

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

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JANUARY 29, 2014

Serial No. J-113-47

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PUBLISHING OFFICE

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OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE

WEDNESDAY, JANUARY 29, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Grassley, Hatch, Sessions, Graham, Cornyn, Lee, Cruz, and Flake.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Before we start, today's hearing, like most hearings in here, deals with a serious issue, and I know the public will act accordingly. I appreciate so many members of the public coming in here. We try to have these hearings as open as possible, Senator Grassley and I, make sure they are streamed live so anybody can watch. But I would also note at the outset that the rules of the Senate prohibit any outbursts or clapping or demonstrations of any kind, which, of course, includes blocking the view of people around you. And please be mindful of those rules, and, of course, the Capitol Police will enforce them.

But I welcome the Attorney General back to the Senate Judiciary Committee. I thank him for his service and restoring Americans' faith in a Department that has in the past at times lost sight of its core mission.

It is interesting that the Judiciary Act of 1789—and neither Senator Grassley nor I were here at that time, but the Office of the Attorney General has carried since its inception the responsibility to protect Americans and safeguard the rights and liberties that make our country great. That is why it is the Attorney General of the United States—not the Secretary of Justice or anything else, but the Attorney General of the United States—representing all of us. For much of the past two centuries, the Department has faced many challenges: combating violent crime, fraud, and corruption and enforcing our Nation's laws.

Over the last several decades, the mission of the Department expanded to include protecting the civil rights of all Americans. We have to continue this even today, years after the end of Jim Crow laws and poll taxes. That is why I recently joined with Representa-

tive Sensenbrenner to introduce the bipartisan Voting Rights Amendment Act.

We also face ever more complex threats to our national security and more sophisticated methods of criminal activity. The Department has adapted quickly to develop new tools and resources to respond to these threats. But along with these rapid changes is the challenge of remaining true to our core values of liberty, privacy, and a Government responsive to the people.

We live in a digital age. We all know that. The challenges are even more acute. Every day, Americans generate an enormous amount of information about their lives through simple, routine tasks like using a credit card, sending a text message, calling a friend, or searching for directions on the Web. This technology improves our lives, but the vast amount of data it creates is also remarkably revealing and vulnerable to exploitation. And I will ask at some point, is there anything in the U.S. Constitution that gives authority to the Congress to pass a law that enables and empowers an executive agency such as the NSA or the Bureau of Land Management, for that matter, to open, to listen, or to seize either the mail, the phone conversations, or electronic communications of U.S. citizens simply by a blanket law? In Vermont, we treasure our privacy, and this makes me wary of Government overreach or lax protections for consumers in these laws. I think the changes show a need for Congress and the Department to act.

We need to set appropriate limits on when and how the Government can collect vast amounts of data on Americans, assuming we even have the power to allow and to pass a law to allow any agency—any agency—to do this. I will continue to push for passage of my USA FREEDOM Act, as well as legislation to reform the Electronic Communications Privacy Act. And I thank those Senators in both parties that have joined on similar legislation. We have to ensure that the huge amounts of data that are collected, assuming that they have the right to collect them, which is a big assumption, that they are—that those that are collected and shared and stored by businesses are kept safe from the growing threats of data breaches and identity theft. We are going to examine this issue in detail at a hearing next week.

But it is also important that the Department continue to fulfill its core criminal justice mission. I know the Attorney General and I share an unshakable commitment to keeping Americans safe, to supporting the men and women on the front lines of law enforcement, but also to help victims rebuild their lives. We worked closely last year—and I appreciated the help—to reauthorize the Violence Against Women Act and the Trafficking Victims Protection Act with critical improvements to protect all victims. And after a 3-year effort, last year the President signed into law my Dale Long Public Safety Officers' Benefits Improvements Act, which will make significant improvements to the Public Safety Officer Benefits program that is so important to our first responders.

I appreciate the Attorney General's strong support for the goals of the Justice for All Reauthorization Act, the Second Chance Reauthorization Act, and forensics reform legislation, each of which are going to improve the effectiveness of our criminal justice system,

and I would like to see them enacted this year. I know a lot of people in law enforcement would like to see them enacted.

I appreciate the Attorney General's recognition of the bipartisan efforts currently underway in this Committee to address the unsustainable growth of our prison population. At the rate we are going, there will be no money for law enforcement. It will be just in prisons, even to the extent of having geriatric units in these prisons. In a time of shrinking budgets at all levels of Government, I think the problem that we have in an expanding prison population presents devastating consequences for our other critical public safety priorities. If you do nothing and we just allow the Federal prison population to consume more than a quarter of the Department's budget with eventually even more in that, that makes us less safe. Incremental changes to mandatory minimums for non-violent drug offenders is a good place to start, and I am optimistic that we are going to be able to pass a bipartisan bill out of this Committee to do that.

So thank you, Attorney General, for returning to the Committee to discuss these important issues. But I also want to thank the men and women of the Department of Justice who work hard every day to keep us safe. I met with a lot of them. You are the face of the Department of Justice. As you know, there are thousands of people whose faces will never be in the news but who are out there every single day throughout the country and abroad keeping us safe. We pray for their safety, and we appreciate what they do. They deserve our gratitude and respect.

Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Before I read my statement, I would like to say to General Holder, obviously you and I were bitten by different political bugs, but—and we have policy differences. Maybe we have got more agreement than what you and I might realize at a particular time. And I think those policy differences are legitimate, and we can live with them. In my statement I am going to make some comments about some administrative action where I think there is no excuse for and Congress is not being respected by your Department, and whether it is you or people within your Department, I think at the very least we ought to have responses to things where there should be no political differences, just wanting information. So I hope you appreciate the fact that if we disagree on policy issues, that it does not carry over to things that when Congress simply wants some administrative action on your part.

I thank you, Chairman Leahy, for this hearing. It is a very important hearing. Oversight is very, very important. And I thank the Attorney General for coming here. You take some beating by coming here, but at least you are fulfilling a constitutional responsibility of giving us information that we need in public.

I have to start by pointing out to the Chairman that we still have not received answers to our questions for the record from the last oversight hearing with the Attorney General, which was almost 11 months ago. As I have indicated, I think this is unacceptable. The Department should show sufficient respect for this Committee to

answer its questions—at least prior to the next oversight hearing, now 11 months elapse. We also have not received replies to questions directed to other department officials who testified at various hearings over the past year.

This hearing also affords me the opportunity to call to your attention, General Holder, the many letters the Department has not yet answered. It is unfortunate that we always have to start a Department oversight hearing with this same request to respond to unanswered questions from Congress.

For instance, back in early November I wrote you about the Justice Department's counsel to Health and Human Services on the Affordable Care Act. HHS says that in consultation with your Department, it decided not to apply the anti-kickback statute to the Affordable Care Act. This is a clear violation of Congress' move to strengthen anti-fraud laws, and you have helped us strengthen a lot of anti-fraud laws. Since I have not received an answer to my letter, I am going to ask you about that today.

I have also written you about the Department's handling of cases in which National Security Agency employees abused their signals intelligence authority.

In August, after news reports about these cases, I wrote to the NSA Inspector General about them. In response, the Inspector General indicated that since 2003, there were 12 documented instances of NSA employees abusing these authorities, in many cases by spying on loved ones. It is good that the number of cases was very small, but even one case is too many. According to the Inspector General, at least six of these cases were referred to your Department for prosecution.

So in October, I wrote to you to request information about how the Department handled these cases. I asked for a response by December 1st. I have not received one.

It is important for the public to know whether the Department is taking these cases seriously. We need to deter this kind of behavior in the future, given the NSA's powerful capabilities.

In addition, this Committee has spent a considerable amount of time over the past 6 months considering various reforms to the NSA. In his speech on this a few weeks ago, the President directed you as Attorney General to work with the intelligence community to develop "options for a new approach" to the bulk collection of telephone metadata. I will be interested in hearing how that is proceeding.

The President has also asked you to do a review of the FBI's whistleblower protections and recommend changes on how to improve them. The assignment was contained in Presidential Policy Directive 19, which claimed to create protections for whistleblowers with access to classified information. The President gave you 180 days to complete the review, and it is now 10 months overdue. There is a lot of lip service to whistleblower protection, but this is another example of how the actions do not match the rhetoric.

I am concerned about the President's Directive. I recently had a whistleblower from the CIA contact my office. He was seeking to report alleged violations of the whistleblower protections in the President's Directive 19, false statements to Congress, and concerns related to qui tam legislation. He tried to get permission to

share the classified details with me. Yet a CIA lawyer wrote a letter denying permission, claiming Judiciary Committee members are not authorized to receive classified information from the CIA—which is, of course, false. But it scares whistleblowers and it intimidates them into silence. This is one of several things that suggests to me that even with the President’s Directive, we need stronger legislative protections for national security whistleblowers.

Another topic I would like to discuss is the Department’s non-enforcement of the Controlled Substances Act. In August, the Department announced that it would not challenge laws in Colorado and Washington legalizing trafficking of marijuana. The Department apparently believes that so long as these States create effective regulatory schemes, key Federal enforcement priorities would not be undermined. Those priorities include the diversion of marijuana into other States, increased use among minors, and more drugged-driving fatalities.

However, I am concerned that in many ways this policy is based on willful ignorance of the realities in these States. For example, as a result of failure to adequately regulate medical marijuana, Colorado has seen a sharp increase in public health and law enforcement problems related to these Federal priorities in the past few years. Just a few weeks ago, a senior Drug Enforcement Administration official told my and Senator Feinstein’s Caucus on International Narcotics Control that what was happening in these States is “reckless and irresponsible.”

At a minimum, it is important that the Department set firm criteria to measure whether—or when—its Federal priorities are harmed so much that the decision not to challenge these State laws is revisited.

This is all the more important now that I understand you will soon announce additional guidance that will permit marijuana distributors in these States to use the banking system to engage in what is, under Federal law, money laundering.

I am also concerned that this administration has not been faithful to the Constitution in a number of other areas by unilaterally changing or ignoring laws passed by Congress. In my view, many of these actions are inconsistent with the Constitution’s requirement that the President “take Care that the Laws be faithfully executed.”

However, your Department’s Office of Legal Counsel is involved with this because they provide an independent check on Executive action. The Office of Legal Counsel is responsible for advising the executive branch on constitutional questions. Moreover, it reviews the constitutionality of all proposed Executive orders.

Last night during the State of the Union address, the President signaled that he will use Executive orders aggressively to advance his agenda this year. Transparency should be brought to the Office of Legal Counsel’s analysis of proposed Executive orders so that the American people can see whether they are subjected to a rigorous constitutional review.

Thank you very much, General Holder, for listening.

Chairman LEAHY. Thank you.

Please go ahead, Attorney General.

**STATEMENT OF HON. ERIC H. HOLDER, JR., ATTORNEY
GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC**

Attorney General HOLDER. Chairman Leahy, Ranking Member Grassley, members of the Committee, I want to thank you for the opportunity to appear before you today to discuss the recent achievements and the ongoing priorities of the United States Department of Justice.

I would like to thank the Members of Congress for coming together earlier this month to pass a bipartisan budget agreement that restores the Department's funding to pre-sequestration levels. Now, we are reviewing this legislation to determine its impact on specific programs and components, but we anticipate that it will provide for the hiring of additional Federal agents, prosecutors, and other essential staff. This will allow us to invest in innovative programs, to keep supporting State and local law enforcement agencies, and to continue building upon the outstanding work that my colleagues have made possible over the past year.

Now, as I have often said, the Department's top priority must always be the protection of the American people from terrorism and other national security threats. Since I last appeared before this Committee, we have continued to strengthen key intelligence-gathering capabilities, to refine our ability to identify and to disrupt potential terrorist plots, and to ensure that those charged with terrorism-related offenses can be held accountable to the fullest extent of the law.

As President Obama noted in his speech at the Justice Department roughly 2 weeks ago, in carrying out this work it is imperative that we continue striving to protect our national security while upholding the civil liberties that all of us hold dear. On Monday, we took a significant step forward in this regard when the Department acted to allow more detailed disclosures about the number of national security orders and requests that are issued to communications providers, the number of customer accounts targeted under those orders and requests, and the underlying legal authorities. Through these new reporting methods, communications providers will be permitted to disclose more information than ever before to their customers. Allowing disclosure of this aggregate data will resolve an important area of concern to communications providers as well as to the public. And in the weeks ahead, as we move forward with the timely implementation of this and other reforms directed by the President, my colleagues and I will work closely with members of this Committee and other congressional leaders to determine the best path forward.

We also will continue enforcing essential privacy protections and other safeguards concerning data possessed by the Government as well as by the private sector. The Department of Justice takes very seriously reports of any data breach, particularly those involving personally identifiable or financial information, and looks into allegations that are brought to its attention.

Now, while we generally do not discuss specific matters under investigation, I can confirm that the Department is investigating the breach involving the United States retailer Target, and we are committed to working to find not only the perpetrators of these

sorts of data breaches but also any individuals and groups who exploit that data via credit card fraud.

Now, beyond this important work, the Department will continue to build on the progress we have seen in confronting really a wide variety of other threats and challenges—from combating drug and human trafficking, to addressing cyber attacks, protecting Americans from violent crime, and taking really commonsense steps to reduce gun violence. Earlier this month, the Department strengthened the Federal background check system by clarifying Federal rules concerning mental health-based prohibitions on firearm purchases. Under the leadership of our Civil Rights Division, we are working diligently with our Federal agency partners to implement the Supreme Court’s ruling, in *United States v. Windsor*, to make real the promise of equal protection under the law for all American families and to extend applicable Federal benefits to married same-sex couples. And we are vigorously enforcing Federal voting protections—and working with congressional leaders from both parties to refine and to strengthen the proposals that Congress is currently considering—to help ensure that every eligible American has access to the franchise.

In addition, last year, as part of our on going efforts to hold accountable those whose conduct sowed the seeds of the mortgage crisis, the Department filed suits against Bank of America and the ratings firm S&P. In November, the Department reached a \$13 billion settlement with JP Morgan Chase and Co.—this is the largest settlement with any single entity in American history—to resolve Federal and State civil claims related to the company’s mortgage securitization process. Now, I think that these results demonstrate that no firm, no matter how profitable, is above the law, and they reinforce our commitment to integrity and equal justice in every case, in every circumstance, and in every community.

This commitment is also reflected in the new “Smart on Crime” initiative that I announced this past August to strengthen our Federal criminal justice system; to increase our emphasis on proven diversion, rehabilitation, and reentry programs; and to reduce unnecessary collateral consequences for those who are seeking to rejoin their communities.

As part of the Smart on Crime approach, I mandated a significant change to the Justice Department’s charging policies to ensure that people accused of certain low-level Federal drug crimes will face sentences that are appropriate to their individual conduct and that stringent mandatory minimum sentences will be reserved for the most serious criminals. Alongside other important reforms, this change will make our criminal justice system not only fairer, but also more efficient. And it will complement proposals like the bipartisan Smarter Sentencing Act—introduced by Senators Dick Durbin and Mike Lee—which would give judges more discretion in determining appropriate sentences for people convicted of certain Federal drug crimes. I look forward to working with Chairman Leahy, distinguished members of this Committee, and other leaders who have shown a commitment to commonsense sentencing reform—like Senator Rand Paul—to help advance this and other legislation.

I want to thank you all once again for your continued support of the United States Department of Justice, and I would be happy to answer any questions that you might have.

Thank you, Mr. Chairman.

[The prepared statement of Attorney General Holder appears as a submission for the record.]

Chairman LEAHY. Thank you, and thank you for mentioning the Smarter Sentencing Act, part of what Senator Durbin and Senator Lee have done, Senator Paul and I and others. We are all working together to try to get something that not only makes sense but can pass. The all one-size-fits-all we have realized, one, it does not make us safer; two, it does not deter crime; but, three, it means we are spending a huge amount of money on things that do not make us better and has to take money away from good law enforcement that we need.

Last week, the Privacy and Civil Liberties Oversight Board issued a report that concluded the NSA's phone records program should end, and I agree with that. I look forward to the recommendations you and the Director of National Intelligence will develop in the coming months, but Executive action is not enough. I think Congress has to act to ensure that this legal theory—and that is what I consider it, legal theory—is not used by any administration to spy indiscriminately on its citizens.

Now, DOJ's current interpretation of relevance in Section 215 could allow the Government to acquire virtually any data base that it might someday down the road for some reason somehow find useful. First, is there anything in the Constitution that allows us to pass such an overbroad law to allow us to search anywhere we want? And is there any meaningful limiting principle for the Government's interpretation of Section 215?

Attorney General HOLDER. Well, I think that you can look at what the Government has been able to do in terms of surveillance, whether it is wiretaps, mail covers. There are a number of statutes that Congress has passed that allows the Government to engage in that kind of surveillance activity. I think the difference between those kinds of, I think, universally recognized programs and what we have seen under Section 215, the metadata program, is that these other materials, the other programs, are really kind of predicate based. The metadata program is really an accumulation of material without necessarily a predicate, though I will say that to query the data base, there has to be a predicate, and that makes it, I think, consistent with what has been passed by Congress before and constitutionally upheld by the courts.

Chairman LEAHY. Well, apparently we can pass something, and you mentioned some have been constitutionally upheld. But we could also pass—Congress could pass a law, for example, that would allow any police officer to seize anybody and lock them up incommunicado for 5 years. We could pass such a law. You are a former judge, and you are Attorney General of the United States. I think you would agree with me and everybody else that would not pass a constitutional test at all.

So I ask again the question: Does the Constitution give us the right to pass a law to allow NSA or the Bureau of Land Manage-

ment or anybody else to collect such untrammelled metadata on American citizens?

Attorney General HOLDER. Well, I would say that 15 judges in the FISA Court, 2 judges—one in California, one in New York—have looked at this question and made the determination that the 215 program is, in fact, constitutional. One judge in Washington, D.C., has decided it is not. But I think that really only deals with one-half of the question. I believe that they are correct that it is constitutional. It is an appropriate use in a constitutional sense of the Government's power. But the question is, and what the President has proposed to us: Just because we can do something, should we do it? And that is what Director Clapper and I are going to be wrestling with over the next 60 to 90 days to modify the program in the way the President has indicated.

Chairman LEAHY. You anticipated another question I was going to ask. As you do that, are you going to be consulting with the Privacy and Civil Liberties Oversight Board?

Attorney General HOLDER. Yes, we will be touching base with them. Obviously there is a report that we can look at. But I think we want to make this a pretty wide-ranging interaction with those people who have been critical of Section 215 and the other surveillance program so that we have as much information, both pro and con, before we make recommendations back to the President.

Chairman LEAHY. There were news reports this past week that the NSA and a British intelligence agency are working together to collect detailed personal information from smartphone apps. I have some questions I will ask you in a classified forum, but what protections are in place to ensure the NSA does not do an end run around U.S. surveillance rules, including the First Amendment, obviously, by just going to another foreign agency and saying, "Hey, we are prohibited from collecting this information on Americans. Would you do it for us?"

Attorney General HOLDER. Well, under Executive Order 12333 the intelligence community is not permitted to ask a foreign government to collect information that we ourselves would not be allowed to collect. And so any attempt to have a foreign government acquire information that we are not permitted to gather ourselves would be inappropriate and a violation of that Executive order.

Chairman LEAHY. The FAA recently approved six test sites for the use of unmanned aerial systems, drones. The FAA is developing plans to allow drones to be operating in commercial airspace by next year. We have also heard, though, in this Committee that drones are already being used for a number of areas—homeland security, law enforcement purposes. That raises significant privacy concerns. I can almost feel what my reaction would be if I saw a drone flying around over my farmhouse in Vermont and what I would be inclined to do, not knowing where it was coming from or what it was.

What plans does the Justice Department have to use drones within the U.S. for law enforcement purposes? And what kind of safeguards are being developed? The Orwellian aspect of it I find very chilling.

Attorney General HOLDER. Well, with regard to the use of these unmanned aerial systems, at this point the only component within

the Department that is using them in an operational way is the FBI. And I think we have to understand that, if used appropriately, they can serve a useful purpose. I do not—I think you remember the young child who was held hostage in a tunnel, I think it was in Georgia or Alabama someplace. Use was made of a drone in that case and proved decisive in resolving that situation in a good way.

The Inspector General in the Justice Department has recommended that we come up with a uniform system of rules and regulations within the Department to control how these devices are used, and that is something that I support, and it is something that we will be developing.

Chairman LEAHY. And that I would like to work with you on the development, and I think other members of the

Committee on both sides of the aisle, because simply the fact that we have the technology, I can see in the hands of some, boy, this is the latest and greatest whiz bang, let us just go spy on everybody's back yard and everything else. And I think the reaction of the American public would be pretty significant as compared to the very specific targeted law enforcement, the missing child thing that you mentioned.

Last, and I apologize to Senator Grassley, but we talked about the Federal prison population—this is something of concern to many of us here—has grown by more than 500 percent in the last 30 years. That is eating up money that cannot be used to hire more prosecutors or agents or providing assistance to State and local law enforcement. In fact, the Inspector General said the Bureau of Prisons' budget is at the top of its list of management challenges—the top of the list.

What is this increasing prison population doing to your other priorities?

Attorney General HOLDER. Well, the Bureau of Prisons' budget takes up roughly a third of the Justice Department's entire budget, and it precludes us from doing a variety of other things that I know members of this Committee are interested in, and those are interests that I share. Our ability to help our State and local partners with regard to grants is impacted. Our ability to hire more prosecutors, more agents, more support personnel is impacted.

We have to fund the prison system to make sure that the people who are in those systems are safe, that we provide constitutional care to people who are incarcerated. But unless we take, I think, the fundamental look that has been suggested by you, Senator Durbin, Senator Lee, Senator Paul, unless we take that fundamental look, we are going to have a prison system that impedes our ability to do the kinds of things the American people expect the Justice Department to do. And I am very concerned about that, and that is why I announced that Smart on Crime initiative back in August. And I think what I announced is consistent with what members of this Committee have suggested as well, and that is why I want to work with you to try to get a handle on what is, I think, a growing and potentially very dangerous problem.

Chairman LEAHY. Please do, because you have broad bipartisan support across the political spectrum to find our way out of this, and we need the advice.

Senator Grassley.

Senator GRASSLEY. Yes, before my time starts, could I follow up on—I have the same concern you do about privacy being violated by drones, but I want to point out that with airplanes in Iowa and Nebraska, EPA has some authority to spy on certain animal feeding operations, but they were spying on people they did not have the right to regulate with airplanes. We are going to have a bigger problem with the Government abuse of privacy with drones now. So I just raise that as an issue, not for you to comment on or not for you to comment on.

General, in my opening statement, a couple questions on something I have already discussed with you. I mentioned that I wrote you back in October concerning the Department's handling of cases referred to in which the National Security Agency employees intentionally or willfully abused surveillance authority, but I never received a response. We need to know whether the Justice Department is taking any action or even whether you consider the cases serious. Can you tell me whether anyone at the NSA has been prosecuted for this conduct, and if they have not, why maybe they have not been prosecuted?

Attorney General HOLDER. Well, I think the concern that you raise is a very legitimate one, and we will get a response to you in greater detail. But the fact that—and there were those referrals. But the fact that members of the NSA who have access to this information, access to these techniques, these capabilities would misuse them for—and I think you are right, as you said in your statement, using them for essentially personal use, look to spy on people with whom they had relationships, is totally inappropriate. We will get you a fulsome response to indicate how those cases were dealt with by the Justice Department. But I share the concern that you express.

Senator GRASSLEY. Is it possible that you could do that soon?

Attorney General HOLDER. Yes, we will do that soon. I will write that one down and make sure we get back to you on that.

Senator GRASSLEY. Now, I have referred to Presidential Policy Directive 19 released 15 months ago. This follows up on my interest of making sure whistleblowers have protection. It mandated that you deliver a report to the President within 180 days—that would be April last year—to assess the effectiveness of the FBI's procedure of handling whistleblowers.

Now, why I raise this issue is because we have had whistleblowers' rights violated, like Robert Kobus and Jane Turner, getting a runaround for years, even after the Inspector General has found in their favor. However, to date there has been no public announcement that your review has been completed. Why have you not issued the report nearly 10 months after deadline? What have you learned from your review? Will you provide a copy to the Committee of the review?

Attorney General HOLDER. Well, I will have to check on the status of that review. I am not sure what shape it is in and whether it is ready for dissemination, but I will look at that.

Again, I share the concerns that you have about whistleblowers. I think that people who have concerns about the way in which the Government is conducting itself have to have the feeling that they

have places that they can go and report these things in a way that does not do damage to the Government itself. And so if there is not that feeling that they have mechanisms, established means to share those concerns, we then end up with people sharing things, and I think in an inappropriate ways, perhaps with newspapers, other media. And so the concern you have is a very legitimate one, and this is another one where I will have to get back to you and let you know where we stand.

Senator GRASSLEY. When you mentioned concerns of the Government, I appreciate that because Government has got certain responsibilities. But when you have got one individual against the Government, it would seem to me it is pretty easy to see how that one individual is going to be run over if we do not see that they get their constitutional rights protected.

I had a question on drones, but I think you have answered that. I will go to the Office of Legal Counsel's review of Executive orders that I spoke about. I mentioned my concern that the President has been using Executive orders to circumvent the will of Congress and the American people. I am sure he does not feel that way. You probably feel he has not either. But I will tell you, it is a big concern for people that come to my town meetings. It appears that he may continue to do this. He said so last night.

In the interest of transparency—and with transparency comes accountability—would you disclose to the public the Office of Legal Counsel's analysis of all proposed Executive orders so that the American people can see whether they are subjected to rigorous constitutional review? It would seem to me that would be one of your responsibilities. It would seem to me you would want the President to only do those things that are legal and constitutional. And if you would not make these public, would you tell me why?

Attorney General HOLDER. Well, first, let me say that with regard to the use of Executive authorities, what the President has talked about was a desire in the first instance to work with Congress to try to pass legislation, but in the absence of that to use the power that he has as President in the way that he described. And what he has described is consistent with what other Presidents have done over the years.

I think if one looks at a various number of studies that I have seen, this President has used far fewer Executive orders than his predecessors.

Senator GRASSLEY. But I am not questioning whether or not he can do it. I might have some question about the legality and constitutionality of it, and if he has got the constitutional authority, if he has got the legal authority, we cannot do it. We are just trying to determine whether or not he has exceeded that authority, and your people making that determination, is there anything wrong with the public saying what the basis of it is, you know?

Attorney General HOLDER. Well, I mean, I think we can certainly look at the requests that are made. We will have to see exactly how the President proposes to use these Executive authorities. And to the extent that we can share the OLC determinations, or whoever in the Justice Department is looking at it and making these determinations, I would be inclined to try to share that with Congress in an appropriate way.

Senator GRASSLEY. Okay. Well, will you at least—if you cannot share it with me, will you tell me why you cannot share it with me? Because I just do not want a big black hole here.

Attorney General HOLDER. Sure. I mean, the concern we generally have with regard to the dissemination of OLC opinions is that we want to have full conversations, fulsome discussions about these matters where OLC lawyers write both pros and cons about a particular issue that they are addressing.

Senator GRASSLEY. We are probably only interested in the outcome, not the debate within your agency, just what is the outcome.

Attorney General HOLDER. Yes, well, the memos—but the memos will contain all of the arguments with a conclusory couple of pages, or whatever. We will try to find ways in which we can share this information with you so that you and other members and the American people feel that the President is acting in an appropriate way—to the extent that he makes use of this authority at all, because as I said, his primary inclination and desire is to work with Congress to pass necessary legislation that I think all the American people want to see happen.

Senator GRASSLEY. I think the Chairman would give me a couple minutes because he took 2½ minutes.

Attorney General HOLDER. I am not sure about that.

[Laughter.]

Senator GRASSLEY. The last question or maybe half a question after this one would be this simple: This is a discussion I had with the Secretary of Health and Human Services in another Committee. They announced that it does not consider the Affordable Care Act plans to be “Federal health care programs.” That exempts them from the anti-kickback laws and undermines the clear intent of Congress in the health reform law to make kickbacks a violation of the False Claims Act. So you have got my interest in the False Claims Act as well.

Secretary Sebelius said that she made this decision after consulting with your Department. I asked Secretary Sebelius why these plans are any different than Medicare Advantage. She claimed Advantage plans are different because payments are made directly from the Medicare trust fund.

So I wrote to you about this last November. I would like to know when I might be able to expect a response but, more importantly, whether you agree with Secretary Sebelius that the Affordable Care Act plans should be exempt from the anti-kickback laws. It does not seem to me like you would want to exempt anything from anti-kickback laws. And was the Department’s advice to HHS documented in writing? And if it was, I would like to have a copy of it.

Attorney General HOLDER. I do not want to sound like a broken record, but that is something I will have to examine and see—

Senator GRASSLEY. Okay.

Attorney General HOLDER. What we have there. But I will say that we have been very aggressive in enforcing the anti-kickback laws and recovered, you know, record amounts of money over the last few years. And I would have to look at the particulars with regard to the Affordable Care Act and see—

Senator GRASSLEY. Well, I can understand that.

Attorney General HOLDER. The applicability of those provisions.

Senator GRASSLEY. But presumably this is action, according to the Secretary, that your Department has already taken, so there ought to be some sheet of paper around there that you can give to us.

The half a question I was going to ask, you have got 1 more day to decide whether or not the Boston bomber is going to be subject to the death penalty. What is your decision?

Attorney General HOLDER. We will be announcing that by the deadline.

Chairman LEAHY. Thank you.

Incidentally, I would note on the amount of money the Department of Justice has collected in fines in anti-kickbacks, I believe you set an all-time record in the amount that you have, and I compliment you on that.

Senator Durbin.

Senator DURBIN. Thanks a lot, Mr. Chairman. I just want to say for the record it was the Grassley amendment that brought us into this world in terms of bringing Members of Congress and their staff into the Affordable Care Act, which we are now under; and if it was not complete when it came to anti-kickback and such, then we certainly want to make sure that it is.

I would like to—

Senator GRASSLEY. My colleagues did not know that. Why did you have to tell them?

[Laughter.]

Chairman LEAHY. Well, I think every staff member in the Congress who are now paying considerably more for their health care know that it is the Grassley amendment that did it.

Senator DURBIN. Mr. Chairman, if I could address two questions related to the wheels of justice. Each year when you appear, Mr. Attorney General, I ask you the same question and you give me the same answer about racial profiling guidelines, and you say, "Really soon we are going to work on this." This year I would like to ask you: How quickly can we expect new racial profiling guidelines when it relates to the issues of religion, national origin, and whether it applies to national security and border security cases?

Attorney General HOLDER. Well, I do not want to repeat the words "really soon" given what you said, so I will say that they are forthcoming and that—in the Holder lexicon, "forthcoming" is shorter than "really soon." We are working with those—there has been a review that is underway. We are really—and I mean this very sincerely. We are truly in the final stages of this. The proposal is now just being circulated for comment within the Department, and my hope would be that it would be out of the Department very soon. Then obviously there will be some White House involvement because we are talking about a 2003 Executive order. But I would hope that we would have an ability to talk about the modifications that I think are appropriate in a forthcoming way.

Senator DURBIN. Thank you. Wheels of Justice question number 2: 155 detainees remain at Guantanamo. I want to say for the record this has been the subject of a lengthy debate here in Congress. The President made his intentions clear when elected to

close Guantanamo. And yet resistance in Congress has thwarted him from accomplishing that.

For those who want an establishment of the record, over 500 people have been convicted of terrorism and terrorism-related crimes through our judicial process since 9/11 in Federal courts. In contrast, there have been six convictions and one plea agreement from Guantanamo's military commissions; two of those convictions have been overturned.

The most dangerous terrorists who have been convicted through our judicial system reside in our prison system and the worst of the worst in maximum security. We spend on average \$78,000 a year in facilities like Florence, Colorado, maximum security, to hold the most dangerous criminals in America, including the most dangerous terrorists, and there has never, ever, ever been an escape or a question that they would escape.

We are spending for the 155 detainees in Guantanamo on average—not \$78,000 a year—\$2.7 million a year per detainee. It is an outrageous waste of taxpayers' dollars.

Now, we were going to start a process to start reviewing the 155 detainees in the hopes that we could dispose of some, dismiss some, transfer some. It took a long time to get started. The wheels of justice unfortunately went very slowly.

The President issued an Executive order in March 2011. The first Periodic Review Board hearing at Guantanamo took place in November of last year, and earlier this month the Board recommended the transfer of the first detainee in question.

The second Periodic Review Board hearing occurred yesterday. I am glad to hear this progress has been made, but with 155 detainees, 71 of whom are eligible for evaluation, Mr. Attorney General, we cannot live long enough to go through this process. At \$2.7 million per Guantanamo detainee, can we get this process moving in an orderly, faster way?

Attorney General HOLDER. I think we can. The President has indicated from the day that he took office that he wanted to close the Guantanamo facility. He put me in charge of an initial review that was done within a year that categorized all of the people in Guantanamo, those who could be tried in military commissions or Article III courts, those who could be released, and those who had to be detained.

We did that. We did that. And I will say with all due respect, congressional restrictions that were placed on us thwarted our attempts to close Guantanamo in a more timely fashion.

You are right, we are now in the process of going through this Review Board process that is largely based on the work that we did in that earlier task force that I was the head of. We are trying to do all that we can to close Guantanamo, and I am actually grateful for the loosening of the restrictions in the latest Budget Act that makes it easier for us to effectuate that closure.

But this is something that, for the fiscal reasons that you talk about but also for the national security reasons that the continued presence of Guantanamo poses, that facility simply has to be closed.

Senator DURBIN. The sooner the better, from my point of view, and I wish more Members of Congress felt the same way.

You were in Chicago in November of last year at the installation of the U.S. Attorney for the Northern District, Zach Fardon, who was a unanimous choice of Senator Kirk, myself, and our bipartisan review panel, and you made some encouraging statements about commitments that were going to be made to Chicago to deal with the violent crime problem and murder issue. Giving credit where it is due, Mayor Emanuel and his Superintendent of Police Mr. McCarthy have made extraordinary progress in this regard, but we need this help.

Can you be more specific in terms of the resources and personnel that you will make available to help us fight these problems with violent crime?

Attorney General HOLDER. Well, we are looking to come up with ways in which we can increase the number of Federal agents who are in Chicago on either a temporary basis or a permanent basis, also looking for grants that we can make available to the city. I am going to be speaking to Mayor Emanuel tomorrow. The purpose of the conversation, at least one of the things we are going to be talking about are the specific needs that he can identify that we might be able to help with. I will also be talking to Zach Fardon, U.S. Attorney Fardon, to get his perspective on this as well.

I think that we want to do as much as we can, but I do not think that that should obscure the fact that the city administration, working with the new U.S. Attorney, I think has made pretty significant progress and I do not think necessarily get all the credit that they deserve for a pretty dramatic decrease in crime in Chicago. But there is Federal assistance that we want to try to make available.

Senator DURBIN. My time is up, but I hope with the new appropriation bill you will be able to also find some Assistant U.S. Attorneys to help Mr. Fardon in his effort in the Northern District.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

Welcome, Mr. Attorney General. I appreciate your service. I am going to try and ask a series of questions that I have tried to couch them so you can answer yes or no so I can get through a lot of stuff. To the extent that you can, I would appreciate it.

But before asking some questions about the NSA surveillance matter, I would like to express my concern about the Department's refusal to fully enforce the Controlled Substances Act. Marijuana is now widely available across the Utah border in Colorado. Federal, State, and local law enforcement have finally seen success in going after marijuana growers on public lands in Utah. There is a direct link between the U.S. marijuana trade and large-scale drug-trafficking organizations that threaten the safety and well-being of our country.

Now, legalization in Colorado threatens the success that we have been seeing in tackling the problem. Controls on legal marijuana are unlikely to deter drug cartels from ramping up their operations on public lands in Utah and elsewhere, especially since demand in Colorado is wildly exceeding supply. I really think this policy shift

sends a mixed and dangerous message to both the law enforcement community and fellow citizens.

Now, do you share my concern that legalization in one State can encourage more illegal marijuana production on public lands by drug cartels and others in bordering States?

Attorney General HOLDER. Well, I will do it very quick if I cannot give you a yes or no.

Senator HATCH. Sure.

Attorney General HOLDER. I share those concerns, and those concerns are expressed in the eight priorities that we set out, let me just—three of them: preventing the diversion of marijuana from States where it is legal under State law in some form to another State, preventing the growing of marijuana on public lands, and preventing marijuana possession or use on Federal property. These are three of the eight things that would precipitate Federal Government action and enforcement of the CSA.

Senator HATCH. Okay. Now, General Holder, the debate about NSA surveillance is in full swing. The illegal and selective leaks last summer were hardly the best way to start this debate, and I think they undermine rather than enhance it, but here we are.

A lot of attention is being focused on the NSA's collection and analysis of so-called telephone metadata, as you mentioned. It is worth reminding ourselves what that information is and what it is not. It includes the telephone number calling, the number being called, and the date, time, and length of the call. Is that correct?

Attorney General HOLDER. That is correct.

Senator HATCH. Okay. It does not include any information about the identity of the caller or the content of the call. Is that correct?

Attorney General HOLDER. That is correct.

Senator HATCH. Okay. The Privacy and Civil Liberties Oversight Board issued its report last week concluding that the PATRIOT Act does not provide legal authority for the NSA's metadata program. In an interview last week, you noted that at least 15 judges on dozens of occasions have said that the program itself is legal. That is correct?

Attorney General HOLDER. That is correct.

Senator HATCH. Okay. To be clear, is it your position that the collection of metadata under Section 215 of the PATRIOT Act is legal and that the Oversight Board's conclusion on this point is wrong?

Attorney General HOLDER. That is my view.

Senator HATCH. That is mine, too, as someone who was on the Intelligence Committee and who helped put this through.

In your judgment, has the NSA abused or misused its capability to collect and analyze telephone metadata?

Attorney General HOLDER. I think the NSA has acted in a way that is consistent with the law, but as I indicated, I think that is the part—that is part one of the analysis. Part two is whether or not we are getting from the acquisition and retention of that data material that is sufficient to deal with the civil liberties, privacy concerns that others have expressed.

Senator HATCH. But they have not misused or abused that.

Attorney General HOLDER. Yes, and that is what the President has asked us to look at.

Senator HATCH. Okay. One more question about the Oversight Board's conclusion on the legality of the metadata program. In creating the Board, Congress authorized it to do two things: first, to ensure that the need for executive branch actions in protecting us from terrorism is balanced with the need to protect privacy. That is true?

Attorney General HOLDER. Yes.

Senator HATCH. Second, to ensure that liberty concerns are considered in the development of laws and policies in this area. That is true?

Attorney General HOLDER. I believe that is true, also, yes.

Senator HATCH. Now, these responsibilities certainly call for recommendations on conclusions about policy, but I do not see how they include opining on legal issues such as the legality of the metadata program. Did the Oversight Board exceed its statutory mission in addressing this issue?

Attorney General HOLDER. I will be honest with you. I am not as familiar as perhaps you are as to what their statutory mission is. I will accept as legitimate the concerns that they expressed, though I do not agree with their legal determinations, their legal analysis.

Senator HATCH. Well, I think they exceeded its statutory mission. So be it.

So we are clear, in my opinion, on the very limited information that the NSA collects and analyzes. And we are clear that the metadata program is legal and that the NSA has not abused or misused its authority to collect and analyze this information, as far as you know.

Attorney General HOLDER. That is correct. I mean, there have been some compliance issues that have been identified by the courts or by the Justice Department, sometimes by the NSA, but those have all been corrected once brought to the attention of the NSA.

Senator HATCH. Okay. So my next question is how to know whether the program is valuable. The President's Review Group said in its report that the metadata program was not itself essential to preventing a specific terrorist attack. Now, is that the right standard? Must there be proof that this program alone prevented an actual attack in order to for it to be valuable for national security and for it to continue?

Attorney General HOLDER. See, I am not sure that—I think we have fallen into a false analysis there. I am not sure that is the only way by which you can judge the validity or the value of the program. There is a mosaic of things that we take into consideration in determining what—if we are acting in an optimal way.

There are questions, I think, that can legitimately be brought and that we are going to consider about the continued need for Section 215, but I do not think that the only way you can test the validity or the need for 215 is whether or not it has prevented X number of attacks.

Senator HATCH. On March 5, 2012, in a speech—the distinguished Chairman is granting me a little more time here so I can finish this line of questioning.

Senator SCHUMER [presiding]. Without objection, Senator Hatch will be given 2 more minutes.

Senator HATCH. I am very grateful to him.

In a speech at Northwestern University School of Law, you discussed oversight of surveillance programs under Section 702 of the Foreign Intelligence Surveillance Act. The Justice Department and Director of National Intelligence conduct oversight reviews at least once every 60 days and report to Congress at least twice a year.

Now, I understand that surveillance programs under Section 215 of the PATRIOT Act and Section 702 of FISA are different, but would you say that the metadata program authorized under Section 215 enjoys similarly rigorous oversight to that which you described for collection under Section 702?

Attorney General HOLDER. I think there is sufficient oversight of Section 215 between what the Justice Department lawyers are looking at, as we are looking at materials that are presented to us by the FISA Court, and then with what NSA is doing internally. I think that there is a great deal of oversight, and that oversight has yielded issues that have been identified as problematic—

Senator HATCH. And then resolved.

Attorney General HOLDER. And then resolved.

Senator HATCH. That is right. One of the President's proposals is for telephone companies rather than the NSA to store the metadata. It has been represented that telephone companies do not support this idea, but supposed they do. Today only 22 individuals at the NSA have access to this metadata—22 people—but there are dozens of phone companies, each of which would have to maintain these records. Thus, you have some number of employees at each telephone company with some kind of access to these data bases in addition to the 22 analysts at NSA who have still have access to query these data bases. How can you possibly provide a comparable level of supervision and accountability when this data is stored in numerous different locations and is accessible by far more individuals than it is today?

Attorney General HOLDER. Yes, I mean, one of the things that the President has asked Director Clapper and I to do is to come up with an alternative way in which this information can be stored, and the issue that you have raised is one that has to be resolved. I think that the NSA has done a good job in the way in which it has stored this information. If we are to move to a different scheme, I think we have to answer the question of how can we put it in a different place and maintain the integrity of the process that I think the NSA has done a pretty good job at.

Senator HATCH. I agree with that, and I have additional concerns about the security of that metadata at the phone companies. Verizon's own data breach investigation report found that privileged misuse and abuse by insiders played a role in 13 percent of data breaches over the past year. A company can only do so much to protect against outside threats to its networks. Just look at Target and Neiman Marcus.

Do you believe that the metadata would be more secure in the hands of the private sector than the NSA?

Attorney General HOLDER. I think that we have to try to find out if we can do that, if we can maintain that whole question of main-

tenance of security, if we can do it in a different setting than we presently do at the NSA, and that is one of the tasks the President has given to me and to Director Clapper.

Senator HATCH. But they are doing the job at NSA.

Attorney General HOLDER. I think they have done a good job.

Senator HATCH. Thank you, Mr. Chairman. I appreciate the extra time.

Senator SCHUMER. Thank you, Senator Hatch.

And now I yield myself 7 minutes, plus whatever else I might need.

It is very good to be here. I want to thank——

Senator SESSIONS. No objection.

[Laughter.]

Senator SCHUMER. I want to thank the Attorney General for the good work he does. I know he is aided with great, great skill by two former Schumer employees who work for you: Elliot Williams, who has been gone for a while, and Brian Fallon, who we miss very much and is doing a good job for you. That is our——

Attorney General HOLDER. Thank you, Senator Schumer.

Senator SCHUMER. Okay. First, on autism spectrum disorders, I know you are familiar with the case of Avonte Oquendo. He is a child with autism spectrum disorder, ASD. He wandered away from his school this fall—about 50 percent of all children with ASD wander, causing great hardship to their parents—and his remains were found 3 months later about 11 miles from the school where he originally vanished. The heart of New York went out to Avonte and his mother, Vanessa Fontaine, and his grandmother, Doris McCoy. I have met with them, and I know their grief and heartache, shared by many parents with autism. You can imagine when a child wanders away, and many of them are non-verbal, very, very heart-wrenching situation and a dangerous situation, as, unfortunately, Avonte's death showed.

So right after Avonte went missing, as you know, Mr. Attorney General, I called on the Department of Justice to expand a current grant program that you have in place which has provided support for the use of tracking devices to agencies who work with patients diagnosed with Alzheimer's and families of those patients. The program is administered by the Bureau of Justice Assistance.

Now, we have been doing this for Alzheimer's patients. The Justice Department funds a program. So it seems almost obvious. You know, it is like a hand fits into a glove that we could do this, and people with Alzheimer's, as you know, wander as well. It seems like just a perfect fit to do the same thing for children with autism who tend to wander.

Now, I understand that the program that is used for Alzheimer's is not available for families of children with autism. So have you been able to identify any other streams of assistance pursuant to my request?

Attorney General HOLDER. Well, I think the concern that you have is a very good one, a legitimate one, and the fact that you brought it to our attention I think is something that is going to help a lot of kids who deal with this issue. And we have made the determination that the Byrne grant program can be used for the

purchase of these devices, these “transmitted bracelets,” I think they are called.

Senator SCHUMER. Sometimes they are bracelets, sometimes on the ankle. You can even sew them into the clothes, because occasionally the kids with autism want to take off the bracelets or the things on—

Attorney General HOLDER. Right, but Byrne grant money can be made and will be made available for the purchase of these devices.

Senator SCHUMER. Right, so localities’ police departments can start applying.

Attorney General HOLDER. Yes.

Senator SCHUMER. Immediately?

Attorney General HOLDER. Yes.

Senator SCHUMER. That is great news, and that will really help in a lot of situations, so I really appreciate that. It is a big, huge step forward.

Now, one other question on this. In order to ensure a permanent adequate stream of money for this, I have introduced legislation, we call it in New York “Avonte’s Law,” named after this lovely boy. It will create a new specific DOJ grant that will be available to local law enforcement, schools, and nonprofits that aim to assist children with autism spectrum disorder. It will authorize \$10 million—that is, I think, how much we spend on the Alzheimer’s—in order to help fund the purchase of voluntary tracking devices for children with ASD, training for parents, schools, and local law enforcement, as well as other innovative methods for families who wander.

What you are doing is great and will solve the problem immediately, but to ensure its permanence—we all know there will be at some point a different Attorney General, many years away, and so legislation would ensure this.

Now, I know the way it all works. You cannot commit to specific legislation until you see the details, but do you agree with the general principle of trying to enact this in statute and assure the revenue stream for many years to come?

Attorney General HOLDER. Yes. I think that given the nature of the unique issues that kids with autism issues face and given the way in which our Nation has responded to adults with Alzheimer’s issues, they ought to be treated in much the same way. And so I cannot commit, but I can say that personally I think that a dedicated funding stream makes a great deal of sense.

Senator SCHUMER. All right. Thanks. We will get you the legislation, and you can put it through the long, laborious executive branch traps. It probably has to go through 47 different agencies, but get their support for this legislation, which we hope will be forthcoming.

Okay. Now I would like to turn to media shield. I appreciate the administration’s support for the Free Flow of Information Act, which would protect confidential sources by providing clear and reasonable standards. Additionally, the Department’s revised guidelines governing the obtaining of evidence from members of the news media are a step in the right direction.

However, they have not been finalized, and it is more than 6 months after the Department sent its report to the President.

When will the revised guidelines be finalized in the Code of Federal Regulations? When will they go into effect?

Attorney General HOLDER. I would expect that we would have them available for comment within the next couple of weeks. I had actually hoped that we would have them done by this hearing. There was a little glitch toward the end, but I think we will get through that, and we will have them available for public review and comment within weeks.

I will say that in spite of the fact that they are not yet issued, we are working under them as if they were in place, and we are also looking to people the board that we are putting together as part of the review process. Mr. Fallon has been working on that.

Senator SCHUMER. All right. Well, then it is in good hands.

Attorney General HOLDER. Right.

Senator SCHUMER. Does that include—you know, you mentioned this media review committee. Has that been established? Has it been convened? Is it officially working? Unofficially working? Give us the status of the review committee and the media—the News Media Dialogue Group I think is what you called it, to “assess the impact of the Department’s revised new media policies.” Has that been established?

Attorney General HOLDER. There will be two bodies: one within the Department to assist the Attorney General in making determinations about requests to access information connected to the news media, and another one that would involve outsiders who will assist us on a periodic basis just to kind of give us an update on how are we doing with regard to the reforms that we have put in place and to consider other ones.

Brian, Mr. Fallon, has been working to come up with the appropriate people for that outside board, and I think we have made a lot of progress. I think we are on the verge of making an announcement there.

Senator SCHUMER. How soon do you think? I do not want to steal Mr. Fallon’s news thunder here.

Attorney General HOLDER. We expect that the first meeting will be in February.

Senator SCHUMER. Thank you.

Attorney General HOLDER. Thank you, Brian.

Senator SCHUMER. Thank you very much, Mr. General.

And I will do two things now: Call on Senator Sessions and turn over the august process—engage in the august process of turning over the Chair gavel to the wonderful senior Senator from Minnesota, Senator Klobuchar.

Senator SESSIONS. And you finished with your time. Very well.

Attorney General Holder, you mentioned gun violence and crime. I would just note, as I watch your statistics, that your prosecutions, total prosecutions of gun crimes declined 5.2 percent this year from last year. And I think prosecutions, vigorous prosecutions, do make a difference, and I would encourage you to keep those numbers up as you go forward.

A lot of our members are discussing how to deal with the mandatory sentences. I would just say I was there when we had the revolving doors in the 1960s and 1970s, and we as a Nation turned against that. We have created a system that requires certainty in

punishment, swifter trials, and the result is a very great drop in the crime rate.

So to my colleagues, we just have to be careful as we go forward. I know you have been a United States Attorney, Attorney General Holder, and you have seen it as a judge and U.S. Attorney, and I think we just have to be careful. We need to have good data as we go forward to analyze how we can find some areas where crime punishments could be reduced. And I do agree with you about the NSA and the metadata question. I think you have thought this through. I believe your position is sound.

Attorney General Holder, when I became United States Attorney in 1981, the percentage of young people in high school, high school seniors, according to the University of Michigan authoritative national survey, 50 percent plus had admitted using an illegal drug previously, in the previous year. That was a dramatic thing. And the Nation energized itself. Nancy Reagan has the “Just Say No” program. In my district—and this was done all over America—groups formed: the Partnership for Youth, the Coalition for a Drug-Free Mobile. We met—I was involved with it, and we created and worked to create in the country hostility to drug use, to create an impression that it is not socially acceptable and children should not be using it and it is wrong. And the trend started the other way. Within 10 years, less than 25 percent of the high school seniors under that study admitted using illegal drugs.

I invested a tremendous amount of my time, citizens all over America invested huge amounts of their time, volunteer efforts, financial contributions, to break the cycle of drug use among young people that were threatening the very viability of our education system and the future of so many. It was just a very serious thing.

So I have to tell you, I am heartbroken to see what the President said just a few days ago. It is just stunning to me. I find it beyond comprehension.

This is the Atlantic article surveying what the New Yorker—the President’s interview with the New Yorker said. The headline is: “Obama on pot legalization: It is important for it to go forward.” That is the President’s quote.

He goes on to quote from that interview. He said, the following things about smuggling marijuana:

“I view it as a bad habit and vice, not very different from the cigarettes I smoked as a young person.”

“I do not think it is more dangerous than alcohol,” he said. In fact, it is less dangerous than alcohol “in terms of its impact on the individual consumer.”

And then he goes on to say: “Well, those who argue for legalizing marijuana as a panacea and it solves all these social problems I think are probably overstating the case.”

This is just difficult to me to conceive how the President of the United States could make such a statement as that.

So, first, do you support the President’s view in that regard as the chief law enforcement officer in America?

Attorney General HOLDER. Well, let me say there are a couple misimpressions there with regard to guns. We are prosecuting the same number of people that we did from 2007 to 2013. There may be fewer numbers of cases, but that means, I think, that the cases

we are bringing are more significant. One-seventh of all the cases that we bring involve guns.

Senator SESSIONS. All right. I have the data on that. I will submit it for the record, and people can decide. The number of gun cases are down, according to the data from the Department of Justice.

[The information referred to appears as a submission for the record.]

Senator SESSIONS. But what about the President's view on this important subject? Do you agree with it?

Attorney General HOLDER. Well, I think that, as I—I have not read the article, but as I have understood what the President said in his totality, it was that he thought that the use of marijuana by young people was not a good thing. One of our eight priorities is the prevention of distribution of marijuana to minors. If there is an indication that marijuana is being distributed to minors, that would involve—that would require Federal involvement. That is what the Deputy Attorney General said in his August 29, 2013, memo to the field.

Senator SESSIONS. You think it is a bad habit but not much worse than smoking?

Attorney General HOLDER. Well, I mean, you know—

Senator SESSIONS. Your opinion. Give us your opinion.

Attorney General HOLDER. Well, I think that the use of any drug is potentially harmful, and included in that would be alcohol. Young people—

Senator SESSIONS. But the President said, "I do not think it is more dangerous than alcohol." Do you agree with that?

Attorney General HOLDER. Well, as I said, I think that any drug used in an inappropriate way can be harmful, and alcohol is among those drugs.

Senator SESSIONS. Using marijuana against the law, is that appropriate use?

Attorney General HOLDER. Well, I mean, as I said, for young people to do that, that is something that violates the Federal law and something that we said would be something that we would continue to use our Federal law enforcement resources.

Senator SESSIONS. Are you aware that Gil Kerlikowske, the drug Czar the President has appointed, said this in December: "Young people are getting the wrong message from the medical marijuana legalization campaigns. If it is continued to be talked about as a benign substance that has no ill effects, we are doing a great disservice to young people by giving them that message."

Do you agree with that?

Attorney General HOLDER. Well, I think that is right, and that is why we have said that the distribution of marijuana to minors will involve—will entail a very vigorous Federal response.

Senator SESSIONS. Are you aware—isn't it a fact that if the laws are relaxed with regard to adults, it makes this drug even more available to minors?

Attorney General HOLDER. Well, I am not sure that that is necessarily true.

Senator SESSIONS. Attorney General Holder, isn't it true that if marijuana is legalized for adults, it makes it more available for young people?

Attorney General HOLDER. Well, I am not sure that that is true, and I say that only because, you know, the alcohol—people cannot buy alcohol I guess now until you are age 18—or age 21, but young people find ways to get alcohol because adults can have access to it. I am not sure that we will see the same thing here given what we have said with regard to law enforcement priorities.

Senator SESSIONS. Did the President make—conduct any medical or scientific survey before he waltzed into the New Yorker and opined, contrary to the position of Attorney Generals and Presidents universally prior to that, that marijuana is not—as I have quoted him? Did he study any of this data before he made that statement?

Attorney General HOLDER. I do not know, but I think, as I said—

Senator SESSIONS. Did he consult with you before he made that statement?

Attorney General HOLDER. No, we did not talk about that.

Senator SESSIONS. Well, what about this study from the American Medical Association, October 2013, “Heavy cannabis use in adolescents causes persistent impairments in neuro-cognitive performance and IQ, and use is associated with increased rates of anxiety, mood, and psychotic thought disorders”? Or this report from Northwestern University, in December, last December, the study found that marijuana users have abnormal brain structure and poor memory and that chronic marijuana use may lead to brain changes resembling schizophrenia. The study also reported that the younger the person starts using marijuana, the worse the effects upon him. Would you dispute those reports?

Attorney General HOLDER. I have not read the reports, but I do not—if they are, in fact, from the AMA, I am sure they are good reports. But that is exactly why one of our eight enforcement priorities is the prevention of marijuana to minors.

Senator SESSIONS. Well, Lady Gaga said she is addicted to it and it is not harmless. She has been addicted to it. Patrick Kennedy, former Congressman Kennedy, said the President is wrong on this subject.

I just think it is a huge issue. I hope that you will talk with the President—you are close to him—and begin to push back or pull back from this position that I think is going to be adverse to the health of America.

Thank you, Madam Chair.

Senator KLOBUCHAR [presiding]. Thank you, Senator.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you.

Welcome back to Congress, Attorney General, and thank you for the terrific work that you are doing as our Attorney General. As a former U.S. Attorney and as a friend of the Department, I not only have my own opinion, but I have other folks who are observers of the Department, and I think we are very appreciative of the fine leadership you are providing the Department of Justice.

Attorney General HOLDER. Thank you.

Senator WHITEHOUSE. Let me talk with you for a moment about cyber. Our efforts to address the cyber threat on the military side have been quite distinct and have led to the establishment of a cyber command with two four-star generals in charge, one double-hatted to lead NSA. On the law enforcement side, our administrative advancement to meet this threat has been, to put it mildly, incremental. And, for instance, responsibility for cyber threats within the Department of Justice itself is divided between the Criminal Division and the National Security Division. And the enforcement responsibility is divided between the FBI and the Secret Service, although the FBI has a very dominant role—and, by the way, does a terrific job.

In the spending bill that was just passed, thanks to Chairman Mikulski's exemplary legislative talents, there is a provision that requires the Department of Justice within 120 days to put forward a multi-year strategic plan for this. As you know, I have had this discussion with the Department of Justice, and the Department of Justice has said we cannot talk about this because OMB is not in the room and they will whip us unmercifully if we talk about budget stuff without their presence, because it will look like we are submarining the prerogatives of the White House over budget issues. So we brought OMB in, and those discussions have gone forward at a moderate pace.

I just wanted to flag for you this legal requirement that it be done within 120 days because I am really expecting that there will actually be a report within 120 days, and I am hoping that you and OMB will both put considerable effort into it, because if you look out 4 or 5 years at the rapid rate in which the cyber threat is growing, in which it is morphing into more complex and varied threats, and at all the ways in which it can affect the lives of ordinary Americans, I think that we are both underresourced and inadequately structured to deal with that problem in the long haul.

So what assurances can you give me about how you guys are going to handle this responsibility for a multi-year strategic plan on cyber within 120 days?

Attorney General HOLDER. Well, I do not want to be alarmist, but I think the concern you have expressed over the years is well founded. This Nation needs to be afraid of where we could be after a cyber attack. When you see the proliferation of these cyber capabilities to criminal organizations, to nation states, our Nation is at risk. Our infrastructure is at risk. And we as a Nation have not, I think, adequately responded to it.

I think the 120-day examination that we have to do to come up with this multi-year plan is indeed a good thing, and we will take it very seriously and respond within that timeframe, bringing into it OMB and, I think, bringing Members of Congress who have expressed an interest—you, for instance—into this process as well, at least to be a part so that we have your views in formulating what this plan is like.

But we as a Nation have not dedicated the attention, the resources to a problem that is 21st century in its inception and will be with us for, I suspect, throughout the duration of the century. And it is only going to get worse. The danger to us is only going to be heightened.

Senator WHITEHOUSE. I spoke to the FBI Cyber Division, I guess yesterday morning, and used the example of the United States Air Force, which, before the opportunity and threat of air warfare was fully appreciated, began as a subcomponent of the Army Signal Corps. And then, obviously, it had to grow, and then it became the Army Air Corps, and finally we got a U.S. Air Force. And I think a similar process needs to be planned for on this.

The other issue I wanted to raise with you is that many of us have been shocked by the discrepancy between the filings that political organizations have made at the Internal Revenue Service, promising under oath that they were not going to spend any money on political activities, and at the same time filing declarations under oath at the Federal Election Commission that they had spent tens of millions of dollars in political activities.

I suspect that those discrepancies reflect false statements that could be prosecuted under 18 U.S.C. Section 1001. There have been no cases from the Department in that respect because the IRS has not referred anything. I think the IRS has been frightened of the power behind these big political machines, so they have basically chickened out and pitched it in. But now they have decided to take a look at those rules, and I would ask you to assign somebody on your staff to track the IRS process, make sure that you are comfortable with where those rules are coming out, and make sure that if there are open and notorious conflicts between sworn statements by these organizations, it leaves room for the Department of Justice to step in and get in front of a grand jury and bring in some evidence and find out if they are, in fact, the prosecutable false statements that they appear to be on their face.

Attorney General HOLDER. I think that is something that is worthy of examination. I think the problem exists in that under the Tax Reform Act, this is information that is called "tax return information" that is always guarded very zealously. There is a Memorandum of Understanding that exists between the Department and—

Senator WHITEHOUSE. You do not get to look at it unless they have referred to you.

Attorney General HOLDER. Right.

Senator WHITEHOUSE. But when an open and notorious violation appears to be happening in place, I do not think there is anything in that law that prevents the Department of Justice from saying to the IRS, "Excuse me, why are you not referring this to me? I can see what is happening right here in the plain light of day. They said zero dollars in this filing under oath and \$20 million in this filing under oath. They cannot both be true. Somebody is lying somewhere. We would like to look into it."

Attorney General HOLDER. Yes, I think those referrals only occur in what I think are termed "extraordinary circumstances," and I think that is just a question of defining what "extraordinary" means. And I think that an examination of this issue makes a great deal of sense, and this is not an ideological issue. This is one that, you know, groups on the left and on the right I think should be held to the full letter of the law.

Senator WHITEHOUSE. The crime of lying to a Federal official has no partisan component to it, and I appreciate that you will take a

look at it with that in mind. And I have gone a bit over my time, so I thank my colleagues, and I yield my time.

Senator KLOBUCHAR. Very good. Senator Cornyn.

Senator CORNYN. Thank you, Madam Chairman. Good morning, Attorney General Holder.

Attorney General HOLDER. Good morning.

Senator CORNYN. I want to introduce you to a constituent of mine and Senator Cruz, Catherine Engelbrecht of Houston, Texas. She founded two organizations known as True the Vote and King Street Patriots dedicated to improving elections and furthering the ideals of our Founding Fathers. She leads a coalition of citizen volunteers who work as election monitors, who provide resources for voter registration drives, and are dedicated to rooting out election fraud. Yet the Federal Government has targeted Catherine Engelbrecht and her organizations with harassment and discrimination.

In the spring of 2010, True the Vote and King Street Patriots both filed for nonprofit status. Like so many organizations, they just wanted to participate in the political process. When the IRS failed to respond, in January 2011 I wrote a letter inquiring about the status of True the Vote's application. A few weeks later, the now notorious Cincinnati office of the IRS began a series of gratuitous and invasive inquiries into Ms. Engelbrecht's organizations. This investigation was so over the top that the Federal Government demanded, among other things, every Facebook post and every Tweet that Ms. Engelbrecht had ever posted.

For more than 3 years, the IRS denied True the Vote and King Street Patriots the nonprofit status they requested and subjected both Ms. Engelbrecht and her family and her business to this kind of harassment.

This kind of abuse of power was not limited to the IRS, however. According to CBS News, within 2 months—or within months of True the Vote's filing, two arms of the Justice Department targeted Ms. Engelbrecht. The FBI made calls to King Street Patriots and attended some of its meetings. And the ATF has twice audited Ms. Engelbrecht's business.

Coincidence? Maybe. But where there is smoke, there is fire. The IRS finally, 3 years after they applied, granted True the Vote's tax-exempt status that it requested.

But we now know that True the Vote was just one of the conservative organizations that was targeted for discrimination, harassment, and intimidation by the Federal Government, the IRS in particular. IRS officials at the highest levels targeted the leaders of conservative organizations based solely on their political beliefs. In Ms. Engelbrecht's case, the intimidation tactics were shocking: threatening to bankrupt an American family and the business they built simply because they dared criticize the Federal Government. This is chilling, and it should be unacceptable in the United States of America.

The President, to his credit, agrees that this is a terrible abuse. He called the IRS scandal "intolerable" and "inexcusable," and he called for those guilty of this misconduct to be held accountable.

But when your Department was asked to step in and investigate, no one has been held accountable for this abuse. In fact, your De-

partment installed a political donor of the President's to lead the investigation. Appointing a political donor to investigate a political activity I think calls the entire investigation into question, and I cannot imagine how this would be designed to instill public confidence in the investigation.

Now, FBI Director Comey, to his credit, said this investigation was an important one for his agency. Now, though, it has been publicly reported that the Department will not pursue criminal charges against any IRS official, even though the FBI's investigation has not yet been concluded. And, shockingly, the Department made this decision, if it is true—and you can certainly confirm it or refute it if it is not. They made this decision without even talking to Catherine Engelbrecht. I talked to her yesterday. She verified she has not heard a word from the Department of Justice or the FBI.

So I would like to know, General Holder, what you have to say to Ms. Engelbrecht and other Americans who spent thousands of dollars defending themselves against harassment by the Internal Revenue Service for daring to exercise their constitutional right to participate in the political process. And I would like to ask you whether you will agree to make sure that your Department consults personally with every victim of this type of intimidation by the Federal Government. And if you can tell us, what kind of accountability can the American people expect from this abuse of power?

Attorney General HOLDER. Well, what I would say is, first off, that I do not remember the exact words that I used, but I think shortly after the President made the statements that you made, I expressed similar concerns, and I was the one who actually ordered the investigation into these matters. They are being handled by the Criminal Division in the Justice Department, the Civil Rights Division in the Justice Department, the Treasury Inspector General, and the FBI, as you indicated. This is a matter that is an open inquiry. The matter is still going on.

Press reports that I think you were referring to with regard to how the case is ultimately going to be decided is a press report. I can tell you that the reporters who have made those assertions are not people privy to what is actually going on in the investigation. It is something, as I said, that is open. The investigation is proceeding.

Senator CORNYN. So is there still a potential for criminal charges to be brought in connection with the investigation since it has not been concluded?

Attorney General HOLDER. Well, I would—I mean, obviously all the options that we have are on the table, given the fact that there has not been a determination either to bring charges or to decline the case.

Senator CORNYN. Well, don't you think it is the responsibility of the Department to actually contact the people with the most information about what exactly happened, like this victim of this abuse of power, like Catherine Engelbrecht?

Attorney General HOLDER. I am not familiar with the woman who you refer to, but I have confidence in the career people at the FBI and the other investigative agencies to conduct a thorough,

comprehensive investigation, and that is what I would expect of them, and that is why matters like this take as long as they do.

Senator CORNYN. Well, would you please, in conclusion—I know my time is up. Would you please commit here to me and publicly to contact Catherine Engelbrecht and to get her side of the story or have somebody on your staff do so?

Attorney General HOLDER. The determinations as to who gets interviewed will be made by the career people who are conducting the investigation. As you have said—and I do not want to cast any doubt on what you have said—she seems like a logical person to talk to on the basis of what you have said. I do not have any independent knowledge of what her involvement is or what her organization is about. But that is something that I would leave to the people who are, as I said, career professionals to make determinations as to who needs to be interviewed.

Senator CORNYN. Well, I hope the Department would talk to the victim.

Chairman LEAHY [presiding]. Okay. Thank you, Senator Cornyn.

Senator Klobuchar will be recognized, and I am also turning the gavel over to her following another matter. But I also want to express again to the Attorney General my appreciation not only for being here, but being available to so many of us on this Committee on both sides of the aisle whenever we have called you. I appreciate that. That has not always been the precedent in the Department, so I appreciate the fact you have always been available.

Senator KLOBUCHAR [presiding]. Thank you very much, Mr. Chairman.

Welcome, Attorney General Holder. Thank you for being here. You and I have talked about this many times, but I want to make sure my Republican colleagues are aware of the fact that the State of Minnesota has not had a full-time U.S. Attorney for 882 days. This came about because our U.S. Attorney was appointed to head up the ATF after the mess with Fast and Furious. He did an able job. He is now, through the vote of this Senate, the Director of the ATF. But during that time, for 2 years he was a part-time U.S. Attorney and, in fact, he was at the ATF much more than he was the U.S. Attorney.

During that time our drug prosecutions have gone down remarkably. I have had Federal judges call me repeatedly. I have had the FBI Director call me in Minnesota repeatedly. And we now have a very good candidate who is supported by law enforcement, who is supported by our Republican Congressman, who made it through this Committee with no objections, but he is now on hold because right now this Senate has decided not to take up unanimous nominees, and it is being blocked.

We have a situation where over 100 people are working now for 882 days without a full-time boss, and I just think it is absolutely outrageous. When Minnesota became a State, we got our U.S. Attorney through President Zachary Taylor in 2 days, and we have not had a full-time boss for 882 days. This is the office that prosecuted the second biggest white-collar case next to Madoff in the last few years. This is the office that dealt with what would have been the additional terrorist for 9/11, Moussaoui. This is the office that has handled numerous complex cases and has been one of the

best U.S. Attorney's Offices. And I fear, knowing half the people that work there that used to work for me when I was a prosecutor, there is a decline in morale. They need a boss. And I am angry at everyone about this, as you know, but it has to end.

So I just ask my Republican colleagues, when Senator Grassley and I both have a U.S. Attorney in Iowa and Minnesota, when Senator Grassley has repeatedly criticized this office in Minnesota because of these crime numbers and other things that I have mentioned, that we be allowed to get a U.S. Attorney in Minnesota. And so I would just like you to comment about that.

Attorney General HOLDER. I agree with you, and I share that concern, and I think that the point that you made at the end is one that I think is extremely relevant and hopefully the Senate will consider. This is not simply a United States Attorney for Minnesota. We also have a United States Attorney in Iowa who needs to be confirmed. We also have other people in the Justice Department who are awaiting confirmation and who are on the floor and who traditionally—these are people who are not very—they are not controversial at all. They are simply waiting to go through the normal Senate process, which is usually by unanimous consent. I would hope that we would get to the point where that process can be begun again so that we could have installed Senate-confirmed people in these positions, because it really does matter. Having a Senate-confirmed person either as United States Attorney, an Assistant Attorney General, it matters. So that is something that I hope that we would be able to work our way through.

Senator KLOBUCHAR. I appreciate that, and I just would suggest to my colleagues, though, that no one ever allows this to go on so long, to have a job share. I will never do this again. And I understand the reasons for it, but because our Congress has not been able to do simple things like approve people for the ATF or approve people when you have a U.S. Attorney's Office that clearly needs a U.S. Attorney, we just cannot take the responsibility to do that job. And because of that, no one should ever allow their U.S. Attorney to take another job at the same time, because we cannot handle the responsibility of confirming a replacement or confirming that person for that job. And so we deserve what we get if that is what happens.

I want to turn to something else, which is sex trafficking, something that Senator Cornyn and I have a very strong bill with a lot of support, bipartisan support, to literally take Minnesota's safe harbor model, which has been a very good force in our State, just getting started, but we had last month a 40-year sentence from the Ramsey County Attorney's Office against the head of one of these rings. And if you could talk about the President's Interagency Task Force, what is going on. The Super Bowl is approaching us this weekend, which is a concern which many have raised in terms of the uptick in the number of sex-trafficking ads. In Dallas in 2011, there was a 300-percent increase in people advertising things like Super Bowl specials, just what the Justice Department is doing about this increasing problem, due in part to the number of ads and what we are seeing.

Attorney General HOLDER. Well, one thing I think you have said, it is something that our country needs to take note of, that where

Super Bowls locate, you see a decided increase in human trafficking. You see young girls, young women brought into these areas for illicit sexual purposes. That is an ugly thing that this Nation has got to confront, has got to deal with, but it really is just indicative of a larger problem, that is, this scourge of human trafficking. This is a top priority for the Justice Department. It is a top priority for me as well.

We need to stop—we need to have effective mechanisms to investigate and hold accountable people who would engage in these activities. We need to see the young women who are involved in this as victims, not as criminals, and come up with rehabilitative services for them.

We have a proposal—the proposal I think that you have made—with regard to getting trafficking experts together to look at this problem and come up with ways in which we are more effective in dealing with this issue. It is one that I fully support.

We also have to deal, I think, quite frankly, with the way in which this is advertised in the media. There are certain publications that make it known that young women—ads that are published, that are available for these inappropriate sexual purposes, and that is something that we need to deal with as well.

We as a Nation are not dealing with this nearly as effectively as we can. We have specialists in our U.S. Attorney's Offices who are trying to deal with the issue, but we need to help our State and local partners as well.

Senator KLOBUCHAR. Thank you. The last thing, synthetic drugs, something that Senator Schumer and Senator Grassley and Senator Feinstein and I have worked on, as well as others in this room. This is the new drug on the scene. We have had several people die in our State, and I did want to thank you and the U.S. Attorney's Office for the prosecution in Duluth, Minnesota, of a major head shop owner that had been going on, people literally laying on the streets from all these synthetic drugs. And while the sentencing, we are awaiting the sentencing, it was a major prosecution, and the shop has been shut down. The guy in charge, they just found something like \$700,000 in bags hidden in his bathroom, and I just want to thank you for that work.

Attorney General HOLDER. Yes, I mean, that is an issue that, again, we need to confront. There is this myth, especially among young people, that somehow or other these synthetic drugs are not dangerous. We have to dispel that myth. Our DEA, Drug Enforcement Administration, is really devoting a lot of time to dealing with these issues. We have had a number of significant busts.

But I think there also is an educational component to this that we really have to focus on young people about the dangers of these synthetic drugs that are marketed in such a way to make them think that there are no dangers in using them.

Senator KLOBUCHAR. Very good. Thank you very much.

And I believe Senator Lee is next.

Senator LEE. Thank you, Madam Chair, and thank you, General Holder, for joining us today.

I appreciate the support you expressed earlier for the Smarter Sentencing Act. I appreciated the opportunity to work with Senator Durbin on that and welcome the support of my colleagues as we

try to move forward in a way that makes our law enforcement efforts more effective and makes sure that we do not continue to escalate our Federal prison population at a rate of about tenfold as we have over the last 30 years.

I wanted to talk to you first a little bit about metadata. Regardless of how you read *Smith v. Maryland* and regardless of whether you think under *Smith v. Maryland* and its progeny a constitutional case can be made for the collection of this data as it relates to American citizens, wouldn't you agree that at some point, when you amass an enormous volume of metadata on American citizens and you retain within the Federal Government the capacity to search that data, targeting potentially specific Americans, that gives the U.S. Government a lot of power to peer into things that are, by their nature, very private?

Attorney General HOLDER. Yes, and it is one of the reasons why in the interim, before we come up with whatever our proposals are going to be, the President has indicated that in querying that data base now, we should only do so through use of judicial authorization. And so that ultimately may be something that we want to enshrine in the program. But that is what the President has asked us to do in the interim, unless there is an emergency situation.

Senator LEE. Right. So you would make that tantamount to a warrant, in other words, because right now what you have are internal operating procedures, internal regulations that can be changed; whereas, if we put that in law, that would provide greater protection.

Attorney General HOLDER. I think we want to try to work out what the mechanism might be so that we would afford the appropriate amount of protection while at the same time not having a negative impact on the operational abilities of people who need to potentially get access to that information on a pretty quick basis.

But I think one thing we should understand is that although there might be billions of records in those metadata bases, I think the number for last year, in terms of the number of queries that were made of that data base, was about 300 or so.

Senator LEE. I understand that. I understand that, and I think for purposes of this discussion, even if we were to assume that all of the men and women serving us within the NSA, even if they are acting in good faith and abiding by their own rules, at some point there is a very grave risk of abuse. And I do not know whether that might happen a day from now, a year from now, 10 years or 20 years from now. But, you know, we have seen this movie before. We know how it ends, and we know that it is not pleasant. This will ultimately be abused unless we put in place some very significant restrictions.

I heard you mention a few minutes ago in response to some of the questions asked by Senator Grassley that it is the President's preference to work with Congress and that, wherever possible, he would like to get Congress to agree with him, to pass legislation that he would like. But, of course, the other side of that coin is something that the President referred to repeatedly last night in his State of the Union address, which is that if he cannot get Congress to act, he will go it alone. If Congress will not act the way

he wants Congress to act, then he will issue an Executive order anytime he gets the chance.

This brings to mind a concern that I have had as to whether or not sufficient analysis is being undertaken when these Executive orders are issued. As you know, the Supreme Court has since *Youngstown Sheet & Tube v. Sawyer* and Justice Jackson's concurrence, and certainly since *Dames & Moore v. Regan*, when that Jackson concurrence was adopted by the majority of the Court, it has tended to separate out Executive orders into three categories.

You know, in Category 1 you have a situation where Congress acts pursuant to authorization by Congress, and that is where his authority to act with an Executive order is at its strongest.

Category 2 is where you have the President acting in the absence of either a congressional authorization or a congressional prohibition. Justice Jackson described this as sort of a twilight zone where it is a little unclear, it is a little murky.

Category 3 is where you have the President taking measures that are incompatible with a congressional command.

And so I would ask, number one, is this analysis undertaken each time the President issues an Executive order? And, number two, was that kind of analysis undertaken when the President, for example, announced on July 2, 2013, that he would not be enforcing the employer mandate of the Affordable Care Act throughout the duration of 2014, even though by law the employer mandate was set to take effect as of January 1, 2014?

Attorney General HOLDER. Before the President exercises the Executive authority that he discussed last evening—and, again, I want to preface that with I think the pretty clear indication from the President that he wants to work with Congress on behalf of the American people. In the absence of that kind of activity, as he has done with regard to raising of the minimum wage, he has used his Executive authority—well, will use his Executive authority to raise the minimum wage for those who do business with the Federal Government. Those kinds of activities by the President are done after consultation with the Justice Department and an analysis is done to make sure that the President is acting in an appropriate and a constitutional way, and those three categories that you talk about, that we all studied in law school from Justice Jackson, are, you know, among the things that obviously are a part of the analysis, you know, where the President's authority is greatest, at twilight zone, and at where the President's authority is weakest.

Senator LEE. So in which of those three categories would you put the President's decision to delay the enforcement of the employer mandate? Is that Category 1, 2, or 3?

Attorney General HOLDER. To be honest with you, I have not seen—I do not remember looking at or having—I do not remember having seen the analysis in some time, so I am not sure where along the spectrum that would come.

Senator LEE. How about the Executive order that he proposed last night with regard to minimum wage? Would that be Category 1, Category 2, or Category 3?

Attorney General HOLDER. Well, again, without having delved into this to any great degree, that would—

Senator LEE. But you are the Attorney General. I assume he consulted you.

Attorney General HOLDER. Well, there have been consultations done with the Justice Department. From my perspective, I think that would put us in Category 1. Given the congressional involvement in the matter, the ability of the President to regulate things that involve the executive branch, and how contracting is done, it seems to me the President is probably at the height of his constitutional power in that regard, with regard to the one we—

Senator LEE. So you are saying there is a Federal statute that authorizes him to issue the Executive order regarding the minimum wage?

Attorney General HOLDER. No, I think that there is a constitutional basis for it, and given what the President's responsibility is in running the executive branch, I think that there is an inherent power there for him to act in the way that he has.

Senator LEE. And with regard to the employer mandate?

Attorney General HOLDER. Again, as I said, I have not had a chance to look at, you know, for some time exactly what the analysis was there, so I am not sure that I would be able to put it in what category. But, again, I would think that given that we are talking about a statute passed by Congress that delegates or devolves to the executive branch certain authorities, I would think that you are probably in Category 1 there as well. But, again, I have not looked at the analysis in some time.

Senator LEE. Okay. I appreciate your candor on that, and I see my time has expired. But as I conclude, I would just like to point out that this is very, very important and it is one of the reasons why, as one of my colleagues suggested earlier, it could be very helpful for you to release legal analysis produced by the Office of Legal Counsel or whoever is advising the President on these issues. It is imperative within our constitutional system that we not allow too much authority to be accumulated in one person, and it is one of the reasons why we have a Constitution, is to protect us against the excessive accumulation of power. And I think the President certainly owes it to the American people and you owe it to the President as his Attorney General to make sure that when he does act by Executive order, that he do so clearly and clearly state the basis of his authority so that the American people can be aware of what is happening and on what basis he is claiming that authority.

I look forward to hearing your explanation. Perhaps you can submit something to us in writing after this hearing about his basis for making some of these decisions, particularly with regard to the delay of the employer mandate. Thank you.

Thank you, Madam Chair.

Attorney General HOLDER. Let me just say that I have great respect for your legal, analytical skills. You are clearly your father's son. But I also want to assure you and the American people that the President will not act in a way that is inconsistent with the way other Presidents have acted in using their Executive authority. He has made far less use of his Executive power at this point in his administration than some of his predecessors have. And he will only do so, as I indicated previously, where he is unable to work with Congress to do things together. That is the desire of the Presi-

dent, to work with Congress to deal with the issues that confront the American people.

Senator LEE. General Holder, I respectfully but forcefully disagree with the assertion, if this is what you are saying, that because the number of Executive orders issued by this President might be comparable to the number of Executive orders issued by previous Presidents, that that means that he has not made more use of it than other Presidents have. When you look at the quality, not just the quantity but the quality, the nature of the Executive orders that he has issued, he has usurped an extraordinary amount of authority within the executive branch. This is not unprecedented. And I point to the delay, the unilateral delay—lawless delay, in my opinion—of the employer mandate as an example of this.

And so at a minimum, I think he owes us an explanation as to what his legal analysis was, particularly given the fact that it is difficult to imagine who has got standing to challenge this, and it is difficult to imagine who, if given—if acquiring standing to challenge this could do so in a timely enough manner so as to avoid a mootness problem in the case. So it is all the more reason why it is important in this case.

Thank you very much.

Attorney General HOLDER. We have to separate then—I mean, with regard to the notion that there is a usurpation or that the President has acted in a lawless way, I think that is totally inconsistent with what the President has done and what his desires are to do.

Senator KLOBUCHAR. Very good. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chairman.

I want to begin—I had not planned to begin this way, but I want to begin by respectfully taking issue with my colleague Senator Lee and say that the use of Executive orders in the past has been very sparing and cautious, and, in fact, in my view the numbers of Executive orders, which have been far less than any recent President, reflect that very sparing and cautious use—in my view, too cautious and too sparing. And I applaud the President's apparent determination to use his authority more aggressively and more vigorously in areas that matter so much to the well-being of the American people, particularly when it comes to economic opportunity as well as to immigration and veterans issues.

The basic concept here is that the President is using his authority. Whether you adopt the construct of three categories or any other method of analysis, at the end of the day the President is simply executing the law and using authority that has been granted to him by Congress for the well-being of the American people, to protect their health and safety and to advance the national interest. And in my view—and I have expressed this view through the Subcommittee that I chair on regulation, in some instances the delay in using that authority has been more on the side of caution than on the side of how aggressively it should be used. So I think your position that any use of Executive power will be in accordance with the law and his legal authority clarifies the point that I think has been missed in a lot of the reaction to the President's speech. Where some of his critics have said that he is going to be legis-

lating or bypassing the Congress, in fact, he is using legislation that has granted him authority.

Let me just say on the issue of sex trafficking, I welcome your comments on that score. I have proposed a resolution, a bipartisan resolution with my colleague Rob Portman, who is not a member of this Committee, basically saying that there should be more vigorous enforcement of these laws, particularly around the time of the Super Bowl, because the trafficking on websites like backpage.com tends to increase during this time. So I welcome your comments.

And let me just add briefly, to take Senator Leahy's comment, I want to thank you and the Department of Justice for really over these past years viewing these legal issues on their merits, on their legal merits, putting politics aside. The Justice Department went through a dark period, in my view, under a previous administration when politics all too often became a part of the analysis, and I want to thank the career Justice Department employees who worked so hard and long under you to make sure that the rule of law is preserved.

Let me turn to a part of the President's speech where I might have hoped he had said more on the issue of preventing gun violence. The mention by the President was very brief, but I hope, and I hope you will join me in the view, that the President remains completely committed to end gun violence in this country, adopting commonsense, sensible measures like background checks and mental health initiatives, a ban on straw purchases and illegal trafficking. The bill that was before us unfortunately failed to pass, but I would like your commitment on behalf of the administration that he remains resolutely and steadfastly in support of these initiatives.

Attorney General HOLDER. Yes, we do still have that commitment. The worst day that I had as Attorney General of the United States was the day that I went to Newtown to thank the first responders, crime scene search officers who were there, and they took me on a tour of that school. And if people had the ability—if the American people, legislators, Members of Congress had had the ability to be with me on that day, to walk through the classrooms and see the caked blood, to see the tufts of carpet that I did not quite understand when I first saw the carpet picked up, then I realized that that was where bullets had gone through and picked up the carpet, if people had seen the crime scene search pictures of those little angels, I suspect that the outcome of that effort that we mounted last year would have been different.

Our resolve remains the same. My resolve is as firm as it was back then. And I think what we should also understand is that the vast majority of the American people still want those commonsense gun safety measures that we advanced last year. Our commitment is real, and we will revisit these issues.

Senator BLUMENTHAL. And on the subject of the use of the President's authority, my hope is—and I would urge that he take whatever action is possible, as he has done in a number of steps already and as you have done in trying to clarify the mental health issues that have to be reported to the NICS system. My hope is that addi-

tional measures, Executive actions are contemplated under that authority.

Attorney General HOLDER. Yes, the President, it is his intention to, again, try to work with Congress, but in the absence of meaningful action to explore all the possibilities and use all the powers that he has to, frankly, just protect the American people.

Senator BLUMENTHAL. Thank you. One last subject. I have a lot of subjects that I could explore with you, but I am hoping that the administration will also explore very vigorously what it can do to stop sexual assaults on campus. I applaud the President's initiative, and you were part of the task force that he has appointed. The report of the Council on Women and Girls very recently emphasizes how pressing and pervasive this problem is on our campuses. I am intending an initiative in Connecticut to try to raise awareness about it. And I would like your commitment that you will work with me and others on this Committee on this issue.

Attorney General HOLDER. I look forward to working with you on that very important issue. I mean, the statistics are very alarming: 20 percent of all young women are either sexually assaulted or an attempt made at a sexual assault. Usually—who are in college. Usually this happens in their freshman or the early part of their sophomore years. We are going to try to use those kinds of statistics and the work of this task force that the President has put together to try to deal with that issue, and we will look forward to working with you and other Members of Congress in trying to come up with meaningful ways that we can deal with an issue that has too often been, if not ignored, not given the attention that it deserves.

Senator BLUMENTHAL. And just so no one thinks that this issue merely involves rhetoric, there is a legal basis for action in Title IX and other Federal statutes for the Federal Government to be involved in protecting women against the ongoing assaults and other kinds of harm that they suffer on our campuses.

Attorney General HOLDER. Yes, and the Justice Department is using all the tools that we can. We worked out an agreement with the University of Montana using our civil rights statutes where that problem was not being adequately addressed, and we worked out—to the credit of the university, we put in place a consent decree, and other universities, as I now understand it, are talking to the University of Montana to see what measures they have put in place, and it is our hope that this kind of thing will expand and cover more college campuses.

Senator BLUMENTHAL. Thank you very much. Thank you for your testimony today and for your and the Department of Justice's service to our Nation. Thank you.

Attorney General HOLDER. Thank you.

Senator KLOBUCHAR. Thank you, Senator.

Senator Graham.

Senator GRAHAM. Thank you. Good morning, Mr. Attorney General.

Attorney General HOLDER. Good morning.

Senator GRAHAM. People on both sides of the aisle are asking you to do some very worthy things. I mean, this is a great area for you to be involved in. Tell me how sequestration over the next decade

affects your ability not only to do more but to do what you are tasked to do today in terms of fighting crime and terrorism.

Attorney General HOLDER. Were sequestration to remain in place, we would simply not be able to do the kinds of things that the American people expect of us. We have 4,000 fewer people in Justice Department now than we did in January 2011 as a result of sequestration, or the expectation of sequestration that forced me to put into place a hiring freeze. And we simply have—we have fewer investigators, fewer prosecutors. Our ability to do the job is just very negatively impacted by sequestration, or has been negatively impacted by sequestration.

Senator GRAHAM. It is one thing to become more efficient. Eventually it becomes a lack of ability.

Attorney General HOLDER. Right.

Senator GRAHAM. So I hope we will all remember that.

Over the next decade, do you see threats to our homeland increasing, decreasing, or staying about the same regarding terrorist activity?

Attorney General HOLDER. That is an interesting question. I would say that in terms of the threat from core al Qaeda, the threat I think is likely to be less severe. I am more concerned about homegrown violent extremists who get radicalized in a variety of ways that, you know, you are very familiar with and what they might try to do, where you have one-offs or two people—

Senator GRAHAM. So there are two threats: homegrown terrorism—which I agree is definitely on the rise. The likelihood of being attacked by someone here who has been radicalized as an American citizen I think, as Boston, may be the future. But you have got to remember the Pakistan Taliban are the ones that trained the guy in New York, so it is just not core al Qaeda.

Attorney General HOLDER. No, I mean the affiliates. No, you are right. The affiliates are—

Senator GRAHAM. They are out to get us, and I just want people to understand that, you know, privacy is important, but understanding the threat, too, is also important.

About the IRS, do you agree with me that the allegation is that the IRS agency targeted people who were political enemies of the President, perceived to be political enemies of the President, and made it harder for them to organize and express themselves? Isn't that the basic allegation?

Attorney General HOLDER. It is certainly what generated my desire to have an investigation done.

Senator GRAHAM. Yes, I mean, this is not the first time that has happened in Washington. I mean, there are some Nixon—

Attorney General HOLDER. I am old enough to remember the Nixon—

Senator GRAHAM. Right, and things do happen. But I guess how we handle it is important.

Senator Cruz has written you a letter that please pay good attention to, because Senator Cornyn suggested that the victim, the person trying to organize in Houston—is that where the lady is from?—has not been talked to. Is that possible?

Attorney General HOLDER. Well, because the investigation is not completed—

Senator GRAHAM. Okay. But how could you investigate a matter if you do not talk to the people who are claiming to be the victim of the offense? It would be almost impossible to say that was a thorough investigation, wouldn't it?

Attorney General HOLDER. Well, you are certainly going to have to talk to the victims. My only point was that the investigation is not over, so it is possible—

Senator GRAHAM. Yes. No, I understand. But at this point in the investigation, could you—how many victims of the Tea Party organizations that claim to have been abused by the IRS, how many people have been actually talked to, the victims themselves, by anybody in the Justice Department?

Attorney General HOLDER. Yes, this is an ongoing matter, and I am not necessarily sure I want to get into the specifics of what we have done, what we—

Senator GRAHAM. Well, if the answer were none, that would be stunning, wouldn't it, at this late date?

Attorney General HOLDER. Well, you say "late date." The investigation has been going on for some time. I am not sure how much longer it is going to go, so I am not sure if we can say we are at a late date.

Senator GRAHAM. Okay, and I do not mean to belabor this, but do you know if any of the victims have been talked to by the Department of Justice about what they allege happened to them?

Attorney General HOLDER. Well, again, I do not want to get into—I have been briefed on this matter on a couple of occasions. I do not want to share what happened in the briefing.

Senator GRAHAM. Well, finally, the idea of a special prosecutor seems to me makes sense here, that the gentleman that you have appointed—I am sure he is a fine man. He made a donation to the President, and that bothers some people. I understand why it would. Don't you think we would be better off just to have somebody clearly disconnected from the politics of President Obama, certainly not be a Republican but just somebody that does not—that cannot be seen as maybe having a political allegiance to close this matter, either through prosecution or dismissal?

Attorney General HOLDER. Well, this is—

Senator GRAHAM. Do you think the country would be better served if we did that?

Attorney General HOLDER. I think this is an investigation that is being done by career people who have constitutional rights to engage in political activity. The men and women of the Justice Department have from time immemorial put aside whatever their political leanings are and conducted investigations in a way that—

Senator GRAHAM. I understand—

Attorney General HOLDER. Rely only on the facts and the law.

Senator GRAHAM. Right. You have got political appointees and you have got career people, and I respect both. But we have got a country to run here, a democracy, and when a group of people, apparently with great reason, believe that their own Government made it difficult for them to organize and express themselves politically, that sort of goes to the heart and soul of the democracy, and it would be better for us all if somebody with an independent viewpoint looked at that.

Attorney General HOLDER. I do not think there is any basis to believe that anybody who is involved in this investigation would conduct themselves in a way that is inappropriate or would be shaded by their—

Senator GRAHAM. Well, the person you appointed—

Attorney General HOLDER. Political activity.

Senator GRAHAM. What do I tell someone in South Carolina, the person investigating the abuse of power by the Obama administration against conservative groups was a donor to the President?

Attorney General HOLDER. I would say that people have constitutional rights. The Hatch Act—

Senator GRAHAM. I totally agree that—I am just saying from a perception problem, for lack of a better word. I mean, you know, to me it just is a no-brainer. I mean, I am glad that someone outside the Nixon administration eventually looked at Watergate. And I am not saying this is Watergate. I am saying on its face it is not a good moment.

So let us go to Benghazi. Can we expect any prosecutions anytime soon against alleged perpetrators in Benghazi?

Attorney General HOLDER. We have been working very hard in connection with that investigation. We are dealing—the work we are doing is in a very challenging environment. We have identified people who we believe are responsible for—

Senator GRAHAM. Is one of them a Mr. Khattala?

Attorney General HOLDER. I do not want to comment on anybody specifically that—

Senator GRAHAM. Well, let me just say that Mr. Khattala is commonly identified in the press as one of the planners of the attack, a man who participated in the attack in Libya. That is what the press reports are, and I have reason to believe they are right. He has been interviewed by CNN, the Times of London, and Reuters. Why can't we grab him if the press can talk to him openly in the hotel in Libya?

Attorney General HOLDER. I will say that we are determined to hold accountable the people who were responsible for that attack, and we will take and use all measures of the American Government in order to effectuate that desire.

Senator GRAHAM. A few more questions. The FBI interviewed the survivors of the attack in the State Department on the 15th, 16th, and 17th of September. I have asked for those FBI interviews because I want to know what they said about a potential protest. The Deputy Director, now retired, of the FBI said that none of the survivors told the FBI agents in Germany, 15, 16, and 17 September, there was anything other than a terrorist attack. They never mentioned a protest. Would you allow us as Members of Congress to have access to those interviews?

Attorney General HOLDER. I am not aware what happened in those interviews. I am not aware of—you say these 3 days of interviews. I am not conversant with what happened during the course—

Senator GRAHAM. When did you first get notified about what happened in Benghazi? And did you believe it to be a terrorist attack?

Attorney General HOLDER. I would have to think about it. I am not sure when I first heard about the attack. I am sure it is some time shortly after. It is probably within——

Senator GRAHAM. Did the FBI ever brief you after these interviews? Do you remember being briefed by the FBI about what they learned in Benghazi?

Attorney General HOLDER. After the attack or——

Senator GRAHAM. Yes. After the interview.

Attorney General HOLDER. I have been briefed by the FBI on a number of occasions with regard to both the attack and the investigation into the attack.

Senator GRAHAM. If the last interview was done on the 17th of September, can you look back in your notes and recall and tell us when is the first time you were informed by the FBI about what they had found about the attack? Is that possible?

Attorney General HOLDER. I am not sure I understand. When——

Senator GRAHAM. Okay. My time is up, but the point I am trying to make, when did the Attorney General of the United States—— were you made aware of the fact that the FBI had interviewed the survivors of the attack? When did they tell you about the interview and about what they found?

Attorney General HOLDER. I would have to look at the records on that. I mean, what we tried to do initially was to work with the Libyan Government to get the FBI into Libya to look at the crime scene. That was our primary concern, our initial concern. And then from there interviews were done of people who were in the facility at the time and who survived the attack.

Senator GRAHAM. If you could go back and look and let us know in writing when you were first made aware of the FBI's results, I would appreciate it.

Thank you.

Senator KLOBUCHAR. Thank you very much, Senator.

Senator Franken. And I do want to note that Senator Franken and I both jointly recommended Andy Luger as the U.S. Attorney. We started our process way before Todd Jones had even been confirmed, despite some pushback in doing that, and so it has now been 189 days since we recommended him.

Senator Franken.

Senator FRANKEN. Thank you, Madam Chairman.

I would associate myself with the Chairwoman's remarks. Andy is an outstanding nominee. We passed him through the Committee here, and I hope he gets to the floor as fast as possible.

Mr. Attorney General, thank you for your service. I want to talk to you about a matter that is pressing right now. It is very urgent right now. Minnesota and a number of other States are experiencing a severe shortage in propane, and the cost of propane is skyrocketing. This is a real crisis. I wrote the President about it over the weekend urging him to take immediate action. I just spoke an hour or so ago with Secretary of Energy Moniz. One of the things that the administration can do is to work with the industry to make sure propane is getting to the regions of the country that really need it. I think there are about 25 States that are in crisis here.

But one of the potential challenges with getting companies in a room to address the crisis is there may be a concern over antitrust violations, however unintended. And I know this issue may not yet be on your radar, but will you commit to working with me to make sure that any of those issues can be addressed and avoided in the midst of this crisis?

Attorney General HOLDER. Yes, we will certainly do that. We will try to do all that we can to make sure that the relief that people need with regard to the provision of propane occurs, and we will look at what we can do to be as flexible as we can.

Senator FRANKEN. Yes, to allow these companies to meet. I was pleased to see that you visited a veterans treatment center in Roanoke last week. We have some very successful veterans treatment courts in Minnesota and across the country, but not nearly enough to meet the demand. Can you tell the Committee what you learned from your visit to the veterans treatment court and why you think it is worthwhile for the Federal Government to invest in these programs?

Attorney General HOLDER. Well, first I think that we as a Nation owe a debt to people who have served and have done so obviously putting their lives at risk. They oftentimes come back with issues that were generated as a result of their service that puts them in conflict with the law. They break the law, and they should be held individually responsible. But I also think we need to come up with ways in which we deal with those underlying issues that generated or that caused that involvement with the law. And what I saw in Roanoke and something that I think we want to try to expand was a very difficult thing. You talk to these veterans, and they said it would be a lot easier simply to plead guilty, do 30 days in jail, a year in jail, and be done with it, as opposed to going through a 6-month program where you have to report every week, where you are subject to random drug tests, where you have to prove that you have a good living situation, that you have employment. It is very rigorous.

But the recidivism rate is tiny compared to what other people go through, and so we save money by not incarcerating people unnecessarily, and we enhance public safety by decreasing the number of recidivist crimes. What I saw in Roanoke I think was very heartening to see and is something that we need to support and expand.

Senator FRANKEN. I really appreciate that response. This is a very important issue to me and to a lot of members of both the House and the Senate on a totally bipartisan basis. I have a bill, the Justice and Mental Health Collaboration Act, which would authorize Federal funding for veteran treatment courts along with a whole bunch of other things. I mean, we do have too many people incarcerated who have not committed violent crimes, who are there because of mental health issues or there for addiction, who would be better off not being in prison and who we are paying way too much money to keep incarcerated and who have more recidivism because of being put in prison instead of being put in treatment. This is about mental health courts, this is about veterans courts, and I would like to submit records of support that I have received from the American Legion, the Wounded Warrior Project, and AmVets, and I would like to submit articles from the Star Tribune

and Minnesota Public Radio website that discuss this issue, Madam Chairman. Do you object?

Senator KLOBUCHAR. No objection. They are in the record.

Senator FRANKEN. Thank you.

[The information referred to appears as submissions for the record.]

Senator FRANKEN. Attorney General Holder, on Monday the Department announced that it would let companies disclose the number of certain surveillance orders they get and the number of customers affected by those orders. I think this is a step forward for transparency, and I want to thank you for your work on this. But, respectfully, I do not think there is enough transparency. The disclosures do not apply to the largest surveillance program that has been declassified, 215, the call records program that affects hundreds of millions of Americans. And what is more, company disclosures are optional and voluntary. And unless the Government tells the American people how many of them have had their information collected under all of these programs, the public will not know the full scope of surveillance.

I have a bipartisan bill with Senator Dean Heller of Nevada that would force the Government to give the American people a good idea of how many of them have had their information collected under all these programs and how much of it has been queried, how much of their information has been looked at. Senator Heller introduced this bill with me, and Chairman Leahy has cosponsored it, along with several other colleagues on this Committee. But the Government has opposed this measure, and it refuses to disclose this information on its own. This is surprising to me because I think it is common sense that if the public knew this information, it would be able to make a better decision for itself as to both the purpose, the efficacy of this program, and to what extent—I think it would—and I think the President said it last night. It would help gain trust.

So my question is: When will the Government give the American people a good idea of how many of them have had their information collected and viewed or queried or accessed under this program?

Attorney General HOLDER. Well, one of the things that we want to try to do—and I think you are right that the action that we took on Monday was a first step. It was only a first step. There is, I think, a need for greater transparency for people to understand the nature of the programs that are being run. We always have to understand, though, that the value in these programs, a substantial part of the value of these programs is that they are done—they are intelligence programs, and, therefore, they have to be kept secret. So how we strike that balance is something that Director Clapper and I will be working on in conjunction with other people, and we would certainly invite your involvement in that process, so that we ultimately come up with a system that is effective and keeps the American people safe, but at the same time gives the American people a degree of assurance that we are only doing that which is necessary to make those programs effective. And to the extent that we can share information, as we did on Monday, about what actually is being collected in terms of numbers, to the extent that we

can do that, I think that is something that we want to try to encourage.

Senator FRANKEN. Thank you. My time has expired. I would like to submit some questions for the record.

Thank you, Madam Chair.

[The questions of Senator Franken appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much.

Senator Cruz.

Senator CRUZ. General Holder, thank you for being here. I would like to talk to you about abuse of power and the integrity of the Department of Justice.

Eight months ago, the Inspector General at the Department of Treasury concluded that the IRS had improperly targeted conservative citizen groups, Tea Party groups, pro-Israel groups, pro-life groups. The day that was made public, President Obama described what had occurred as “intolerable and inexcusable,” and he said, “Americans have a right to be angry about it, and I am angry about it.” Likewise, that same day you said the IRS’ targeting of conservative citizens groups was “outrageous and unacceptable.” That was 8 months ago.

In the 8 months that have transpired, Lois Lerner, the head of the office that targeted conservatives improperly, has gone before Congress and pleaded the Fifth, which, as you know, means she raised her hand and said, “If I testify, I may incriminate myself in criminal conduct.” For a senior Government official to plead the Fifth is a major occurrence.

In the 280 days since that Inspector General report, nobody has been indicted. Not a single person. In the 280 days since that Inspector General report, it has been publicly reported that no indictments are planned. Today in this hearing, you were unwilling to answer a question whether even a single victim of the targeting has been interviewed in the 280 days that have transpired. And most astonishingly, it has now been publicly reported that the lead lawyer heading the investigation was, number one, appointed from the Civil Rights Division, which has historically been the most politically charged Division in the Department of Justice, and even more astonishingly, is a major Democratic donor and donor to President Obama. Indeed, between 2004 and 2012, she has personally given \$6,750 to President Obama and the Democratic Party.

I must tell you, I find it astonishing that the Department of Justice appointed a major Obama donor to head this investigation. So the first question I want to ask is: Did you know that the lawyer in charge of this investigation was a major Obama donor?

Attorney General HOLDER. Well, first off, the characterization of this lawyer as the “lead lawyer” on the case I think is not correct. This is an investigation being done by the Civil Rights Division as well as by the Criminal Division of the Justice Department. And if I had to assign a lead in this, I would say that the Criminal Division, the Public Integrity Section, has actually got the lead. It is also involving the FBI as well as the Inspector General from the Treasury Department.

Senator CRUZ. General Holder, with all respect, you did not answer the question I asked, which is: Did you know that this lawyer was a major Obama donor?

Attorney General HOLDER. No, I do not know anything about the political activities of any of the people who are involved in this investigation.

Senator CRUZ. Now, previously, when you were asked about this, you made a reference to the fact that she has a First Amendment right to be involved in politics, and that is surely right. No one is talking about restraining her First Amendment right to be involved in politics. But the Department of Justice ethics guideline says that if a lawyer “believes your impartiality might be questioned, you must either disqualify yourself or see the ethics officer.” And indeed, it goes on to say, “In a case where your impartiality might be questioned, you may obtain a formal opinion that the Department’s interest and your participation in this matter outweighs the concern that the integrity of the Department’s operation would be questioned.”

Now, I have to tell you, the fact that a major Obama donor is playing this leadership role has resulted in the integrity of the Department being questioned.

Is it your position that out of the 117,000 employees at the Department of Justice the only lawyer available to head this investigation was a major Obama donor?

Attorney General HOLDER. Well, first, we have got 112,000 people, but beyond that, the people who are assigned to this case, the assignments were done by career people within the Department to make sure that the best people with the greatest amount of experience would handle this matter. Your repeated reference to her as the “lead lawyer,” as I said, I think is not—is not borne out by the role she is actually playing.

I do not have any basis to believe that the people who are engaged in this investigation are doing so in a way other than investigations are normally done, that is, by looking at the facts, applying the law to those facts, and reaching the appropriate conclusions. I do not have any basis to believe that anything other than that is occurring.

Senator CRUZ. Well, I will say a lot of American citizens have a basis to believe it given that 280 days have passed, no one has been indicted; 280 days have passed and many, if not all, of the victims have not even been interviewed; 280 days have passed and apparently the anger and outrage that both the President and you expressed has utterly disappeared. Indeed, last night in the State of the Union address, the President did not so much as mention the word “IRS.” So that anger and outrage sees very little manifestation in actual action.

Now, I would also point out—

Attorney General HOLDER. I would actually hope that the President would not discuss an ongoing investigation. I do not know if you have ever conducted an investigation, Senator, but the fact that it has taken—and I will just take you at your word—280 days is not unusual for complex investigations. We want to make sure that what we do is comprehensive and that at the end of the day we get it right. I do not—

Senator CRUZ. Well, many of the victims have not—

Attorney General HOLDER. Ask people to do things on a short basis. I ask people simply to do them right, and—

Senator CRUZ. Many of the victims have not been interviewed. Has the investigation examined the meetings between the head of the IRS and White House political operatives to determine the degree of political influence that was exercised from the White House over this political targeting?

Attorney General HOLDER. As I said to, I think it was, maybe Senator Graham, I am not going to discuss an ongoing investigation and what steps have been taken in connection with that investigation. And that is not something I am only doing for this inquiry. This would be an answer you would get from me for any investigation that the Justice Department was involved in. It is not appropriate for an Attorney General or any Justice Department person to discuss an ongoing criminal investigation. That is just—

Senator CRUZ. Has any investigation been done about whether individual donors to Governor Romney have been audited and targeted by the IRS at a greater rate than donors to President Obama? I will tell you, as I travel the country, I have heard from dozens of financial supporters for Governor Romney who told me that they had never been audited in their life, and within a week, a month of it becoming public that they were raising money for Mitt Romney, they discovered they were being audited.

Now, those are anecdotal stories, but it would be relatively simple to examine the prosecution rates of Obama donors versus Romney donors, and if there were a sharp differential, if it were the case that Romney donors were being audited at a much higher frequency, that would raise substantial basis to investigate further.

Has the investigation inquired as to that?

Attorney General HOLDER. Senator, you know, I will say—I will give you the same response to the questions that you are asking that are in many ways very similar. I am not going to discuss what we have done in an ongoing investigation. This is a matter that is presently being investigated; interviews are being done; analysis is being conducted. And it would be inappropriate for me to talk about the matter in the way that you have asked.

Senator CRUZ. Well, my time has expired, but let me say this in conclusion, which is, I sent you last week a letter laying out this record, laying out the abuse of power, laying out the obvious conflict of interest. In my view, the integrity of the Department of Justice has been severely compromised. Predecessors of yours in both parties, Democrat and Republican, when faced with serious charges of abuse of power for partisan gain, have made the right decision and appointed special prosecutors.

Elliot Richardson appointed Archibald Cox to investigate allegations of President Nixon's abuse of power. No one would have trusted John Mitchell to investigate Richard Nixon. Likewise, Janet Reno appointed Robert Fisk to investigate allegations against President Clinton.

I would call upon you to carry out the tradition of independence that Attorneys General have honored that office with for centuries and protect the integrity of the Department of Justice. Given the

political sensitivities, given the fact that individual citizens believe they are being persecuted by the Federal Government for partisan reasons, it would further justice and further the integrity of the Department of Justice for you to appoint a special prosecutor with a meaningful degree of independence to investigate and find out what happened. And I would suggest that any special prosecutor should have integrity beyond reproach and not be a major Obama donor.

Attorney General HOLDER. Well, let me just say this: The statute—a lot of what Attorney General Reno did with regard to the appointment of independent counsel was pursuant to a statute that no longer exists. The regulations that now exist were put in place under my supervision when I was a Deputy Attorney General in the Clinton administration, and so I am familiar with both the regulations and when it ought to be applied. I do not think that there is a basis for us to conclude on the information as it presently exists that there is any reason for the appointment of an independent counsel. I have faith in the career people who are handling this matter to do so in a way that is free of any kind of partisan or ideological tint and to come to an assessment of the facts and the law based only on the facts and on the law. And the notion that somehow this has caused a loss of faith in this Justice Department I think is inconsistent with the facts.

Senator KLOBUCHAR. All right. Senator Coons.

Senator COONS. Thank you, Senator Klobuchar, and thank you, Attorney General Holder, for your testimony today and for your service.

I wanted to first focus on an area of shared concern and interest. The Department of Justice, as questioning has highlighted today, has a broad range of responsibilities toward promoting justice and public safety for our country. One of particular interest to me is strengthening and sustaining the vital connections between Federal, State, and local law enforcement, and in your opening statement you emphasized your gratitude for the appropriations this year which makes possible strengthening that relationship.

In Delaware, in particular, the Justice Reinvestment Initiative is one example of this partnership that is making a real difference, and sustained Federal support is going to be critical to ensuring that newly enacted State reforms actually translate into reduced recidivism, save lives, and save dollars.

Can you just comment at the outset for me why it is important for the Federal Government to invest in State and local law enforcement, training, information sharing, funding assistance? Why does this make a difference?

Attorney General HOLDER. Well, I think there are at least a couple of bases—one, to try to increase the capacity of our State and local partners. The reality is that the vast majority of criminal law enforcement is conducted by people who are in our State and local law enforcement agencies, and so helping them just do their jobs makes a great deal of sense.

But I also think that what we see is innovative practices being done by our State and local counterparts that we want to try to support, experiments almost, and see which things work and then try to push those out to other parts of the country.

If we want to have a truly safe country with safe communities, with really innovative law enforcement practices, the Federal Government I think has the unique capacity through our funding mechanisms to funnel money to agencies that have particular crime problems that they are dealing with or have innovative solutions to crime problems that many communities around the Nation are facing.

Senator COONS. Thank you. I am a strong believer in the capacity of the Federal Government to find specific programs and to combine research, training, and funding assistance to sort of catalytically leverage those either unique practices or important and special programs, and I want to draw your attention to two of them that we have discussed before:

The Victims of Child Abuse Act has in the past funded child advocacy centers that are a really important tool, and Senator Klobuchar discussed with you earlier the critical importance of strengthening our enforcement against sex trafficking. I think these child advocacy centers have played a central role in that.

And, second, the Bulletproof Vest Partnership Act, which has made possible the deployment of cutting-edge vests that protect local law enforcement officers, particularly in smaller or more rural departments where they could not sustainably field them themselves.

Regrettably, both of those were zeroed out in the President's Fiscal Year 2014 Budget, and through action on the Appropriations Committee funding was restored, and I think we are continuing to work in partnership to ensure that they are actually carried forward and deployed.

I know that you have spoken in support of these programs in the past, and budgets are difficult and they are also an important tool to convey our values and our priorities. Would you just comment on how these specific programs can help State and local law enforcement, particularly in ways that are not possible if done alone at the State or local level?

Attorney General HOLDER. Well, I think the child advocacy centers are things that I have been familiar with since my time as United States Attorney here in Washington, D.C. They are a primary tool, a good tool for people in law enforcement to successfully prosecute cases that involve children who are victims. But beyond that, it also helps the healing process for young victims so they do not get re-victimized by the process that they go through and, then once through with the process, can try to get on and to heal. For too long we did not understand the unique needs that children had, and child advocacy centers I think have really gone a long way to increase our sensitivity in that regard.

We do not have budget numbers yet for Fiscal Year 2015. We have them in a macro sense, but we do not have the micro numbers with regard to the Justice Department, but I will be advocating on behalf of these child advocacy centers. I think they are proven to work, and given who they assist, I think that as we are trying to decide what our priorities are, the protection of our most vulnerable citizens, our children, has to be a place where we put our money.

With regard to the vests, I think that—we have talked about this before, a concern—you have raised a very legitimate concern that we not make the provision of vests dependent on the size of the community. Officers who are on two-, three-man police forces are just as at risk when they are making a stop on a highway in the middle of the night as is somebody who works on the New York Police Department. And to the extent that we can, we want to get as many of these vests out there as we can.

Senator COONS. The recent report from the Presidential Commission on Election Administration confirms an issue I have raised previously, that there is a widespread lack of compliance with Section 5 of the National Voter Registration Act, the so-called motor-voter law. In fact, the report very specifically says that DMVs, which are supposed to play an absolutely central role in registration, are the weakest link in the system. Many State DMVs disregard the laws. Others have erected impediments to the seamless transfer of voter registration data from motor vehicle to voter registration.

Do you see this report as a call to action for enforcement of Section 5 of the NVRA by the Department? And what is your plan to make sure this important law is enforced?

Attorney General HOLDER. Well, I think we need to look at that report. I think that that was a very thoughtful and potentially very consequential piece of legislation. And for it not to be enforced and for it not to be paid attention to would go against what I think is really important, which is to somehow in an appropriate way, without any fraud, expand the franchise and make it easier for people to get to vote. And so to the extent that issues have been identified in that report, we will look at them and that will help shape our enforcement efforts.

Or just to bring—when I say “enforcement efforts,” that does not necessarily mean we are going to have to bring cases, but just to bring to the attention of departments in various States that are not doing that, if we bring to their attention sometimes just best practices, we can hopefully modify things that are inconsistent with the Act.

Senator COONS. Let me, if I might, ask a last question about FISA reform. The President has publicly recently instructed you to develop options to reform the Section 215 bulk collection program in ways that would better respect and defend civil liberties in this country. Is it the Department’s position that Section 215 can be used for suspicion-less bulk collection of metadata beyond phone records, including location information, financial records, or other Internet records? And how do you view the best way moving forward to ensure the public that the framework for making these decisions is right? Do you support more disclosures of the legal rationales for various aspects of the surveillance program?

Attorney General HOLDER. Yes, I think that we have to ask some very frank questions about the bulk collection component of Section 215 and make a decision as a Nation about whether or not we are getting from that program sufficient amounts of good information, sufficient amounts of usable information to balance the, I think, very legitimate concerns that people have expressed about the wide—potentially wide-ranging nature of the program.

I come into this, I will be honest with you, with an open mind. You know, there are certain programs, section 702, for instance, that I think has to be guarded almost at all costs. With regard to 215, I think the metadata part of 215, I think that we have to ask ourselves some difficult questions and not simply do things, as the President has said, simply not do things because we can do them. The question is: Should we do them?

As I said, I think 215 is legal, but that does not answer the question that the President has posed to us.

Senator COONS. Well, thank you, Mr. Attorney General. I join a number of colleagues in urging and hoping that the investigation into IRS actions is done in a balanced and professional and appropriate way, and I assume it is unless demonstrated otherwise. And what I have heard is that there were progressive groups as well as Tea Party groups that were perhaps allegedly on the receiving end of reviews of their 501(c)(3) applications, and it is my expectation that we will hear more in an appropriate and timely way about the conduct of this investigation.

Attorney General HOLDER. Well, let me assure you and the American people that the investigation of what we call the IRS investigation will be done in a nonpartisan, non-ideological way, that we will make determinations only on the basis of the good investigative techniques that we always employ in the Justice Department. And let me also express confidence in the men and women who are part of the team who are investigating the case now.

As I said, I see no basis to question their impartiality, and we will try at the conclusion of the investigation to share as much information as we can about the conclusions that we have reached, either through prosecutions or declinations, however the case ends up.

Senator COONS. Thank you.

Senator KLOBUCHAR. Very good. Last but not least, Senator Flake.

Senator FLAKE. Thank you. I appreciate you being here, and I just want to say I share the concerns that some of my colleagues have expressed about some of the, for lack of a better term, extra-constitutional actions taken by the President with regard to the ACA. But you have been asked those questions. Some answers have been given, some not. I do not think I will plow any new ground by going over that.

Also, I share the concerns about the investigation, the timeliness of it. I hope that we can move forward quickly, and I am concerned about whether there are leaks or whether there are statements by the FBI that should not have been made about that there will be no criminal prosecution, I think that is concerning. When the FBI says something like that or leaks that out, I would hope that DOJ refutes that. And I do not think we saw that.

Let me just talk about an area that I do not think has been talked about. It is with regard to waste or inefficiency in the grant programs. DOJ administered about \$17 billion in grants just between 2009 and 2013. Inspector General Michael Horowitz issued a report in December that I think is some pretty tough medicine. He is saying that we need some budget constraints, we need some things put in place to make sure that we are not squandering a lot

of taxpayer resources. DOJ, it was reported by someone, has squandered perhaps as much as \$100 million in taxpayer dollars over the past 5 years. The OIG audit questioned, for example, all of the more than \$23 million in grant funds awarded by the Department to Big Brothers and Big Sisters of America. There just are not the controls in place that there need to be to shed a light on where this money is going.

Mr. Horowitz highlighted the problem yesterday. He said that there is “virtually no visibility” on how grant funds are actually being used by the recipients.

“Unless there is an OIG audit or investigation or the granting agency dedicates resources to collecting and analyzing the accounting information from a recipient, the Government and taxpayers are virtually in the dark regarding how grant funds are actually used.”

This is an ongoing problem. I just want to know what is being done to remedy this.

Attorney General HOLDER. First, I think what we have to understand is that I do not the Inspector General indicated that he is concerned that these funds have necessarily been misused as much as there are not mechanisms in place to assure that they are being used in an appropriate way, which I—that is a serious concern. I think, as I remember the report, that he had said that over the past couple of years, I think, that things have gotten better than they perhaps were at the beginning. I might be confusing the reports, but I think that is what he said.

But what we have to do, I mean, the concern you raise is a legitimate one, and we have to have in place the mechanisms so that we know that the money that is given to grantees is being used in an appropriate way, first so that we know that it is being done for the purpose that it was given, but also just to assess the effectiveness of the grants.

Senator FLAKE. Let me get beyond just platitudes on this. DOJ said in 2012 that you would conduct an assessment of these programs to see where there is overlap and where money perhaps is being wasted. The Inspector General said that that assessment has not been completed or provided to him or to Congress. Is that the case?

Attorney General HOLDER. Well, we will have to, you know, get that assessment completed, share it with Congress, and share it with the Inspector General.

Senator FLAKE. You mentioned with regard to the investigation, the IRS, that it is perhaps routine to go 260 days, or whatever figure was used, and I understand that. It probably is routine. What I would suggest is that it is not routine to go for a year, a year and a half, 2 years before you come back with an assessment that you said that you would do with regard to these programs. Is that routine to take a year and a half or so after you say you will have an assessment?

Attorney General HOLDER. I would not say it is routine, but obviously what we want to do is make sure that we have looked at these things and done a good and complete job. If, in fact, it is 18 months, whatever the timeframe is, that would seem to me to be on the excessive side.

Senator FLAKE. Speaking of which, it was brought up earlier in the hearing that the questions that were submitted after the last oversight hearing in March of last year, that DOJ has not returned any answers to those questions by this oversight Committee. Is that routine to go nearly a year without answering specific questions that have been asked as part of the oversight hearing?

Attorney General HOLDER. I think what we generally try to do is make sure—I think as Senator Grassley said, to try to make sure that we answer all the questions before the next oversight hearing. I do not know how many of the questions have not been responded to. I just do not know. I will have to look into that at the conclusion of—

Senator FLAKE. I think it was the case that none of the questions had been submitted. Nothing.

Attorney General HOLDER. All right. The answers actually have been prepared. They are now under review by the Office of Management and Budget.

Senator FLAKE. So nearly a year later, when we come to the next oversight hearing, we still have not received answers to the questions from the last oversight hearing. I realize we have not gone through regular order in this place for a while, but it is difficult to provide oversight when the answers do not come back.

Attorney General HOLDER. That is a fair criticism, and we obviously are going to have to do a better job in the administration, both at the Department and OMB, to get answers to you in a more timely fashion.

Senator FLAKE. We will have some follow-up questions to this, and I would like to have a commitment, if I could, that you will get back in a more timely fashion.

Attorney General HOLDER. We will do better. I promise.

Senator FLAKE. With regard to just one quick question on immigration, as you know, I was part of the group, the bipartisan group here, that put together an immigration bill. I share the President's concern and his desire to get immigration reform done. Let me just tell you, in all honesty, one of the most difficult questions I face at home from constituents and others is about this new legislation we are putting forward, as they say why in the world do we want to create more laws when we simply are not enforcing the ones that we have, or the Department, the administration takes it upon itself to interpret the laws that we have and use perhaps a little too much discretion in terms of implementing those laws. They have very little confidence that the new legislation put forward, when it becomes a law, will be implemented as it was intended.

Do you understand that sentiment out there, at least? And what can the administration do to help us? We are trying to get this done. I am on your side, and those who want to get immigration reform done, but I can tell you it is very difficult when we see things like release of individuals with multiple felonies into the community. I asked questions of Secretary Napolitano. Those answers never got back to us either. I mean, that kind of stuff at home makes it very difficult to instill the confidence that we need that these laws will be faithfully executed.

Attorney General HOLDER. Well, I think that if people truly understood how we enforce the laws, how completely we enforce them,

how we use the discretion that we possess, they would have a greater degree of comfort in how the Justice Department, DHS for that matter, conduct themselves and not focus necessarily on anecdotal things but really on a more systemic—have a more systemic view of how it is we do what we do, because I am actually quite proud of the way in which we use the limited resources that we have to keep the American people safe.

Senator FLAKE. I agree with that, and I would just tell you that if people understood—perhaps they would better understand if they had answers to these questions. What I am telling you is we are not getting answers to those questions. I am unable to go back to my constituents and say here is the reason that these people with multiple felonies were released into the community, because I am not getting answers back from the Department of Homeland Security or in some cases from DOJ. So I take your point, but just tell you it is very difficult when we do not hear back from the Department a year later in conducting oversight hearings.

So I just would leave you with that, and I appreciate you being here, and we will have further written questions to follow up.

Attorney General HOLDER. And, Senator, the concern you raise is a fair one. That is a fair one. And as I said, we will have to do better. And I am not criticizing anybody in the Justice Department. I mean, we have to, as an executive branch, do better in responses to the questions that you are talking about.

Senator FLAKE. Thank you. I yield back.

Senator KLOBUCHAR. Thank you very much, Senator Flake.

Thank you, Attorney General Holder, and I think the people who watch this hearing can see the range of work the Justice Department does, everything from—I was jotting down some notes—legal issues regarding surveillance, autism, propane fuel, sex trafficking, IRS investigations, and drug policy. So we thank you for answering such a broad range of questions at this oversight hearing today and look forward to seeing you again soon. The record will stay open for 2 weeks. Thank you.

Attorney General HOLDER. Thank you.

[Whereupon, at 1:06 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Oversight of the U.S. Department of Justice”

Wednesday, January 29, 2014
Dirksen Senate Office Building, Room 226
10:00 a.m.

The Honorable Eric H. Holder Jr.
Attorney General
U.S. Department of Justice
Washington, DC



Department of Justice

STATEMENT FOR THE RECORD OF

ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENTITLED

“OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE”

PRESENTED

January 29, 2014

**Statement of
Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

**“Oversight of the U.S. Department of Justice”
January 29, 2014**

Chairman Leahy, Ranking Member Grassley, and Members of the Committee: thank you for the opportunity to appear before you today to discuss the recent achievements and the ongoing priorities of the U.S. Department of Justice. I also want to express my gratitude – on behalf of my hardworking colleagues serving in Justice Department offices around the world – for your support of the Department’s work to seek justice on behalf of everyone in this country.

In particular, I would like to thank Members of Congress for coming together earlier this month to pass a bipartisan budget agreement that restores the Department’s funding to pre-sequestration levels. My colleagues and I are reviewing this legislation to determine its impact on specific programs and components, but we anticipate that it will provide for the hiring of additional federal agents, prosecutors, and other essential staff. This will allow us to invest in innovative programs, to keep supporting state and local law enforcement agencies, and to continue building upon the outstanding work that my dedicated colleagues have made possible over the past year.

As I have said many times before, the Department’s top priority must always be the protection of the American people from terrorism and other national security threats. Since I last appeared before this Committee, we have continued to strengthen key intelligence-gathering capabilities; to refine our ability to identify and disrupt potential terrorist plots; and to ensure that those charged with terrorism-related offenses can be held accountable to the fullest extent of the law. From the recently-unsealed guilty plea of Ahmed Abdulkadir Warsame, a former senior al-Shabaab commander and emissary to al-Qaeda in the Arabian Peninsula, on charges of terrorism, to the extraordinary and highly-coordinated FBI-led response to last year’s Boston Marathon bombing, the Department and its law enforcement allies have relentlessly fought to secure the American homeland and bring those who would harm our people to justice. In that regard, I urge the committee to approve the Nuclear Terrorism Conventions Implementation and Safety of Maritime Navigation Act, which passed the House last May. Enactment of this measure would strengthen national security and enhance multilateral efforts to combat terrorism and nuclear proliferation.

As President Obama noted in a speech at the Justice Department two weeks ago, in carrying out this work it is imperative that we continue working to protect our national security while upholding the civil liberties we *all* hold dear. On Monday, we took a significant step forward when the Department took action to allow more detailed disclosures about the number of national security orders and requests issued to communications providers, the number of customer accounts targeted under those orders and requests, and the underlying legal authorities. Through these new reporting methods, communications providers will be permitted to disclose more information than ever before to their customers. And as we move forward with the timely implementation of other reforms that the President announced, my colleagues and I remain committed to working closely with members of this Committee and other Congressional leaders to fulfill the President's directives and determine the best path forward.

Beyond this important work, the Department will continue to build on the progress we have seen in confronting a wide variety of other threats and challenges – from combating drug and human trafficking, to addressing cyber-attacks, protecting Americans from violent crime, and taking common-sense steps to reduce gun violence. Earlier this month, the Department took action to strengthen the federal background check system by clarifying federal rules concerning mental health-based prohibitions on firearm purchases. Under the leadership of our Civil Rights Division and our Community Relations Service Division, we are using important tools like the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act to achieve justice and to prevent and respond to hate crimes on behalf of those who are victimized because of who they are, what they look like, or who they love. We are working diligently with our federal agency partners to implement the Supreme Court's ruling, in *United States v. Windsor*, to make real the promise of equal protection under the law for all American families – and extend applicable federal benefits to married same-sex couples. And we are vigorously enforcing federal voting protections – and working with Congressional leaders from both parties to refine and strengthen the proposals this body is currently considering – to help ensure that *every* eligible American has access to the franchise.

We are also striving to expand on the unprecedented successes that our litigating divisions and United States Attorneys' offices have made possible in recent years. During the fiscal year ending in 2013, the Justice Department collected more than \$8 billion in civil and criminal fines and penalties. This represents nearly three times the approximately \$2.76 billion in direct appropriations that pay for our 94 U.S. Attorneys' offices and main litigating divisions. And during FY2012 and FY2013, the Department collected more than \$21 billion – a record amount for a two-year span.

In addition, last year – as part of our ongoing efforts to hold accountable those whose conduct sowed the seeds of the mortgage crisis – the Department filed suits against Bank of America and the ratings firm S&P. Since 2009, we have filed charges against more than 37,000 white-collar defendants, more than half of whom are financial fraud defendants. And in November, the Department reached a \$13 billion settlement with JP Morgan Chase & Co. – the

largest settlement with any single entity in American history – to resolve federal and state civil claims related to the company’s mortgage securitization process. These results demonstrate that no firm, no matter how profitable, is above the law – and the passage of time is no shield from accountability. And they reinforce our commitment to integrity and equal justice in every case, in every circumstance, and in every community.

This commitment is reflected in the new “Smart on Crime” initiative I announced this past August – to strengthen our federal criminal justice system; to increase our emphasis on proven diversion, rehabilitation, and reentry programs; and to reduce unnecessary collateral consequences for those seeking to rejoin their communities. These efforts – including the Justice Reinvestment Initiative, which has already produced major state reforms – can improve outcomes and increase public safety and will make our expenditures both smarter *and* more productive. As it stands, too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason. Federal prisons are operating over 30% above capacity. And spending on federal prisons consumes a quarter of the Department’s budget – a figure that’s expected to continue to increase.

As part of the “Smart on Crime” approach, I mandated a significant change to the Justice Department’s charging policies to ensure that people accused of certain low-level federal drug crimes will face sentences appropriate to their individual conduct – and that stringent mandatory minimum sentences will be reserved for the most serious offenders. Alongside other important reforms, this change will make our criminal justice system not only fairer, but also – by reducing the burden on our overcrowded prison system – more efficient, freeing up resources for police and prosecutors and other vital law enforcement priorities. And it will complement legislative proposals like the bipartisan Smarter Sentencing Act – introduced by Senators Dick Durbin and Mike Lee – which would give judges more discretion in determining appropriate sentences for people convicted of certain federal drug crimes. I look forward to working with Chairman Leahy, distinguished members of this Committee, and other leaders who have shown a commitment to common-sense sentencing reform – like Senator Rand Paul – to help advance this and other proposals.

I thank you all, once again, for your continued support of the Department of Justice. And I would be happy to answer any questions you may have.

**Questions for the Record for Attorney General Eric Holder
Chairman Patrick Leahy
February 5, 2014**

Intellectual Property Investigations

1. In 2008, Congress enacted the Prioritizing Resources and Organization for Intellectual Property (PRO IP Act), legislation that I authored to provide better tools and resources to protect intellectual property. Among its provisions, the legislation authorized additional resources for the Justice Department to promote intellectual property enforcement and improved coordination of enforcement efforts.

The Department has done meaningful work in one such case, the *Megaupload* investigation. A 2013 research study by professors at Carnegie Mellon University and Wellesley College found that the closure of Megaupload led to an increase in legitimate digital sales and rentals of 6 to 9 percent across twelve countries. The study found that the deterrent effect of law enforcement action coupled with removing a readily accessible source of pirated content steered customers from illegal piracy to purchasing or renting through legitimate online channels. Such an outcome benefits creators and consumers.

Will the Department continue to prioritize IP investigations in order to protect U.S. creators and the many Americans employed by IP-intensive industries?

Net Neutrality

2. On January 14, the U.S. Court of Appeals for the D.C. Circuit struck down core elements of the Federal Communications Commission's 2010 Open Internet Order. I was disappointed in this outcome because these rules provided basic protections that promoted an open and competitive Internet. So-called "net neutrality" policies also protect consumers, who often have limited or no choice in broadband providers. This lack of competition has the potential to incentivize broadband providers to block or discriminate against certain types of lawful Internet traffic, including services that compete with their own offerings.

The antitrust laws have long stood as a tool to preserve competition and prevent anticompetitive abuses that harm consumers. They have also often been a complement to other regulations.

Do you agree that these laws can play an important role in promoting a vibrant and open Internet?

Bulletproof Vest Partnership

3. I am committed to ensuring that state and local law enforcement agencies have the tools they need to keep our communities safe, and that in challenging economic times, law enforcement officers have the equipment they need to stay safe and effective. Since 2004, the Bulletproof Vest Partnership has been able to fund all the small jurisdictions (with populations under

100,000) at the full 50 percent of their application requests. Due to both an increase in applications from smaller jurisdictions and a decrease in funding last year, BVP was able to fund 37 percent of the small jurisdiction applications and was not able to fund any of the 502 large jurisdictions that applied.

There is an obvious demand for support in the procurement of armor vests for both small and large jurisdictions across the country. I am pleased the programs received a \$1 million increase this year but believe more funding is needed. It is imperative that we reauthorize the bulletproof vest programs and I hope to work with your staff reauthorize this lifesaving program.

In 2010 we funded the Bulletproof Vest Partnership at \$30 million. Would funding BVP at the 2010 level be sufficient to fund all small jurisdictions at 50 percent in FY 2014? How much would be necessary to fully fund small jurisdictions at 50 percent and a percentage of larger jurisdictions at a level comparable to 2010?

Office of Juvenile Justice and Delinquency Prevention Funding

4. Funding programs that target and benefit our country's at-risk youth are a worthwhile investment. They can provide young people with the resources they need and divert them from the criminal justice system. Programs targeting youth have saved Vermont millions of dollars. I was disappointed that the recent omnibus appropriations legislation did not fund the Department's juvenile justice programs at a higher level.
 - a. **With this reduced funding, what difficulties will the Office of Juvenile Justice and Delinquency Prevention face in supporting programs that serve at-risk youth, including those young people already involved in the juvenile justice system?**
 - b. **Does the Department calculate the estimated annual savings incurred through funding these types of programs to assist at-risk youth, including those already involved in the juvenile justice system?**

Human Trafficking

5. Does the FBI have a policy regarding when a request for "continued presence" status should be made to DHS on behalf of an immigrant victim of human trafficking?
6. What type of training does the FBI provide to its agents and investigators about the availability of "continued presence" status for immigrant victims of human trafficking?

Questions for the Record from Senator Dianne Feinstein
For Attorney General Eric H. Holder, Jr.
Senate Committee on the Judiciary
January 29, 2014

Contraband Cell Phone Use in Prisons

In 2010, the Cell Phone Contraband Act, which I authored, went into effect. As you know, the Act classifies cell phones and other wireless devices as contraband material in federal prisons.

In September, 2011, the GAO published a report that concluded that the Bureau of Prisons (BOP) lacked a “sound evaluation plan” to determine which cell phone detection technologies to test and, ultimately, to purchase and implement.

In response to my inquiry, then-Director Thomas R. Kane wrote, on October 26, 2011, that BOP had “developed an evaluation plan that supports a consistent approach to testing cell phone detection technologies and strengthens decision making about deploying cell phone detection projects.”

More recently, on December 16, 2013, my staff received information from your staff via e-mail that “BOP has implemented increasingly stringent cell, inmate, staff, and visitor search procedures that have resulted in successfully finding and removing an increasing number of contraband cell phones.” That e-mail also stated that “BOP aggressively evaluates and tests varied technologies” and that “BOP is piloting several state of the art security technology solutions in the field to address this significant issue.”

I am pleased that BOP is taking actions to address contraband cell phone use in federal prisons and would like to better understand those actions. To that end, I ask that you respond to the following questions and requests for information:

- **How many contraband cell phones have you confiscated in BOP facilities in each of 2011, 2012, and 2013?**

- **How many cases of illicit cell phone use by inmates in BOP facilities have you referred for prosecution in each of 2011, 2012, and 2013?**

- **Please share the evaluation plan that you have designed for testing cell phone detection technologies that you referenced in your October 26, 2011 letter.**
- **Please describe the “increasingly stringent” search procedures that you reference in your staff’s December 16, 2013 e-mail to my staff.**
- **Which cell phone detection technologies are you testing and in which prisons are you testing these technologies?**
- **What are the results to date of the projects you are piloting? How many cell phones have you detected through these pilot projects?**
- **What is the cost of implementing, in a single BOP facility, the cell phone detection technology you are testing?**
- **What is the cost of the pilot projects you are currently undertaking to test cell phone detection technologies?**

ATF Special Agent Attrition

I am very concerned about the number of special agents that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) expects to lose in the near future due to retirements. I understand that, by the end of fiscal year 2017, 35% of ATF’s special agent population will be eligible for retirement. This is on top of the 130 special agents that ATF has lost to retirement over the last two years.

- **How will the loss of special agents affect ATF’s ability to conduct criminal investigations, train new agents, and carry out the Bureau’s work?**
- **What steps is ATF taking to address this attrition?**
- **How can Congress help ATF address this attrition?**

Gun Dealers' Compliance with Federal Law

A report issued last April by the Department of Justice's Inspector General found that only 62% of the gun dealers ATF inspected in 2011 were compliant with federal gun laws.

- **In what ways do non-compliant gun dealers contravene federal law?**
- **What steps is ATF taking to improve dealers' compliance with federal law?**
- **Has dealers' compliance improved since the Inspector General's report was released?**

Afghanistan Drug Trade

On January 15th, Senator Grassley and I held a hearing in the Senate Caucus on International Narcotics Control on *Future U.S. Counternarcotics Efforts in Afghanistan*.

Unfortunately, there is little good news coming out of Afghanistan when it comes to counternarcotics. According to the United Nations, poppy cultivation in Afghanistan was up 36% in 2013, reaching a record level of 209,000 hectares. In addition, the Taliban received about \$155 million in 2009 from the Afghan drug trade.

While this is all troubling, Drug Enforcement Administration-supported vetted units operating in the country continue to do outstanding work in targeting Afghan drug kingpins, such as Haji Bagcho, who was sentenced to life in prison in the United States in 2012 for using drug proceeds to finance the Taliban.

- **As the U.S. troop drawdown in Afghanistan continues, can you assure me that DEA will continue to provide support to our vetted units in the country?**

Synthetic Drugs Legislation

On September 25th, Senator Grassley and I held a hearing in the Senate Caucus on International Narcotics Control to examine the continued threat posed by synthetic drugs, particularly as drug traffickers slightly alter the chemical structure of these drugs to circumvent the law.

U.S. Attorney Tim Heaphy explained the challenges that exist for federal prosecutors and defense attorneys in arguing whether a synthetic drug meets the scientific definition of a “controlled substance analogue.” As I see it, the entire success – or failure – of your case rests on the ability of your scientific experts to persuade a jury on what is, in fact, a very technical matter of law.

I introduced the *Protecting Our Youth from Dangerous Synthetic Drugs Act* because I believe the decision about whether a synthetic drug is or is not a controlled substance analogue should be decided through an administrative process in the executive branch outside of the courts. An administrative list provides clarity and helps to stop drug traffickers who try to skirt the law.

- **Would the administrative list of controlled substance analogues created in my legislation be useful to the Department of Justice?**
- **What additional tools does the Department of Justice need to stop the sale of synthetic drugs to our nation’s youth?**

Unaccompanied Alien Children

A recent surge in widespread organized crime and violence in Central America has led to an unprecedented increase in the number of unaccompanied alien children (UAC) crossing the U.S.-Mexico border. I applaud the work done with the Legal Orientation Program for children in the Office of Refugee Resettlement’s custody who have pending immigration cases. However, considering the increased number of children being released from custody who still have pending immigration cases and thus still need guidance to navigate the legal system, more has to be done to ensure these children have Child Advocates and attorneys to represent them in immigration court. It is essential that they understand the full consequences of their legal proceedings.

Congress allocated \$315 million for the Executive Office for Immigration Review (EOIR) and the Office of the Pardon Attorney in the 2014 Consolidated Appropriations Act (Public Law 113-76), instructing DOJ to “better serve

vulnerable populations such as children,” and “improve court efficiency through pilot efforts aimed at improving legal representation.”

- **Have you considered developing dockets in immigration courts dedicated to children, so that non-profit organizations and pro bono attorneys can better coordinate legal representation and child advocates for children? If so, what steps have you taken thus far?**
- **Will the DOJ take steps to allocate funds to provide legal representation for unaccompanied children?**
- **Will the DOJ commit to looking at how to expand access to legal counsel for immigrant children?**

TVPRA Regulations

Ensuring that U.S. enforcement procedures provide fair and decent treatment to immigrants, particularly children, is a priority for me. In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). I worked on the 2008 and 2013 TVPRA reauthorization bills to ensure that children who arrive in the United States without a parent or guardian are detained in the least-restrictive setting possible in accordance with the best interest of the children, and not in prison-like facilities.

The 2008 law specifically required the Departments of Justice, Homeland Security and Health and Human Services to issue regulations that take into account the special needs of unaccompanied alien children while in deportation proceedings. During an oversight hearing in 2011, I asked you about the status of these regulations and why they have not yet been issued. I understand that the Department has worked to develop these regulations.

- **Why haven't these regulations yet been implemented since the 2008 bill was signed into law?**
- **When will these regulations be completed and published for comment?**

Immigration Court Backlogs

The Immigration Court backlog is up 85% from five years ago, climbing to approximately 350,000 cases. The average wait time for cases pending with the Executive Office for Immigration Review (EOIR) is up to 562 days. California has the second longest wait in the country, with an average wait time of 686 days. My state also has the largest pending immigration court backlog, with 77,246 cases.

- **Considering due process concerns and the goal of an efficient and fair court process, what steps have been taken, or can be taken, to reduce this backlog in the EOIR?**
- **With an increase of about \$11 million that it received in the 2014 Consolidated Appropriations Act (Public Law 113-76), does the Department of Justice have plans to hire more immigration judges for EOIR?**

Hate Crimes Against Sikhs and Other Groups

In August 2013, the Department of Justice announced that it would begin tracking hate crimes against Sikhs, Hindus, Arabs, and several other groups. I, along with Senator Durbin, had led the push for this much-needed reporting. For example, according to a recent survey of 1,370 Sikhs living in the California Bay Area, 10% reported being the victim of a hate crime. Sixty-eight percent of those crimes were in the form of physical attacks.

- **I understand that the FBI is revising its Hate Crime Incident Report form to allow federal, state, and local jurisdictions to indicate when a crime under investigation is suspected of being a hate crime committed against Sikhs or one of the other groups against which the FBI will now track hate crimes. Could you update me on the status of the FBI's revision to this form?**
- **When will law enforcement be able to record hate crimes against Sikhs and the other groups added by the Department's policy change?**
- **When will the FBI's Uniform Crime Reports begin providing yearly figures on the number of hate crimes committed against Sikhs and the other groups added by the Department's policy change?**

Questions for the Record
“Oversight of the U.S. Department of Justice”
January 29, 2014
Senator Sheldon Whitehouse

The Honorable Eric H. Holder, Jr.:

As you know, many of us are working toward comprehensive legislation to confront the impact of prison spending on other law enforcement priorities. Separately, there are measures that the Department of Justice and the President can take on their own to rein in prison spending. The Department has made a good start with its “Smart on Crime” initiative, which focuses drug prosecution efforts on high-level criminals, and its efforts to identify low-level nonviolent drug offenders serving unnecessarily long sentences who should be considered for clemency.

- What additional steps is the Department prepared to take to reduce the inmate population and lower prison costs while maintaining public safety?
- What, if anything, limits the President’s authority to reduce the federal inmate population under his clemency powers?

QFRs from Senator Coons to Attorney General Holder

1. Under the Presidential Policy Directive announced January 17, 2014 (Signals Intelligence Activities), you will work toward developing new options for a Section 215 program.
 - a. The Directive states that “privacy and civil liberties shall be integral considerations.” How will you measure whether a new program under Section 215 respects civil liberties to a greater extent than the current 215 program?
 - b. Is it the Department’s position that Section 215 can be used for suspicion-less, bulk collection of other metadata beyond phone records, including location information, financial records or internet records?
2. The President’s Review Group on Intelligence and Communications Technologies, in its Report dated December 12, 2013, recommends increased transparency of Foreign Intelligence Surveillance Court decisions, including declassification reviews that comply with existing standards. Do you support that recommendation, and if so, when should we expect to see more disclosure of FISC opinions?

Senate Committee on the Judiciary
“Oversight of the Department of Justice”

January 29, 2014

Questions for the Record from Ranking Member Charles E. Grassley

Eric H. Holder, Jr.

1. DOJ’s Use of Drones

Last September, the Department of Justice’s Inspector General released a report on the Department’s use of drones. According to the report, officials with both the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) said that there was no need to develop specialized privacy controls to guide the Department’s use of drones. But the Inspector General recommended otherwise, noting that the use of drones raises unique concerns about privacy and the collection of evidence.

- a. Do you agree that special privacy controls for drones are not necessary? Why or why not?
- b. If you think these controls are necessary, have you taken any steps to implement the IG’s recommendation?

2. Marijuana Enforcement Policy

The Department’s policies are facilitating the growth of large-scale, recreational marijuana industries in Colorado and Washington, states which have an uneven record of state regulation and enforcement in this area. Therefore, it’s important for the Department to measure how its stated federal priorities, such as preventing the diversion of marijuana to states like Iowa, are being harmed as a result, so as to determine whether to revisit its decision not to challenge these laws.

- a. How will the Department measure the impact of its limited enforcement policy on these federal priorities?
- b. In the interest of transparency, will you inform the public of any metrics you adopt?

3. ATF’s “Churning Authority”

In 2004, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) was granted the authority to use proceeds generated from undercover operations to offset expenses related to the operations, known as “churning authority.” However, last September, the Department of Justice’s Inspector General released a report on its use of this authority and found serious problems. According to the report, auditors were unable to account for \$127 million worth of cigarettes that its agents purchased for use in an undercover investigation.

- a. Has ATF implemented the recommendations in the IG Report intended to address these problems?
- b. Has the Department taken any other steps to ensure careful oversight of its use of this authority?
- c. Have the \$127 million worth of cigarettes been located?

4. NSA Reform

In directing you and the intelligence community to develop new approaches to holding the telephone metadata collected by the National Security Agency (NSA) by March 28, the President has given you a difficult task.

- a. Can you give me a sense of the process through which you are working with the intelligence community to address this issue?
- b. Given that last week, the Privacy and Civil Liberties Oversight Board dismissed this approach as both unworkable and undesirable, do you think March 28 is a realistic deadline?

5. USIS Investigation - Fraudulent Background Checks

I was alarmed to hear allegations that USIS, a private company that conducts nearly half of all the background checks completed for the U.S. government, was taking shortcuts in order to increase its profits. According to a complaint filed by the Department last week, USIS failed to properly conduct approximately six hundred and sixty five thousand (665,000) background checks assigned to it since 2008. That is a staggering number.

- a. How could such a massive fraud that jeopardizes our national security be perpetrated on this Administration without it being detected long before now?

6. Failure to Prosecute High-Level Bank Executives

In 2013, you agreed with my concerns before this committee about some banks being simply too large to prosecute. One year later, the Department still has not brought charges against a single top employee of a large bank. You recently described JPMorgan as a company that “helped sow the seeds of the mortgage meltdown.” So far, the Justice Department’s multiple investigations of JPMorgan resulted in settlements that cost the company just one years’ worth of profits. The statutes of limitations on crimes related to the financial crisis are starting to expire.

- a. If the Department of Justice does not bring prosecutions related to the financial crisis against high level bankers, has it failed in its basic duty to hold individuals responsible for actions that cost millions their jobs and homes?

7. DOJ Grant Reform

In January 28, 2014, the Department's Inspector General testified that over the last five fiscal years, the OIG issued more than 200 grant-related audit reports containing about 1,000 recommendations, but that the corrective actions have not been completed with respect to about 360 of these recommendations. Moreover, the Inspector General recommended that the Department address the problem of duplication and coordination of effort among its three grant-making components, and its poor ability to evaluate the effectiveness of grants it awards.

- a. Please describe the status of these 360 recommendations that have yet to be implemented, and the steps the Department is taking to address these two other identified problems.

8. Foreign Corrupt Practices Act

- a. What are the Department's current enforcement priorities under the Foreign Corrupt Practices Act? What particular industries, markets or practices is the Department focusing on, and why? What proportion of the Department's enforcement activity during 2013 involved non-U.S. companies?
- b. Has the Department seen a recent increase in whistleblower claims of FCPA violations? If so, to what would you attribute that? How has the Department responded?
- c. Although the Department does not publicize each particular instance in which it declines prosecution despite evidence of an FCPA violation, what characterized the Department's declinations during 2013? Did the number increase from 2012? What factors were most important in leading the Department to decline prosecution?
- d. In November 2012, the Department and the SEC issued the FCPA "Resource Guide," which reflected guidance from your agencies regarding the interpretation and enforcement of the FCPA. Does the Department anticipate updating, supplementing or amending the "Resource Guide" in the foreseeable future?
- e. In 2013, the Department issued only one Opinion Release concerning the FCPA. Does the Department consider the "Resource Guide" a substitute for its opinion release program?

9. FBI Whistleblowers and Presidential Policy Directive 19

It has now been over 15 months since the issuance of Presidential Policy Directive 19. In that directive, the President mandated that the Attorney General deliver a report to him within 180 days to assess the efficacy of the Department regulations that provide whistleblower protection for Federal Bureau of Investigation (FBI) employees. This report was due by April 8, 2013. However, to date, there has been no public announcement that the review has been completed. The report appears to be nearly ten months overdue.

- a. What is the current status of your review?
- b. Why have you failed to issue a report by the deadline mandated by the President?
- c. When will the report be complete?
- d. When the report is complete, do you intend to provide it to the Judiciary Committee? Why or why not?

10. Anti-Kickback Statute and the Patient Protection and Affordable Care Act

On October 30, 2013, Secretary Kathleen Sebelius sent a letter to Representative Jim McDermott regarding whether qualified health plans (QHPs) are considered federal health care programs under § 1128B of the Social Security Act. Secretary Sebelius's letter stated that the Department of Health and Human Services (HHS) decided in consultation with the Justice Department that QHPs, other programs related to the federally-facilitated and subsidized marketplace, and other programs under Title I of the Patient Protection and Affordable Care Act (PPACA) will not be considered "federal health care programs."

The PPACA provides for billions of dollars in subsidies to be paid directly to insurance companies. However, the anti-fraud provisions of the Social Security Act which provide criminal penalties for false claims and kickbacks would not apply to these subsidies if the Administration exempts them from the definition of "federal health care programs." Further, such an interpretation defeats Congress's explicit intent to *tighten* the anti-kickback laws, evidenced by a provision in the PPACA that made violation of the anti-kickback statute a *per se* violation of the False Claims Act.

On November 7, 2013, I wrote you and Secretary Sebelius for information to understand the Administration's decision. To date, you have not responded.

- a. When will you provide a response to my letter about the anti-kickback laws and the PPACA?
- b. What advice did the Department give to HHS about qualified health plans and whether they are federal health care programs? Please provide an explanation of DOJ's reasoning.
- c. Was the Department's advice to HHS made in writing? If so, please provide a copy of the advice in the form it was provided (whether by e-mail or memo).
- d. Who at the Department made the final decision regarding its decision in this matter, and did you sign off on the advice before it went to HHS?
- e. In light of the Administration's decision, how does the Department plan to prevent false claims and kickbacks within QHPs?

11. ATF Storefronts

Almost one year ago, I submitted to you, a number of questions about a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) undercover storefront operation in Milwaukee, Wisconsin known as Operation Fearless. The operation was rife with blunders, including theft of an assault rifle and two handguns from the primary undercover agent's government vehicle, the burglary of the undercover storefront, and the recruitment by ATF agents of an allegedly brain-damaged man to coordinate gun deals. ATF provided a briefing on the matter and the Department provided a written response to a separate set of questions relayed in a letter. The information I received from ATF and the Department conveyed the impression that the problems plaguing Operation Fearless were isolated to Milwaukee. While it appears that the majority of cases listed in a recent media report happened contemporaneously with Operation Fearless, it troubles me that during our oversight into Operation Fearless, ATF and the Department did not bring any of these other operations to our attention.

According to this media report, around the approximate time of Operation Fearless, there were at least five other problematic storefront undercover operations being conducted in Portland, Oregon; Wichita, Kansas; Albuquerque, New Mexico; Atlanta, Georgia; and Pensacola, Florida. In all of these cases, ATF apparently wasted taxpayer dollars on purchases and exercised poor judgment in management.

In Milwaukee, in addition to the stolen weapons and burglarized storefront, ATF agents paid \$1,250 for a gun that usually sells for \$400 to \$700 and \$2,000 for a rifle that a suspect purchased hours before at Gander Mountain, a firearms retailer, for \$700.

In Portland, ATF management approved putting an undercover storefront right across the street from a local middle school while agents encouraged individuals to get tattoos of the store's logo.

In Phoenix, federal prosecutors charged James Arthur Lewis with selling eleven firearms to undercover agents and officers. The investigation found that Lewis obtained most of the firearms through residential burglaries during the operation of the storefront.

In Pensacola, Roderick Jones committed seven burglaries in six weeks, stealing, among other things, generators, air compressors and oxygen tanks that he sold to undercover ATF agents.

In Wichita, Albuquerque, Pensacola, and Milwaukee, it appears that ATF agents actively recruited assistance from individuals who allegedly had a diminished mental capacity and then filed charges against these individuals at the conclusion of the respective cases. In Florida, a state prosecutor apparently declined to pursue cases against a number of such defendants.

- a. Are there any other undercover storefronts that have any of the issues listed above?
- b. When did each of these storefront operations begin and end?
- c. Why didn't the Department inform Congress of the problems with these storefront operations at the time it provided a letter about Operation Fearless?

- d. Please identify by name and position each individual involved in the authorization and supervision of each operation.
- e. When and how did ATF headquarters become aware of the problems with each of these five cases?
- f. When and how did you personally first become aware of each of these five undercover operations?
- g. How did ATF determine the placement of each undercover storefront?
- h. How did ATF determine the price to be paid for weapons or drugs bought in the undercover operation involving each operation?
- i. What were the sources of cash for each undercover operation? Please include the breakdown between (i) funds appropriated to ATF, (ii) any non-appropriated funds, such as project generated income (PGI), and (iii) interest income.
- j. What were the costs for each undercover operation? Please include the breakdown between (i) funds appropriated to ATF, (ii) any non-appropriated funds, such as project generated income (PGI), and (iii) interest income.
- k. How many arrests, indictments, convictions, and plea agreements did ATF garner through each undercover operation?
- l. Please describe any civil claims that may have been filed against ATF, DOJ, or employees of ATF in conjunction with any of these undercover operations and the status of those claims.
- m. Which of these operations, if any, were part of the Monitored Case Program?
- n. Will the Civil Rights Division be conducting any investigation into the conduct of any of the individuals involved with these operations?
- o. Which individuals, if any, from each of these operations are currently under disciplinary review or have been disciplined in connection with these operations? Please provide a detailed description of the status and results of any disciplinary proceedings.
- p. Was Bernard Zapor, the Special Agent in Charge (SAC) of Milwaukee during Operation Fearless, disciplined as a result of ATF's internal investigation into Operation Fearless? If so, please explain the reasons for which Mr. Zapor was disciplined and the details of any discipline imposed.
- q. After his time as the SAC of Milwaukee, Mr. Zapor served from the fall of 2012 until the summer of 2013 as Deputy Assistant Director for Field Operations (Central).

Was his reassignment as the SAC of the Phoenix Field Division, allegedly where he owns a home, a disciplinary action for his role in Operation Fearless? If so, was Phoenix the best field division to transfer Mr. Zapor to, given the problems that have arisen in the past several years from ineffective management in the Phoenix Field Division and the similarities between Operation Fast and Furious and Operation Fearless, which both suffered from insufficient supervision from field division leadership?

- r. Why does ATF frequently blunt disciplinary actions by transferring disciplined individuals to their location of choice, such as William Newell being reassigned to his hometown of Salt Lake City, Utah until his retirement?
- s. How many storefront operations has ATF conducted each year from 2009 to 2013? Please break the numbers down by year.
- t. How many arrests, indictments, convictions, and plea agreements have those operations from 2009 to 2013 generated? Please break the numbers down by year.
- u. How many of the operations from 2009 to 2013 have suffered burglaries of either the location of the store or government vehicles associated with the operation? Please list the dollar amount of items stolen from each store.
- v. How many storefront operations were ongoing at the time of B. Todd Jones' appointment as Acting Director?
- w. How many storefront operations has ATF initiated since B. Todd Jones was named Acting Director?
- x. Please provide the Committee with complete, unredacted copies of all reports prepared by the Office of Professional Responsibility and Security Operations pertaining to any storefront operation conducted at any time between January 2009 and present.
- y. Please provide the Committee with all ATF Operational Plans (including ATF Form 3210.7) for the above operations, including Operation Fearless in Milwaukee.
- z. Please provide the Committee with all reports of investigation (ROIs) for the above operations, including Operation Fearless in Milwaukee.
- aa. Please provide the Committee with the new ATF policy for undercover storefront operations.

12. Accountability for Operation Fast and Furious

Over two years ago, you sat before this Committee at a similar oversight hearing of the Justice Department and said of Operation Fast and Furious:

We have an inspector general report that will look into this matter. And I think that we will glean from that report a better sense of what people did, who should be held accountable. . . . I will certainly await the report that comes out of the inspector general and I will assure you and the American people that people will be held accountable for any mistakes that were made in connection with Fast and Furious.

It has now been nearly a year and a half since the Inspector General first issued a draft copy of its report to you in mid-August 2012. That report criticized several Department employees, including in the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Attorney's Office for the District of Arizona, and Main Justice. However, there has been no public announcement of any discipline imposed whatsoever in connection with Operation Fast and Furious.

- a. Do you believe you have accomplished what you assured this Committee and the American people, namely, that people would be held accountable for any mistakes that were made in connection with Fast and Furious? If so, how have you done so?
- b. Has *anyone* in the Department or in ATF been fired, demoted, or otherwise disciplined as a result of the Inspector General's findings or their involvement in Operation Fast and Furious? If so, please describe each disciplinary action in detail? If none, why not?
- c. What disciplinary measures, if any, were imposed on ATF Special Agent Hope MacAllister, the case agent on Operation Fast and Furious?
- d. What disciplinary measures, if any, were imposed on David Voth, the ATF Group Supervisor who oversaw Operation Fast and Furious?
- e. Were any disciplinary measures proposed for James Needles, who served as an Assistant Special Agent in Charge over Voth and MacAllister for part of Fast and Furious?
- f. Prior to his retirement, what disciplinary measures were proposed for George Gillett, who served as an Assistant Special Agent in Charge over Voth and MacAllister for the bulk of Fast and Furious?
- g. Prior to his retirement in June 2013, what disciplinary measures were proposed for William Newell, the Special Agent in Charge over Fast and Furious?

13. Recovery of Fast and Furious Guns in Connection with Violent Crimes

After your appearance before the Committee in May 2011, I asked you about recoveries of guns from Operation Fast and Furious in connection with violent crimes. I received several updates from the Department on these numbers, the most recent being June 7, 2012. However, since that time, I have written the Department on October 2, 2012 and July 12, 2013 for updates, and have received no response. Based on news reports, it appears that the number of Fast and Furious guns recovered in connection with violent crimes has risen in the past two years.

- a. In addition to the two guns recovered at the Terry murder scene, how many of the guns connected to Operation Fast and Furious that have been recovered were recovered in connection with violent crimes in the U.S.? Please describe the date and circumstances of each such recovery in detail.
- b. How many of the guns connected to Operation Fast and Furious that have been recovered were recovered in connection with violent crimes in Mexico? Please describe the date and circumstances of each such recovery in detail.

14. Ibragim Todashev

On May 22, 2013, Ibragim Todashev was allegedly shot and killed in his Florida residence by a Boston Federal Bureau of Investigation (FBI) agent conducting an interview regarding his connection to the Boston Marathon Bombing and an unsolved triple homicide in Waltham, Massachusetts. The FBI initiated a shooting review which, according to media reports, is presently in the possession of the Department. Further, according to a statement from Department spokeswoman Dena Iverson in May to the Huffington Post, the Civil Rights Division was monitoring the FBI Inspection Division's inquiry into this matter while it progresses, coordinating with the FBI and reviewing evidence as it was obtained.

- a. Have you seen or been briefed on the report?
- b. Will you share the results of the report with the Committee? If not, why not?
- c. How long do you anticipate the Department's review to take?
- d. When will the report be released to the public? If not, why not?
- e. Will the Civil Rights Division be conducting its own investigation based upon the information and evidence it gathered in conjunction with the FBI?
- f. Why has it taken eight months for this review to be conducted?

15. Boston Marathon

On May 10, 2013, the Federal Bureau of Investigation (FBI) provided Senate staff members a comprehensive TS/SCI briefing on the Boston Marathon bombing. During the course of the briefing, several unclassified questions were asked. A member of my staff asked one series of unclassified questions. However, the FBI provided no substantive answers, citing a need to gather more information and provide complete answers at a later date. Since my staff received no further response to the inquiries, I submitted them as Questions for the Record following the Committee's July 31, 2013, oversight hearing on the Foreign Intelligence Surveillance Act. Once again, the FBI did not answer the question presented to them. On October 15, 2013, I asked the questions an additional time in a letter to Director Comey. The FBI responded to the letter on December 6, 2013, but *again* failed to answer the *specific* questions presented to them.

- a. At what time and date were the images of Dzhokhar Tsarnaev and/or Tamerlan Tsarnaev discovered on video or photograph for the first time as being at least one or both of the individuals *reasonably believed* to be involved in the bombing?
- b. Who made that determination?
- c. For what agency did the individual who made the determination work?

16. Transparency in Executive Travel

In my Questions for the Record from last year's March 6, 2013 hearing, I asked you about a report from the Government Accountability Office (GAO) which found that from 2007 through 2011, you took 366 flights for non-mission purposes aboard Department aircraft at a cost of \$5.8 million. Examples of non-mission travel include official travel to give speeches, attend conferences or meetings, or make routine site visits. I understand that you are required by the President to take all travel, including personal travel, on Department aircraft. However, I asked whether you shouldn't try to limit your travel as much as possible, given that it costs the taxpayer so much money. I also asked about the disclosure requirements for personal travel, and whether you supported a requirement to regularly disclose how much is spent for personal travel on government aircraft.

This month, GAO submitted a draft report to the General Services Administration (GSA) recommending that it clarify its reporting exemption and collect additional data on executives' use of aircraft for non-mission purposes. Office of Management and Budget Circular A-126 sets forth executive branch policy with respect to the management and use of government aviation assets, and directs that agencies that use government aircraft should report semiannually to GSA each use of such aircraft for non-mission travel by senior federal officials, members of the families of such officials, and any non-federal travelers, with certain exceptions. The Federal Travel Regulation (FTR), issued by GSA, does exempt classified trips from reporting requirements. The GSA also issues the Federal Management Regulation (FMR). In 2002, GSA added to the FMR an exemption from the reporting requirement for intelligence agencies. Citing this change, the Federal Bureau of Investigation (FBI) stopped reporting to GSA flights taken by senior federal officials aboard its aircraft. As a result, the data referenced above on your 366

non-mission flights, as well as data on 29 other unclassified non-mission flights by the FBI Director and other Department executives, was not reported to GSA, and had to be obtained by GAO from other sources.

- a. Why should the FBI be exempt from GSA reporting requirements for non-mission executive flights?
- b. Since non-mission flights—travel to give speeches, attend conferences, etc.—are by definition not related to national security or intelligence work, why should the data not be reported to GSA?
- c. Will you direct the FBI to resume reporting such data? If not, why not?

17. OIG Audits and Reviews

The standard practice of the Department's Office of Inspector General is to give the Department an opportunity to comment on audits and reviews before incorporating the comments and making the final product public.

- a. How many audits or reviews are currently pending for comment by the Department or its components to the OIG for more than 30 days?
- b. Please describe each audit or review on which the OIG sought comments more than 30 days ago and list the number of days that have elapsed since the OIG sought comment.

18. Previous Questions For The Record

Please incorporate by reference and answer all 37 Questions for the Record from the March 6, 2013 hearing, for which have not yet received responses.

QUESTIONS SUBMITTED TO HON. ERIC H. HOLDER, JR., BY SENATOR HATCH

Question to Attorney General Eric Holder:

Throughout my service in the U.S. Senate, I have long fought for the principle that America's music artists should be compensated fairly for their creativity.

For years, performance rights organizations such as the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) have played an important role in helping ensure that our nation's songwriters receive compensation for their work.

Over 70 years ago ASCAP and the Department of Justice entered into a consent decree as part of an antitrust case. Obviously, the decree was instituted long before the technological advances in today's music transmission methods.

I understand that that the DOJ Antitrust Division is currently undergoing a review of the ASCAP consent decree. Could you give me a sense of the timing and the Department's intent with this review?

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Questions for the Record

DOJ Oversight Hearing (Attorney General Holder)

Senator Mike Lee

January 29, 2014

1. As I expressed at the hearing, I share Ranking Member Grassley's concern with respect to the President's use of executive orders, and I believe it is very important that the Department of Justice analyze the constitutionality of executive orders and make available that analysis to Congress and to the public.
 - a. Will you make available to the Committee any analysis the Department, and in particular the Office of Legal Counsel, has conducted with respect to any executive order this administration has issued?
 - i. If not, why not?
 - ii. Will you also make available this analysis to the public?
 1. If not, why not?
 - iii. If the Department has not conducted analysis on executive orders issued by this administration, will you commit to doing so for past executive orders issued by the administration?
 - b. Will you commit to make available to the Committee (at the time such analysis is conducted or shortly thereafter) any analysis the Department conducts with respect to any executive order this administration may issue at a future date?
 - i. If not, why not?
 - ii. Will you also make available that analysis to the public?
 1. If not, why not?

QUESTIONS SUBMITTED TO HON. ERIC H. HOLDER, JR., BY SENATOR FLAKE

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Oversight of the Department of Justice
February 5, 2014

1. The Federal government is often plagued by red tape and duplicitous programs and the Department of Justice is not immune from these problems. Recent Office of Inspector General (OIG) and Government Accountability Office reports have found that improvements could be realized by reducing duplication and improving coordination among the Department's three grant-making components: the Office of Community Oriented Policing Services, the Office on Violence Against Women, and Office of Justice Programs. What plans do you have in place to mitigate the risk of unnecessary duplication in the Department's grant-making components?
2. In your written testimony, you highlighted the fact that, "During the fiscal year ending in 2013, the Justice Department collected more than \$8 billion in civil and criminal fines and penalties . . . And during FY2012 and FY2013, the Department collected more than \$21 billion – a record amount for a two-year span." However, an OIG report noted that even though \$13.2 billion was collected in criminal and civil actions in FY 2012, an additional \$23 billion was owed to the United States, including \$18 billion in criminal fines and \$5 billion in civil debts. The OIG report states that the U.S. Attorney's Office efforts to collect criminal and civil debts are the subject of an ongoing OIG review.
 - a. Without commenting on the ongoing investigation, what efforts are you making to collect the criminal fines and civil debts that are owed to the United States?
3. In addition to the unilateral executive actions taken by the administration with regard to the Affordable Care Act, it also implemented the Deferred Action for Childhood Arrivals (DACA) program in June of 2012. Since its implementation, interior removals of undocumented immigrants have steadily declined. Has this program affected the number of interior removals? If so, how?
 - a. If not, why have the numbers declined?
4. In March of 2013, it was revealed that ICE had released more than 2,000 illegal immigrants, 622 of which had criminal records and 32 had multiple felony convictions. At the time, I sent a letter to DHS Secretary Napolitano requesting information about the effects of the release on Arizona. What steps have you taken to ensure criminal aliens are prosecuted and not released into our communities?
5. After reviewing the Treasury Inspector General for Tax Administration's report on the Internal Revenue Services' inappropriate targeting of conservative groups applying for tax-exempt status, President Obama called the report's findings "intolerable and inexcusable." President Obama also said that the "IRS must apply the law in a fair and impartial way." However, the IRS has now proposed new regulations for 501(c)(4) organizations that appear to continue the targeting of conservative groups because these

regulations single out 501(c)(4) organizations from among other types of tax-exempt organizations thereby threatening free speech and civic participation.

- a. Has anyone at the Department of Justice reviewed the constitutionality of these proposed regulations? If so, who and what was their analysis?
 - b. Do you believe these newly proposed regulations are constitutional?
 - c. Specifically, in light of the Supreme Court's *Citizen United* decision, do you believe that these proposed regulations are consistent with the First Amendment?
6. The Department of Justice is responsible for ensuring the integrity of the bankruptcy system in most areas of the country. Recently, a federal judge overseeing an asbestos-related bankruptcy found "a pattern of misrepresentation" by plaintiffs' attorneys and noted an "effort by some plaintiffs and their lawyers to withhold evidence" from a debtor and from the bankruptcy system. The judge expressed concern that "more extensive discovery would show more extensive abuse." This case is not an isolated example. As explained by a *New York Times* columnist in December 2013, "over the years, plaintiffs' lawyers have brought tens of thousands of bogus cases."
- a. What steps is the Department taking to ensure that asbestos bankruptcy trusts are not depleted through fraud to the detriment of trust beneficiaries, many of whom have life threatening asbestos-related illnesses?
 - b. Will the Department insist that future trusts cooperate with state courts and litigants seeking to determine whether certain plaintiffs' law firms are misusing the bankruptcy trusts?
7. As you know, last year Congress enacted a law that would, in limited situations, extend the jurisdiction of tribal courts over non-Indian defendants. To what extent do you believe the full panoply of Bill of Rights protections would apply to a non-Indian defendant when being tried pursuant to the criminal jurisdiction of a tribal court?

The American Legion



OFFICE OF THE
NATIONAL COMMANDER

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 263-2986 ★

January 8, 2013

Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

Dear Chairman and Ranking Member:

On behalf of the 2.4 million members of The American Legion, I would like to express support for the *Justice and Mental Health Collaboration Act* introduced by Senator Al Franken and Representative Richard Nugent. This legislation is important for veterans especially regarding the intersections between the criminal justice system and the mental health fields.

As America has seen our veterans return home from combat overseas, sadly we have also witnessed some of our veterans who self-medicate with drugs and alcohol as a way to cope with mental health issues such as Posttraumatic Stress Disorder (PTSD) and/or Traumatic Brain Injury (TBI) – the “signature wounds” of our modern wars. The 2004 Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) supported collaborative approaches to address the needs of individuals with mental health conditions in the criminal justice system.

The *Justice and Mental Health Collaboration Act* reauthorizes and improves the critical programs in MIOTCRA. As an organization in every town in America, large and small, The American Legion has seen firsthand the positive impact that veterans courts supported by MIOTCRA can have for veterans who are at risk.

The American Legion’s Resolution 119, passed at our National Convention in August 2012 in Indianapolis, Indiana recognizes how important it is to get the veterans the help they need to prevent recidivism, and help reintegrate these veterans who have sacrificed so much, back into the communities they served to defend.

The American Legion supports enacting the *Justice and Mental Health Collaboration Act*, and applauds your leadership in addressing this critical issue facing our nation’s veterans and their families.

Sincerely,

JAMES E. 'JIM' KOUTZ
National Commander

The American Legion



OFFICE OF THE
NATIONAL COMMANDER

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 263-2986 ★

January 8, 2013

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman and Ranking Member:

On behalf of the 2.4 million members of The American Legion, I would like to express support for the *Justice and Mental Health Collaboration Act* introduced by Senator Al Franken and Representative Richard Nugent. This legislation is important for veterans especially regarding the intersections between the criminal justice system and the mental health fields.

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Sincerely,


JAMES E. 'JIM' KOUTZ
National Commander

02 April 2013



SERVING WITH PRIDE



AMVETS NATIONAL HEADQUARTERS 4047 Forbes Boulevard Lanham, Maryland 20706-4380 TELEPHONE: 301-450-9690 FAX: 301-450-7924 EMAIL: amvets@amvets.org

The Honorable Senator Al Franken 309 Hart Senate Office Building Washington, D.C. 20510

Dear Senator Franken:

On behalf of AMVETS (American Veterans), a leader since 1944 in preserving the freedoms secured by America's armed forces and providing support for Veterans, Active Duty military, the National Guard/Reserves and their families, we heartily support S 162/HR 401, the Justice and Mental Health Collaboration Acts of 2013. This bipartisan legislation is vitally important to justice-involved veterans because it:

- 1. authorizes services for veterans who are arrested, including Veteran Treatment Courts;
2. continues support for crisis intervention training for police officers;
3. recognizes intervention programs and risk assessment tools that reduce recidivism; and
4. authorizes funding for corrections-based programs, including transitional and re-entry programs.

It is a sad fact that individuals with diagnosed or undiagnosed mental health conditions are considerably overrepresented in our criminal justice system. Unfortunately, some of these same individuals are veterans who have honorably served their country, but due to additional factors such as unemployment, homelessness, substance abuse, financial distress, etc., have run afoul of the law. These individuals are generally not hardened criminals; they are often nothing more than distressed veterans who have fallen through the cracks of the system. Does it seem fair that our most vulnerable veterans, those suffering from untreated mental health issues, should be jailed and criminalized, rather than supervised and treated?

Should a fragile veteran, possibly suffering from untreated mental health conditions, who becomes inadvertently involved in the criminal justice system, be remanded to an inadequate penal institution with little to no hope of treatment or should they be afforded a second chance in recognition of their service to our country?

Thanks to the Justice and Mental Health Collaboration Acts of 2013 our at-risk veterans will get the second chance they have earned through their service and which they so rightly deserve.

Sincerely,

Handwritten signature of Adam M. Zumatto

National Legislative Director AMVETS 301-683-4016/dzumatto@amvets.org

EXPANSION OF TREATMENT COURT SOUGHT FOR OUTSTATE MINN. VETS

Jessica Mador; Minnesota Public Radio; August 13, 2012

Two years after Hennepin County launched a Veterans Treatment Court, more than 100 veterans have avoided jail time and gotten the help they needed. The Minneapolis court has become a model -- and now, advocates say something like it is needed outside the metro area to help veterans there.

Marine combat veteran Seth Kroll is one of the veterans helped by the court. Relaxing on a folding chair outside his apartment building in Willmar recently, he reflected on his long journey back to civilian life. . . . [Discussion of case particulars omitted.]

So even though his case was accepted into veterans court, he couldn't take advantage of it. Court officials felt the long distance to and from court would make it impossible for him to participate. So Kroll's probation was transferred to the Willmar area, where he is completing his sentence. He can't help but think he might have gotten better sooner if there had been a veterans court in the Willmar area when he first started having trouble.

"If there would've been something in place where they would've said OK, we are going to go through this with you," he said. "These are the steps we want you to take. We want you to seek help at the VA and we'll monitor you and make sure you do these things because we believe it'll help you in the future so you don't make these mistakes again."

Kroll's situation is all too common for the more than 188,000 veterans who live in outstate Minnesota.

At a recent event for homeless veterans at Fort Snelling, 1st Judicial District Judge Kathryn Messerich said veterans in rural areas easily fall through the cracks. And many of them have lost their driver's licenses after getting DUIs. . . .

Messerich would like to have a formalized veterans court in her southeastern Minnesota district, which covers seven counties. But until there's money for it, she uses techniques from the Hennepin County veterans court to try and help the veterans she deals with.

She starts by asking if defendants have been in the military. That way, she can begin connecting them with services to try and address any underlying issues that may be contributing to their criminal behavior.

She's not alone. Judges from around the state make regular visits to observe veterans court and share tips.

Hennepin County Judge Charles Porter says in his court, the only one of its kind in the state, veterans get the chance at a reduced sentence or other resolution in exchange for agreeing to a strict treatment program. "We want them to see their probation officers weekly; we want them to be in whatever treatment program we pick for them and we make them go. If they've got chemical or alcohol issues we want them to do support groups of some sort, usually AA but also

others. We want them to see their treatment provider at the VA on a regular basis. We expect them to come to court sometimes weekly, sometimes monthly.” . . .

Nearly half the veterans accepted to the court are homeless or living in unstable housing. Most suffer from serious mental illness or chemical dependency. Many are Vietnam-era veterans who have cycled through the criminal justice system for decades with untreated problems.

The problem of veterans in the criminal justice system is national. At least 9 percent of U.S. jail and prison inmates are veterans, according to data from the U.S. Department of Justice, and this number is considered an undercount. A recent study by the RAND Corp. found that more than a third of Iraq and Afghanistan veterans suffer from traumatic brain injury or PTSD. Less than half have gotten treatment.

VETS COURT FOCUSES ON THOSE STRUGGLING AFTER THEIR SERVICE

Mark Brunswick; Star Tribune; November 20, 2011

Room 1659 in the Hennepin County Government Center looks like any other courtroom. But there is subtle evidence that it's not.

On a recent Monday afternoon, for example, a defendant facing two attempted theft charges stood in front of Judge Charles Porter with his hands firmly in the center of his back, his fingers extended and interlocked so his palms faced outward. Out of habit or deference, he was, in military parlance, standing stiffly at “parade rest.”

This is Hennepin County Veterans Court, a pilot project in Minnesota that focuses on the unique demands of veterans in the court system. . . .

When it began in July 2010, court officials expected to see about 50 cases the first year. But in the first 12 months, the court heard more than twice as many cases. Now Ramsey, Washington, and Anoka counties are considering similar programs.

“It’s up to us who’ve been there to help this new generation,” said John Baker, an attorney and retired Marine gunnery sergeant who led an initiative to start the program. “Ninety-nine percent of the folks put those yellow ribbons on their vehicles and that’s it. You peel back the yellow ribbon and what are they doing?”

Since the first veterans court was launched in Buffalo, N.Y., in January 2008, about 80 vet court programs have been created. In 2009, Texas became the first state to authorize the county veterans courts. Most recently, five other states have passed similar legislation.

One year into the Hennepin pilot program, 71 vets were actively participating in the court and two had graduated. The participants ranged in age from 20 to 64 years old. Of the 71 active participants, 90 percent had chemical abuse or chemical dependency issues.

The true test of success will come two or three years down the road, after participants have completed their programs. Statistics compiled by the National Association of Drug Court

Professionals show that 70 percent of defendants in specialty courts like the vets court finish their programs, and 75 percent do not re-offend for at least two years. . . .

A key component is that the courts are not a forum for determining guilt or innocence but an entry point for counseling and resources. Offenders can be charged with a misdemeanor, a gross misdemeanor or a felony, provided the charge doesn't involve a presumption of a prison sentence.

The court convenes Monday afternoons, but the real action happens 90 minutes beforehand in a conference room. There, a team meets to go over the day's planned docket. The Star Tribune was recently given access to witness the process with the understanding defendants not be named.

It's a holistic group that includes the expected representatives from the county attorney, public defender and probation. But there are also people from Veterans Affairs, Minnesota's Department of Employment and Economic Development and Hennepin County's Veterans Services office. . . .

On one recent Monday, one man on the day's docket has been charged three times with drunken driving. A representative from the VA pulls up his record on the laptop and notes to the group that the man, who served in the Army from 1979 to 1981, has checked in for in-patient treatment for chemical dependency at the St. Cloud VA and will continue to go to St. Cloud for out-patient counseling. There is some indication he is bipolar and suffered a skull fracture while in the service. He has made all his appointments. Porter notes his improvements.

Another defendant appears not to be doing well. A 49-year-old Air Force veteran charged with domestic abuse, he has missed four of six appointments for counseling and has resisted psychological testing. Porter suspects the man may not be suitable for more of the court's attention and scribbles a notation.

Part of the process involves a mentoring program through the Metropolitan Center for Independent Living, that pairs offenders with volunteers.

Mentor Bill Preiss, who served in the Army in Vietnam, feels satisfaction in ensuring that some of today's vets are treated better than those of his era.

Peter Heller is one veteran Preiss mentors. Heller served two tours of duty in Iraq and a 15-month tour in Afghanistan with the Army, and their connections help him make the transition from warrior to civilian.

Near the end of his tour in Afghanistan, in which he was awarded a Bronze Star for valor, Heller said he felt like he was unraveling. He was commander of a truck in which another soldier was killed and his driver injured.

"It was almost to the point where I guess you would call it strung out," he said. "I had a big concern about going home and being normal." In 2008, Heller left the military almost as fast as he got in and began working as a sales manager for a jewelry company.

“You’ve been in an intensive situation and that has become normal to you, then coming back to something that is less intensive, there’s a gap there,” he said. He felt isolated. There had been a drunken driving charge in North Carolina, then a second in Minnesota last year, and a third in March of this year when the option of the vets court was offered.

“A lot of those things I wouldn’t even know about had I gone through the regular court system,” he said. “I would have served my penance and been done with it and gone on and not have this opportunity to do some pretty heavy self-exploration.”

Preiss had his own dealings with alcohol after returning from 13 months in Vietnam and successfully went through treatment 35 years ago.

“I can look at Peter at this point in comparison to when I first met with him and part company and say, ‘You’re going to be OK. You’re doing good’,” he said.

In court, one man who served three separate times in the Army, including a tour in Iraq, was making one of his last appearances after being charged with domestic assault and disorderly conduct. He’d gone to counseling and sought help for memory loss that has resulted in a 100 percent disability from the VA. He told everyone that he has gone to a clinic testing for traumatic brain injury and has been given some mechanical aids to help his memory.

“You’ve done a great job making some changes that need to be made,” Porter told him. As the veteran left, folks in the courtroom broke into applause.

Wounded Warrior Project
1120 G St. NW, Suite 700
Washington, DC 20005
☎ 202.558.4302
☎ 202.898.0301



Senator Al Franken
309 Hart Senate Office Building
Washington, DC 20510

February 25, 2013

Dear Senator Franken:

With about 50% of veterans who served in Iraq and Afghanistan not getting needed mental health care and still more not receiving effective treatment, Wounded Warrior Project (WWP) is deeply concerned about warriors' mental health conditions going untreated. While many combat veterans are incredibly resilient, untreated behavioral health problems lead some into difficulty with the law. Noting that veterans treatment courts have provided far better alternatives than incarceration, and have turned lives around, WWP applauds your proposal to establish additional courts under the Justice and Mental Health Collaboration Act, S. 162.

Veterans' treatment courts have served as a model to rehabilitate veterans dealing with the mental health consequences of combat-deployment by diverting them from the criminal justice system and into a collaborative, holistic program. Building on collaborative partnerships that provide comprehensive wrap-around services, these programs have had life-changing results.

While veterans' treatment courts have developed around the country, some counties and communities where the need exists lack the resources to mount such programs. Many communities with concentrations of veterans who have served in Iraq and Afghanistan are remote from VA medical centers that are otherwise critical veterans-court partners, providing veterans who enroll with mental health and substance-use treatment. Importantly, VA medical center participation ensures that local government is not bearing the cost of treatment. WWP continues to see tragic instances of young veterans with war-related mental health conditions involved in behaviors that lead to arrests in communities that lack the resources to foster diversion into treatment and rehabilitation rather than indictment and potential incarceration.

Providing grants to establish veterans' treatment courts, as proposed in your Justice and Mental Health Collaboration Act, would be of vital importance to help some of our wounded warriors find a path from the criminal justice system to treatment and rehabilitation. We look forward to working with you to advance the establishment of these innovative court programs.

Sincerely,

John Molino
Acting EVP for Government Affairs

DUTY ★ HONOR ★ COURAGE ★ COMMITMENT ★ INTEGRITY ★ COUNTRY ★ SERVICE

woundedwarriorproject.org

