it into CODIS?

Response: While the FBI currently has a backlog of approximately 313,000 samples, we anticipate that the automated databank program discussed above will allow us to eliminate the databank sample backlog by the summer of 2010. At that point, the databank program will be capable of completing the sample processing workflow, from collection, to DNA analysis, to CODIS entry, in less than 30 days. Until that time, the databank program will routinely accept requests to expedite the analysis of databank samples from subjects in ongoing investigations. Upon receipt of such a request, the databank program can complete an analysis and enter the DNA profile into CODIS in less than a week.

e. In the FBI's budget request, how much is being requested for their DNA program/laboratory? Is the capacity in place to deal with the growing demands on the FBI to process DNA samples in a timely fashion?

Response: The FY 2010 base of approximately $25 million includes funding for both the Federal Convicted Offender Program and DNA casework (which includes investigations related to missing persons, homicides, sexual assaults, and violent crimes). The FBI received an FY 2009 enhancement comprised of both personnel and nonpersonnel funds. As discussed above, the candidates for the newly received positions have been selected and are undergoing their background investigations. Upon entry on duty, these new employees will receive necessary training. Because this process will not be completed for several months, the FBI's base FY 2010 funding for DNA includes resources to continue the use of the present contractors.

QUESTIONS SUBMITTED BY REP. TRENT FRANKS

I understand that my colleague, Congressman Frank Wolf, the Ranking Member on the Commerce, Justice, Science Appropriations Sub-Committee, has written to you about his concerns regarding the failure of this Administration to clearly define what a terrorist is and which of those individuals being held in Guantanamo are terrorists according to your definition. Additionally, he has called upon you to declassify and release information regarding the capture, detention, and threat assessment of any detainee scheduled for release. I would like to reiterate his questions and request a response, which I understand he has not received after three specific letters requesting this information.

1. What is your definition of a terrorist?

Response: As you may be aware, in the context of the Guantanamo-related habeas litigation ongoing in the U.S. District Court in the District of Columbia, the Obama Administration has stated that the authority on which it relies to detain individuals at Guantanamo is based on Congress's Authorization for the Use of Military Force, as informed by the laws of war, and not on a finding that an individual is a "terrorist." With regard to your question about the definition of terrorism, although federal law does not define "terrorist," it includes a number of related

definitions, including 28 C.F.R. 0.85(l) ("Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives"); 18 U.S.C. § 2332b(g)(5) (defining "Federal crime of terrorism" as an offense that "is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct" and violates any of a number of enumerate criminal provisions); 18 U.S.C. § 2331(1) (defining "international terrorism").

2. Who are each of the individuals held at Guantanamo Bay that this Administration does NOT consider to be terrorists?

Response: Pursuant to Executive Order 13492, the Guantanamo Review Task Force is currently conducting a review of each detainee held at Guantanamo Bay. Pursuant to the Executive Order, the Task Force is making individualized assessments to determine the appropriate disposition consistent with the national security and foreign policy interests of the United States, as well as the interests of justice. That review is ongoing. It would be premature to characterize detainees with respect to whom the Task Force is still reviewing. Final decisions resulting from the Task Force's review will be made public as appropriate in each case.

3. Why are these individuals not considered terrorists?

Response: Please see the response to question #2, above.

4. I have information indicating that all current detainees are considered medium to high-security threats;

a. Is this correct?

Response: Please see the response to question #2, above.

b. If so, specify why each person is categorized as such.

Response: Please see the response to question #2, above.

5. With regard to information for which the Department of Justice is the classifying agency, will the Department declassify and release information with regard to the capture, detention, and threat assessment of all detainees scheduled for release?

Response: The current applicable procedures within the Executive Branch generally governing the classification and declassification of information by officers within the Executive Branch are set forth by Executive Order 13292, which was issued on March 25, 2003. The Department will

follow the Executive Order in considering whether information relating to detainees should be declassified.

ATTACHMENT A
CONYERS Q. 6
CRT HARRIS COUNTY FINDINGS LETTER

U.S. Department of Justice
Civil Rights Division

Assistant Attorney General
950 Pennsylvania Avenue, NW - RFK
Washington, DC 20530

June 4, 2009

The Honorable Ed Emmett
County Judge
1001 Preston
Suite 911
Houston, TX 77002

RE: Investigation of the Harris County Jail

Dear Judge Emmett:

On March 7, 2008, we notified your office of our intention to investigate conditions at the Harris County Jail (Jail) pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. Consistent with statutory requirements, we write to report the findings of our investigation and to recommend remedial measures needed to ensure that conditions at the Jail meet federal constitutional requirements. See 42 U.S.C. § 1997b.

During our investigation, correctional experts in the fields of penology, medicine, psychiatry, and life safety, assisted us in reviewing records, interviewing staff, interviewing detainees, and inspecting facility living conditions. Before, during, and after our on-site inspections, we received and reviewed a large number of documents, including policies and procedures, incident reports, medical and mental health records, and other materials. Consistent with our commitment to provide technical assistance and conduct a transparent investigation, we provided debriefings at the conclusion of two on-site inspections conducted in July and August 2008. During the debriefings, our consultants provided their initial impressions and tentative concerns.

Throughout this process, County and Jail officials cooperated fully with our review. We appreciate the assistance that they provided us and the candor of their response. Indeed, we were impressed by the level of professionalism exhibited by staff at all levels and with the sophistication of many Jail systems. While we use individual incidents throughout this letter to illustrate systemic deficiencies, we are aware that this facility has a very difficult task handling large numbers of

detainees, many of whom have serious medical and mental health problems. The examples we cite should not necessarily be construed as a criticism of particular staff. In many cases, such incidents may be more reflective of inherent systemic problems with Jail procedures or resources than the professionalism or dedication of staff and administrators.

We are pleased to advise you that Harris County Jail complies with constitutional requirements in a number of significant respects. The Jail's operational infrastructure includes the existence of written policies and procedures, clearly designated security and medical supervisors, training programs, a booking and intake assessment process, infection control programs, and fire safety precautions. At the same time, however, we also conclude that certain conditions at the Jail violate the constitutional rights of detainees. Indeed, the number of inmates deaths related to inadequate medical care, described below, is alarming. As detailed below, we find that the Jail fails to provide detainees with adequate: (1) medical care; (2) mental health care; (3) protection from serious physical harm; and (4) protection from life safety hazards.

I. DESCRIPTION OF THE JAIL

Harris County Jail includes four major jail facilities constructed between the 1980s and the 1990s. At the time of our site visit, the Jail housed over 9400 detainees.[1] The Jail's design capacity is reportedly 9800 detainees. The Harris County Sheriff's Department also places detainees at various satellite locations. If those detainees are also counted, the Sheriff's Department is responsible for a total of nearly 11,000 detainees. In 2007, the Jail processed over 130,000 admissions.

II. LEGAL FRAMEWORK

CRIPA authorizes the Attorney General to investigate and take appropriate action to enforce the constitutional rights of jail detainees and detainees subject to a pattern or practice of unconstitutional conduct or conditions. 42 U.S.C. § 1997. The rights of pre-trial detainees are protected under the Fourteenth Amendment which ensures that these detainees "retain at least those constitutional rights . . . enjoyed by convicted prisoners." Bell v. Wolfish, 441 U.S. 520, 545 (1979). Under

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[1] The Jail houses mainly pre-trial detainees, but also houses some post-adjudication inmates. For the purpose of this letter, both groups will be referred to as detainees.

the Eighth Amendment, prison officials have an affirmative duty to ensure that detainees receive adequate food, clothing, shelter, and medical care. Farmer v. Brennan, 511 U.S. 825, 832 (1994). The Eighth Amendment protects prisoners not only from present and continuing harm, but also from future harm. Helling v. McKinney, 509 U.S. 25, 33 (1993).

Detainees have a constitutional right to adequate medical and mental health care, including psychological and psychiatric services. Farmer, 511 U.S. at 832. Detainees' constitutional rights are violated when prison officials exhibit deliberate indifference to their serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 102 (1976). Detainee living conditions must be "reasonably sanitary and safe." Farmer 511 U.S. at 832.

III. CONSTITUTIONAL DEFICIENCIES

As a large urban detention facility, Harris County Jail faces a number of significant problems including a high detainee census and complex funding and logistical challenges. In many ways, the Jail actually performs quite well. Jail policies and procedures provide for a comprehensive detainee housing assignment process, medical sick call procedures, and regular facility maintenance. Staff receive broad training on Jail operations, supervision of detainees, and detainee rights. Unfortunately, in a number of critical areas, the Jail lacks necessary systems to ensure compliance with constitutional standards.

A. Medical Care

The Jail has functional systems in place to provide medical care and treatment to a large population of detainees. These systems include an initial screening process, a more comprehensive health assessment for longer-term detainees, a sick call process, a modern clinic, qualified medical staff, a professional management structure, and mechanisms to obtain outside specialty care. Despite the general quality of such systems, the Jail fails to provide consistent and adequate care for detainees with serious chronic medical conditions. We found specific deficiencies in the Jail's provision of chronic care and follow-up treatment. These deficiencies, in themselves and when combined with the problems in medical record-keeping and quality assurance discussed below, are serious enough to place detainees at an unacceptable risk of death or injury.

1. Inadequate Chronic Care

Detainees who suffer from chronic medical conditions require assessment and ongoing treatment to prevent the progression of their illnesses. As part of the treatment process, detainees with chronic medical conditions require routine follow up to monitor the progression of their illness and the potentially hazardous effects of medication. Because of crowding, administrative weaknesses, and resource limits, the Jail does not provide constitutionally adequate care to meet the serious medical needs of detainees with chronic illness.

Generally accepted standards of correctional medical care require that medical staff identify detainees with chronic conditions such as - diabetes, tuberculosis, and heart disease - and provide timely treatment for such conditions. Unfortunately, the Jail does not have an assessment process to adequately identify detainees with serious chronic medical conditions. In particular, we found that the Jail has delegated screening to nurses who are in need of additional training and more administrative oversight by physicians. For instance, we found assessment forms completed by nursing staff who had not actually completed the assessments. We also found that physicians do not routinely see detainees with chronic conditions to assess the status of their health. Moreover, Jail staff do not conduct periodic surveys of the housing units to identify detainees who may have chronic medical conditions, but who may not necessarily be identified by the normal sick call process or the screening procedures conducted during detainee booking. Such deficiencies result in gaps in the system for identifying detainees with serious chronic medical conditions. For instance, staff may miss some detainees who are degenerating mentally or physically, but who are unable or unwilling to utilize the normal sick call process.

Problems with chronic care assessments are particularly pronounced in the assessment of detainees receiving medications. Generally accepted correctional medical standards require that once medical staff identify a medical condition, they need to order appropriate medications and then periodically re-assess those medications to determine their effectiveness and to monitor side effects. The Jail medical staff are not adequately

conducting such periodic assessments. Examples from 2007-2008 include:

- Detainee AA had a history of hypothyroidism and seizures.[2] Medical staff administered two medications, each of which could have had potentially toxic side effects. After the initial medication order, dosages and blood levels of these medications were not monitored.

- Detainee BB suffered from a deep venous thrombosis (blood clot) in his lower extremity. Medical staff administered an unsafe dosage of blood thinning medication, placing the detainee at an increased risk of clot formation. Such clots can cause serious medical complications including sudden death. Staff conducted lab tests which showed that the dosage might be unsafe, but then failed to follow up on the test results.

- Detainee CC had a history of heart failure. Medical staff administered two medications with potentially toxic side effects. Our record review suggests that medical staff did not check CC's blood levels for several months.

2. Inadequate Continuity of Medical Care

Chronic and some acute medical conditions require appropriate ongoing treatment and continuity of care. Failure to address detainee medical conditions over time can lead to an increased risk in morbidity and mortality. Systems and practices, such as adequate record-keeping and follow-up exams by qualified staff, must be in place to manage the serious medical conditions of detainees during the length of their incarceration. The Jail does not have a system in place to provide such continuity of care for some of the detainees with the most serious medical conditions.

The Jail's medical clinic serves as a makeshift emergency room, stabilizing detainees with acute conditions. This model, however, is problematic in a large urban detention facility with

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[2] To protect the identity of detainees, the initials used in this letter are not the actual detainees' initials.

hundreds of sick detainees. Many of the detainees with serious medical conditions cannot be adequately identified or treated solely through an acute care process.

In the absence of a chronic care program or other systems for ensuring follow-up care, the sick call process serves as the primary mechanism for the Jail to provide continuity of care. This system is not capable of providing such continuity of care. The sick call process itself is seriously strained due to crowding, staffing limits, and some problematic practices. For instance, we received a number of complaints about delays in care at the Jail's 1200 Baker facility. Because of the way care is organized at the Jail, the 1200 Baker housing units seem to be particularly affected by any bottlenecks in access to the main intake clinic, despite the fact that the clinic is also located at 1200 Baker. Because the main clinic also serves as the main intake facility and emergency treatment center, the 1200 Baker detainees must effectively share the same clinic resources as newly admitted detainees, emergency cases, and detainee transfers from other units who require additional medical supervision. This puts a heavy strain on 1200 Baker medical staff and impedes detainee access to care.

More generally, the Jail's administrative procedures allow delays in care to be easily overlooked. Jail procedures require that detainees complete forms to request medical care. The Jail disposes of these forms, however, just after they are processed. Once the forms are destroyed, the Jail apparently cannot track detainee requests for medical care in order to determine whether they have been fulfilled. Another peculiar Jail practice involves the process for responding to requests for specialty care. As a matter of routine practice, Jail detainees submit requests for specialty care to a clerk. This process has apparently little or no physician oversight, which means that access to specialty care is not initially reviewed by qualified personnel. This lack of oversight means that individuals who may need more intensive or immediate care receive the same level of attention as those with relatively low priority needs.

These problems would be troublesome enough for a clinic dealing only with detainees who have acute medical complaints. For detainees with chronic conditions, barriers to care can cause them more difficulties than experienced by those inmates with more typical medical complaints. Detainees with chronic illness may need care to be much more timely and routine than some detainees with acute conditions. At present, however, the detainees have a difficult time first accessing the clinic, and then receiving continuity of care. Detainees with mental illness

are an especially high risk group. Other detainees with chronic conditions may at least have the capacity to seek care. Detainees with mental illness, especially those who are acutely psychotic or suicidal, may not even try to use the sick call process to obtain continuing treatment of their conditions. Such detainees may need regular follow-up visits and more consistent access to medical staff.

Examples of the Jail's failure to provide appropriate follow-up treatment and continuity of care include the following examples from 2007-2008:

- DD was a 74-year-old detainee with a history of open heart surgery. When DD visited the clinic presenting complaints of incontinence, medical staff failed to give DD a physical exam or take his vital signs. Staff sent DD back to DD's unit. The following day, DD returned to the clinic with incontinence and elevated blood pressure. Clinic staff sent DD to the hospital, where he died shortly thereafter.

- EE had a documented history of diabetes that received inadequate medical attention. When EE complained of symptoms, staff merely prescribed pain medication. Initially, EE complained of leg pain and knee swelling. In response, staff provided EE with pain medication. EE complained again 5 days later about her symptoms. The medical notes were essentially illegible, but apparently staff again just provided pain medication. The detainee complained of her symptoms once more that same day. While waiting to be seen in the clinic, EE collapsed and died shortly afterwards. The documentation suggests that after EE collapsed, staff failed to provide an appropriate emergency response. For instance, the records show that EE had a low blood sugar level at the time of her collapse, but staff failed to respond to the symptoms. Medical records also suggest that the staff did not try to use an automatic emergency defibrillator during the incident.

- FF had a history of cirrhosis. Over several weeks, FF's liver condition worsened, but staff repeatedly failed to respond in a manner consistent with generally accepted correctional medical standards. FF initially presented to the clinic with a complaint of swelling to his legs. Jail staff prescribed blood pressure medication, even though FF's blood pressure was normal. FF complained of chest pain and other conditions over

the next several weeks. Jail staff repeatedly sent FF to the hospital but repeatedly failed to change his medications, treatment plan, or conduct other appropriate follow-up. For instance, on one of these occasions, a deputy reported that FF was having trouble walking. The staff sent FF to the hospital, and an undated medical note indicates that FF needed fluid removed from his stomach. Again, however, staff did not alter FF's treatment plan; nor was there any apparent documentation of vital signs. Approximately one month after his initial complaint, FF died during his last hospital stay. One troubling additional note about this case is that during the period in question, FF apparently spent much of his time at the Jail in a housing unit instead of the infirmary. Given the seriousness of FF's medical condition, he needed to be in an infirmary in order to receive the level of care required by generally accepted correctional medical standards. The discontinuity of care and a lack of follow-up by staff are of serious concern in this case.

3. Inadequate Medical Documentation and Quality Assurance

Medical record-keeping and quality assurance are basic components of a clinical practice that is consistent with generally accepted correctional medical standards. These systems help identify and correct potential problems with patient care. Harris County has deficiencies in both areas, and these deficiencies contribute to problems with chronic care and continuity of care.

A complete and adequate medical records system is critical to ensuring that medical staff are able to provide adequate care. The Jail's process for maintaining medical records and processing medical orders often leaves medical records unavailable to nurses and doctors. Medical staff have little or no access to the records when the pharmacy staff are filling out medication orders, because the pharmacy staff have custody of the records when completing those orders. During our fact-gathering, we also found various record-keeping problems such as a lack of compliance with professional record-keeping formats, illegible physician notes, and factually inaccurate documentation. These deficiencies affect the quality of care and the medical staff's ability to meet Constitutional requirements.

As a matter of technical assistance, we should note that correctional facilities often benefit from having an adequate quality assurance process. Such a process can help

administrators self-identify and correct any deficiencies. A large facility may have particular difficulty addressing systemic constitutional deficiencies without such a process. The Jail does engage in some effective quality improvement activities in order to track and trend medical-related incidents at the facility. The activities do not, however, include adequate mechanisms to review and evaluate Jail physicians; nor does the process include mechanisms that could help ensure more consistent and adequate record-keeping. The mortality review process does not include feedback to appropriate physician staff.

B. Mental Health Care

Many of the Jail detainees require mental health care. Approximately 2000 Jail detainees reportedly receive psychotropic medications each day. Of the detainees receiving psychotropic medications, approximately 200 are considered by the Jail to be part of the mental health program. These detainees often cannot be housed in general population because of their mental health condition. The Jail needs a range of housing options to handle such detainees, because detainees with mental illness have very different needs depending on their circumstances. Instead, the Jail only has a limited number of on-site housing options for detainees with mental illness. These basically consist of some single cells and specialized dormitories.

Housing practices for detainees with mental illness are problematic. For example, even though the ratio of male to female mental health patients is about 2:1, the number of male single cells to female single cells appears to be 32:1. Thus, female detainees with mental illness are much more likely to be left in inappropriate housing conditions while awaiting care. As with medical care generally, the clinic in the 1200 Baker building serves as the primary mental health resource. As noted previously, the 1200 Baker clinic is overwhelmed. The Jail also has access to some other treatment facilities, such as the Harris County Psychiatric Center (Center), but these facilities have limited resources. For example, the Center can house only 24 Jail detainees.

Many of the problems noted previously regarding chronic care and medical care generally also apply to detainees with mental illness. For example, the Jail's process for assessing and treating detainees is focused on acute symptoms and does not adequately identify detainees with serious mental health needs. The mental health clinic functions like a hectic emergency room,

and detainees with serious mental health conditions often cannot obtain timely and appropriate care. These deficiencies violate generally accepted correctional mental health standards.

As a practical matter, while the general medical clinics can meet the serious acute care needs of many detainees, the mental health system does not adequately address the serious mental health care needs of detainees. Mental health policies designed to cover a range of conditions exist, but overwhelmed staff often do not implement them as written. A host of serious mental health conditions cannot be adequately handled at the Jail because of significant housing and treatment limitations. While the Jail devotes additional resources to dealing with the most acutely suicidal, even the basic care and supervision of the most seriously mentally ill appears inadequate.

1. Inadequate Access to Mental Health Treatment

The Jail's written policies include a process for screening and prioritizing detainees with serious mental illness, but in practice, the Jail does not adequately treat detainees based on the seriousness of their condition. The Jail staff classify requests for mental health care into four basic categories. Category 1 includes detainees who are acutely suicidal or have expressed homicidal complaints. Category 2 includes detainees who have expressed some suicidal ideation but have not indicated imminent action. Category 3 includes detainees with medication issues. Category 4 includes detainees who need to see a case manager. Because of limitations on facility housing, staffing, and treatment options, the Jail can only address detainees in Category 1. Other detainees must wait for treatment, often for significant periods of time, if they receive mental health treatment at all.

Given that mental health staff received about 17,000 requests in 2007, the existing system for allocating mental health resources is inadequate. The Jail does not provide access to mental health care for many inmates with serious needs. Examples from 2007-2008 include:

- GG entered the facility with a mental health history. At the time, GG apparently was withdrawing from alcohol, but staff failed to provide appropriate medication and initial intervention. Five days later, someone observed GG in his cell, with blood seeping out under the door. Security arrived, and they discovered that GG had lacerated his hand and appeared to be hallucinating. Staff transferred GG to the infirmary,

but they did not complete an initial psychiatric assessment until five days later. Staff discharged GG two days later.

- HH's medical record suggested that he had a history of not eating, but staff did not initially refer him to a psychiatrist for assessment. After six months in the Jail, HH complained of depression, and staff finally referred HH to a psychiatrist. Mental health staff, however, did not conduct an initial psychiatric evaluation until three weeks after HH complained of depression. Mental health staff noted that HH appeared to be depressed. During the next two months, HH received medication but did not see a psychiatrist. HH ended up in an altercation and had to be placed in isolation. Two days later, he began vomiting blood. At the time of our tour, HH had been housed in administrative separation for more than 18 months and had been involved in various altercations with staff. Given the nature of HH's mental health condition, the Jail's delays in providing mental health treatment and evaluation likely contributed to HH's continuing mental decline and behavioral disturbances.

- II entered the Jail with a history of seizures, but apparently did not receive seizure medications at intake. II experienced a seizure 19 days after arrival at the Jail. II also had a history of cutting. There was no follow-up on this psychiatric issue at all.

- JJ served time in the Jail on multiple occasions. Staff medicated JJ without following generally accepted correctional medication standards. Without an initial screening, the Jail staff involuntarily medicated JJ and housed him in the mental health department's acute treatment cellblock. Staff then repeatedly treated JJ with both anti-psychotic and mood-stabilizing medications without adequate laboratory studies or proper monitoring, placing the detainee at risk of sudden death.

- KK was identified as bipolar upon admission. Psychiatry did not see KK for nearly a month, and KK received no medication for his illness until about six weeks after his admission. In the interim, KK was involved in altercations on four occasions, resulting in the fracture of his arm. Staff renewed KK's medication order over this period without further

patient examination by a psychiatrist. Even after KK's altercations, there appears to have been little follow-up by staff to deal with KK's mental health symptoms.

- During intake, LL reported a mental health history that included risk factors for suicide. The Jail staff did not refer LL to mental health services. Approximately 3 weeks later, LL lacerated his neck.

2. Inadequate Treatment and Psychotropic Medication Practices

In a large urban detention center with a heavy mental health caseload, staff need to have access to a variety of treatment resources. Such resources include an array of different types of therapy, medication, and intensive supervision in order to address different types of mental illness, and varying levels of patient acuity.

Jail mental health staff have access to some mental health resources, but those resources are not sufficient given the size of the mental health caseload. The Jail has few treatment program options available for detainees with mental illness. The Jail uses medications, additional staff monitoring, and some structured housing for detainees with mental illness. For most mental health conditions, the primary intervention is a medication order, often with inadequate follow-up even for the most seriously ill. Indeed, once medical staff prescribe medications, they often cannot or do not routinely follow-up on those detainees unless the detainees themselves request care. This is a substantial departure from generally accepted correctional standards. Notably, detainees also reported that there are significant delays when they request care.

In our document review, some of the treatment orders appeared to depart significantly from generally accepted professional mental health standards. Some of these orders suggest that staff may be utilizing medications in a clinically inappropriate or unsafe manner. Examples of improper chemical restraints and unsafe medication practices during the period from 2006-2008 include the following:

- MM was in an acute psychotic state for nearly two weeks before he died. At intake, staff prescribed medications but they were never dispensed. As MM became increasingly uncooperative, staff injected MM with an intramuscular drug. Medical records suggest significant problems with basic medication

documentation and staff approaches to medication non-compliance. Soon after MM was injected, MM's breathing grew shallow, and he became unresponsive. MM died shortly afterwards.

- NN spent the better part of a year in a State Hospital. NN was found not competent and not restorable. For some reason, he was sent back to the Jail. Despite his competency status, Jail staff nevertheless placed the detainee in general housing and allowed him to keep various medications on his person. NN was not a good candidate for self-medication. NN appeared to suffer a seizure and he was sent to the clinic. The clinic staff suspected the detainee was "sleepy" due to his psychotropic medications. They released the detainee from the clinic, and he died shortly afterwards.

- A Jail psychiatrist diagnosed OO with schizoaffective disorder (a situation where both mood and schizophrenic symptoms exist). OO also had a history of mental illness. OO's mental health deteriorated, and staff repeatedly renewed his medications without having him seen again by a psychiatrist. OO ended up in two altercations, including one in which he struck a deputy.

- PP reported a history of seizures. PP suffered at least one seizure in the Jail, but according to the Jail's medical records, there was no proper follow-up. Medical staff placed PP on four benzodiazepines, but not a long-term anti-convulsant.[3] This suggests that the purpose of the medications prescribed was more likely to sedate the inmate, rather than to treat his seizures.

- QQ required treatment for seizures. QQ experienced a series of seizures, but on at least two clinic visits, documentation suggests that QQ's chart was unavailable

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[3] If used at all for seizure disorder, benzodiazepines are typically prescribed for short-term treatment. They are more commonly used for acute detoxification. In the context of this individual's history and record, the use of four medications of the same class to sedate a detainee appears to be a misuse of the medications.

to the staff during the exams. This resulted in a number of delays in care despite QQ's repeated seizures.

3. Inadequate Suicide Prevention

In general, a comprehensive system for providing adequate mental health care should also include policies, procedures and practices to prevent detainee suicides. Because suicide prevention is itself an important legal concern, we note specifically that the Jail has a number of conditions that are dangerous for suicidal detainees.

First, the Jail lacks adequate video surveillance and supervision in various holding areas. Some of the cells used for housing newly arrested detainees include unsafe physical fixtures (e.g., exposed bars) that can be used to facilitate suicide. While the Sheriff's Department was in the process of retrofitting these cells during our tour, such efforts need to be broadened. Many of the mental health holding areas throughout the Jail appear to be clinically inappropriate. For instance, padded rooms in administrative separation and maximum security units are difficult to supervise and the conditions are so stark, they can cause a detainee with mental illness to degenerate.

Second, the detainees' generally limited access to mental health care can be especially dangerous for suicidal detainees, since suicidal detainees may not be particularly inclined to seek care on their own. Thus, adequate screening and pro-active efforts to identify and treat suicidal detainees are necessary to ensure compliance with minimum standards of care.

C. Protection from Harm

We evaluated the Jail's detainee supervision procedures, security classification process, housing practices, grievance procedures, disciplinary process, and training program. We found that many Jail policies and practices are consistent with minimum correctional standards. Yet, at the same time, we also found some significant and often glaring operational deficiencies. For security matters in particular, the Jail lacks: (1) a minimally adequate system for deterring excessive use of force, and (2) an adequate plan for managing a large and sometimes violent detainee population.

1. Excessive Use of Force

We have serious concerns about the use of force at the Jail. The Jail's use of force policy is flawed in several regards. First, neither written policy nor training provide staff with clear guidance on prohibited use of force practices. For example, Harris County Jail does not train staff that hogtying and choke holds are dangerous, prohibited practices. Indeed, we found a significant number of incidents where staff used inappropriate force techniques, often without subsequent documented investigation or correction by supervisors. Second, use of force policies fail to distinguish between planned use of force (e.g., for extracting an detainee from a cell) and unplanned use of force (e.g., when responding to a fight). In many planned use of force situations, staff should be consulting with supervisors, and possibly medical staff, before using force. Third, Jail policies do not provide for routine videotaping of use of force. Fourth, the Jail does not have an appropriate administrative process for reviewing use of force. Jail policy does not clearly require the individual using force to file a use of force report; nor does Jail policy provide for routine, systematic collection of witness statements. When supervisors review use of force incidents, they do not have ready access to important evidence. Instead, they appear to rely excessively on officer statements to determine what happened during an incident. While Jail staff were helpful and willing to assemble use of force documents requested by our review team, we found it troubling that the Jail did not collect such documents as a matter of course. In other words, use of force occurs at the Jail without adequate review, and Jail data regarding use of force levels cannot be considered reliable. We believe that the incidents noted during our review may only reflect part of what is really occurring within the facility.

As a result of systemic deficiencies including a lack of appropriate policies and training, the Jail exposes detainees to harm or risk of harm from excessive use of force. In a particularly troubling January 2008 case, staff applied a choke hold to a detainee, who subsequently died. The autopsy report identified the manner of death as homicide. Our review of the Jail's records suggests that such improper force technique is being used with troubling frequency. For instance, our consultant found a pattern of such incidents when reviewing use of force reports dated from January through June 2008. These incidents included the following:

- An officer reported that he "grabbed inmate RR by the front of his jumpsuit top and the back of his neck and

forcibly placed inmate RR on the ground. Once on the ground, I continued to apply pressure to inmate RR's neck and placed my right knee in the small of his back."

- An officer used both a headlock and multiple strikes to SS's rib cage.

- Officers "grab[bed] the front of [TT's] shirt and place[d] him on the wall to gain control of the incident."

- Officers used force on UU that resulted in a laceration requiring eleven staples to the scalp. Yet, the use of force incident was not reported by either of the officers who applied the force. Instead, another officer initiated the "inmate offense report."

These and other similar incidents suggest that staff use hazardous restraint and force techniques without appropriate guidance or sanction. In some cases, medical records confirm that detainees may have suffered notable injuries, such as lacerations to the scalp or eye. Notably, when force was investigated by supervisors, it appears that the supervisors often determined that staff's use of force was appropriate without obtaining independent medical review or multiple witness statements.

At the time of our inspection, the Jail was already making some effort to improve use of force reviews. At the time of our tour, the Office of the Inspector General was in the early stages of developing a use of force review process. We also understand that the Jail continues expanding this process in ways that may address some of the concerns noted in this letter. Nevertheless, work must continue in this area before we can conclude that the Jail meets minimum constitutional standards.

2. Overcrowding

With a population approaching 10,000 detainees, the Jail is one of the largest detention facilities in the country. The Texas Jail Commission's decision to grant the County waivers to house approximately 2000 detainees more than the Jail's original design capacity is concerning on its face. At the same time, however, a large detainee population, even if over design capacity, does not itself necessarily violate minimum legal standards. Moreover, the Sheriff's Department has adopted a number of measures to alleviate crowding issues, such as

transferring detainees to outside facilities and providing "portable bunks." Conditions would likely be much worse if the detainees at outside contract facilities had to be housed in the Houston Jail complex. The Sheriff's Department is clearly trying to manage its population, and we acknowledge its efforts. While crowded conditions may not, in and of themselves, violate the Constitution, we are compelled to raise our concerns here because (1) the Jail's crowded conditions currently exacerbate many of the constitutional deficiencies identified in this letter; and (2) the Jail needs a more comprehensive, systemic approach to dealing with a large and growing Jail population.

Jail crowding affects multiple Jail systems. For instance, it impedes detainee access to medical care, indirectly affects detainee hygiene, and reduces the staff's ability to supervise detainees in a safe manner. How the Jail handles inmate supervision and violence illustrates some of the complexities associated with overcrowding. The Jail has already adopted a number of useful strategies for dealing with detainees who are dangerous to themselves or others. These strategies include an objective classification process for deciding where to house detainees and contracts with outside facilities to handle crowding pressure. Despite such strategies, the Jail is so large, violence still breaks out frequently. In one recent ten month period, the Jail reported over 3000 fights, and 17 reported sexual assaults. Also, as discussed above in the mental health section of this letter, the Jail has had particular difficulty managing violent detainees with behavioral and mental health issues. Because crowding makes it difficult to supervise detainees and prevent violence, additional Jail staffing or more jail diversion programs could reduce the risk of detainees coming to harm in the facility.

Managing a large population is a complex problem, and requires both short-term administrative approaches and long-term strategies. For instance, changes to administrative processes and better technology can help alleviate violence and supervision problems associated with crowding. The Jail staff have limited options to address violence and other serious incidents through internal administrative and supervisory mechanisms. At the time of our tour, the Jail did not have the ability to routinely investigate violent incidents. Instead, the Jail staff had to rely heavily on more cumbersome criminal prosecutions to deal with such incidents. In such a large facility, criminal prosecutions may not be a sufficient deterrent to violence. More structured administrative procedures for reviewing incidents, identifying dangerous inmates, and correcting hazardous situations are needed. The Jail also did not have procedures in

place that could more appropriately distinguish between disturbances caused by detainees with mental illness and other detainees. The response to the former often needs to be more nuanced in order to avoid exacerbating the detainees' mental illnesses and to ensure fairness. Instead of referring detainees for structured treatment, the Jail staff instead often have to rely on placing detainees with mental illness in isolation. Isolation can actually make a detainee with mental illness worse and is not as therapeutic as a properly designed, dedicated treatment unit. Other administrative deficiencies include a lack of staff control over hazardous contraband (e.g., detainee razors), and a disciplinary process that lacks safeguards to protect witness confidentiality. Similarly, physical plant and technology issues affect the Jail staff's ability to supervise housing areas. The four main facilities do not have video surveillance in critical areas. The satellite facilities also lack adequate video surveillance.

More generally, while clearly the use of outside facilities and other tactics have helped to alleviate some of the population pressures at the Jail, it is less clear whether the Jail actually has a workable long-term plan for dealing with the types of systemic problems noted in this letter, especially in light of potential population growth. The County is reportedly working to address many of the specific issues raised in this letter, but at this early remedial stage, it is difficult to determine how much progress will eventually be made. For instance, if the Jail increases staff, but then the Jail population simultaneously increases, those staff could quickly become overwhelmed. In other words, when dealing with crowding and its effects on security, medical care, and various Jail operations, the Sheriff's Department should evaluate issues and remedies in a systemic manner. Otherwise, it may be much more difficult to resolve deficiencies in a complete and long-term manner.

D. Sanitation and Life Safety

The Jail buildings are generally modern and adequately maintained. Staff receive training on a variety of emergency procedures. The Jail lacks, however, certain necessary structured maintenance, sanitation, and fire safety programs. Given stresses upon Jail infrastructure crowding, the lack of such programs raises concerns about sanitation and fire safety in the Jail.

1. Sanitation and Hygiene

While the Jail generally appeared to be clean and many systems seemed to be well-maintained, certain deficiencies in the Jail's hygiene practices and maintenance programs expose detainees to an unacceptable risk of injury, disease, or other harm. Jail crowding contributes to these deficiencies.

First, the Jail does not have systems in place to ensure adequate detainee personal hygiene. For example, the facility's laundry facilities and procedures are currently inadequate given the size of the Jail population. As a general matter, the Jail does not even have a "par level" of clothing or linen available for detainees. In other words, the Jail does not maintain enough accessible clothing or linen on-hand for the number of detainees housed at the facility. Moreover, the laundry operation does not meet minimum sanitary standards. The laundry operation does not properly wash and sanitize clothing. The laundry has only a few machines, and a number of those were inoperative during our tour. The staff also use a variety of inconsistent, and often inadequate, schedules and procedures for handling and cleaning laundry. As a result, we found a significant amount of unsanitary bedding, clothing, and mattresses throughout the facility. Such unsanitary conditions can expose detainees to a serious risk from infectious disease.

Another example of poor hygiene practices involves detainee grooming and shaving equipment. The Jail's barbers practice their trade in an unhygienic manner. Clipper blades, guards, and supply boxes appeared to be dirty and had not been cleaned between uses. Detainee barbers did not keep their equipment in disinfectant solutions. As discussed previously in this letter's section on protection from harm, razor blades are not well controlled in the facility. The availability and use of dirty, shared razors and blades is a serious risk, both in terms of disease transmission and as a security matter.

Finally, the Jail's plumbing and mechanical systems require improved maintenance in order to ensure hygienic conditions in certain housing units. While most of the Jail is properly maintained, the Jail's population size and gaps in the Jail's maintenance program result in unsanitary conditions in the intake and mental health units, where the Jail utilizes archaic flushable floor drains, essentially holes in the floor, instead of toilets. Using such grossly inadequate facilities for long periods of time is itself problematic because they are

unhygienic. Moreover, when we tested some of the drains, they back-flushed into the cells. Elsewhere throughout the Jail, we found drains clogged with significant accumulations of debris.

2. Fire Safety

The Jail is a modern facility with a number of fire safety features, such as alarm systems and fire suppression equipment. The main problem with the Jail's fire safety program is that staff training and oversight appear to be inadequate. During our site inspection, we found inadequate numbers of personnel trained to perform emergency tasks. The Jail has a level of constant staff turnover that makes it difficult to ensure that there are fully trained staff on duty in the housing units. As a result, when we randomly questioned staff about emergency procedures, we found that a number of them did not know how to use emergency equipment or how to respond during a drill. We also discovered inconsistencies in safety documentation that further suggest a lack of staff training. Finally, we found that the Jail staff did not have adequate access to emergency keys in the event of a failure in the Jail's electronic door control system. Commendably, the Sheriff's Department immediately took a number of steps to address our fire safety concerns. Importantly, these efforts should be incorporated into ongoing, system-wide safety reviews.

IV. RECOMMENDED REMEDIAL MEASURES

In order to address the constitutional deficiencies identified above and protect the constitutional rights of detainees, the Jail should implement, at a minimum, the following measures in accordance with generally accepted professional standards of correctional practice:

A. Medical care

1. The Jail should develop a chronic care program consistent with generally accepted correctional medical standards. This program should include a process that will identify detainees who should be enrolled in a chronic care program; a roster of detainees enrolled in the program; a schedule of medical visits for each detainee enrolled in the program; a system for determining which diagnostic tests will be required for each chronic condition; and record-keeping which includes documentation of lab work and medical orders.

2. The Jail should update and improve the medical and mental health quality assurance and training programs to ensure

compliance with generally accepted correctional medical standards. These improvements should include additional internal self-auditing to ensure that staff conduct appropriate assessments, provide timely treatment, and document care in a manner consistent with generally accepted correctional medical standards.

3. The Jail should develop a system to monitor the effects of medications and to ensure appropriate follow-up for detainees with serious medical or mental health conditions.

4. The Jail should develop a system to track sick call requests and identify barriers to timely access to medical or mental health care. Sick call requests need to be triaged by appropriate personnel to ensure appropriate and timely access to medical care.

5. The Jail should ensure that medical consultation and specialty services receive physician oversight.

6. The Jail should employ sufficient qualified staff to ensure detainees have adequate access to medical and mental health care.

B. Mental Health Care

1. The Jail should create a mental health program that will allow the Jail to identify, treat, and monitor detainees with chronic mental illness. As part of this development process, responsible Jail personnel may wish to consider evaluating mental health programs in a variety of outside institutions and adopt useful policies and procedures from appropriate models.

2. The Jail should continue with efforts to assess the mental health caseload in the facility, and develop a variety of housing and treatment options to address the needs of the mentally ill. This system will need to organize treatment options so that the Jail can deal with those across the entire spectrum of care. The Jail's mental health treatment policies need to meet generally accepted standards of correctional health care. These policies should provide for the development of individual treatment plans and timely access to levels of care appropriate to detainees' mental health needs. Such care should address detainees who are stable and can be housed in general housing, detainees who are highly unstable and require intensive supervision, detainees who are stable but may require step-down services

before returning to general population, detainees who are actively suicidal, and detainees who are at risk of suicide but may not have expressed an immediate intent to commit suicide.

3. Restraints should not be used as punishment, for the convenience of staff, or in lieu of treatment. The Jail should provide a variety of psycho-therapeutic treatment options and adopt appropriate safeguards to avoid the inappropriate use of chemical sedation.

4. The Jail should implement policies for monitoring detainees at risk of suicide that meet generally accepted correctional mental health standards. The Jail should retrofit cells used for suicidal detainees or detainees requiring intensive supervision. The Jail should eliminate fixtures that can be used to facilitate suicide (e.g., exposed bars or bath fixtures) while at the same time avoid creating a non-therapeutic environment (e.g. bare cells or extensive use of isolation for psychotic detainees).

5. The Jail should include mental health staff and administrators as part of medical quality assurance and other administrative management processes.

C. Protection from Harm

1. The Jail should ensure that there are a sufficient number of adequately trained staff on duty to supervise detainees and to respond to serious incidents.

2. The Jail should prohibit the use of chokeholds and hogtying.

3. The Jail should increase video surveillance in critical housing areas and alter staffing patterns to provide additional direct supervision of housing units.

4. The Jail should develop and implement policies and procedures to improve control over razors or other dangerous items.

5. The Jail should develop and implement additional policies and procedures for the investigation of serious incidents, including excessive use of force and detainee-on-detainee violence. These policies and procedures should include administrative responses to violence and a detainee disciplinary process conducted in a confidential manner. They should also include routine interview and document

collection procedures that will allow investigators to complete their inquiries in an objective manner consistent with generally accepted correctional standards.

6. The Jail should alter its procedures for cell extractions and other use of force situations to ensure that staff are utilizing appropriate force techniques. Such alterations should include routine videotaping of planned use of force.

D. Sanitation and Life Safety

1. The Jail should develop and implement a long-term plan for addressing Jail crowding and population growth.

2. The Jail should develop and implement policies and procedures to improve detainee hygiene to a level consistent with generally accepted health standards. The Jail should specifically improve laundry practices and facilities to ensure that the Jail can adequately wash and sanitize detainee laundry. The Jail should also maintain, at all times, a sufficient supply of sanitary bedding, linen, clothing, razors, and other hygiene materials.

3. The Jail should increase staff training to ensure that staff is prepared to implement emergency procedures and operate emergency equipment the event of an emergency. Jail supervisors shall periodically test and drill staff on their knowledge of emergency procedures, and provide corrective instruction as part of a Jail-wide safety program. The Jail should continue with its ongoing effort to develop a qualified Jail safety team to help conduct staff training and oversee facility safety programs.

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Please note that this findings letter is a public document. It will be posted on the Civil Rights Division's website. While we will provide a copy of this letter to any individual or entity upon request, as a matter of courtesy, we will not post this letter on the Civil Rights Division's website until ten calendar days from the date of this letter.

We hope to continue working with the County in an amicable and cooperative fashion to resolve our outstanding concerns regarding the Jail. Since we toured, the County has reported that it has adopted a number of improvements, many of which appear to be designed to address issues raised during our exit interviews. We appreciate the County's pro-active efforts.

Assuming there is continued cooperation from the County and the Jail, we would be willing to send our consultants' reports under separate cover. These reports are not public documents. Although the consultants' evaluations and work do not necessarily reflect the official conclusions of the Department of Justice, their observations, analysis, and recommendations provide further elaboration of the issues discussed in this letter and offer practical technical assistance in addressing them.

We are obligated to advise you that, in the event that we are unable to reach a resolution regarding our concerns, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct deficiencies of the kind identified in this letter 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1).

We would prefer, however, to resolve this matter by working cooperatively with you and are confident that we will be able to do so in this case. The lawyers assigned to this investigation will be contacting the County's attorney to discuss this matter in further detail. If you have any questions regarding this letter, please contact Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

/s/ Loretta King

Loretta King
Acting Assistant Attorney General

cc: Vince Ryan, Esq.
Harris County Attorney

Adrian Garcia
Sheriff
Harris County

The Honorable Tim Johnson, Esq.
United States Attorney
Southern District of Texas

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