

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2015**

THURSDAY, APRIL 3, 2014

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:03 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairwoman) presiding.

Present: Senators Mikulski, Leahy, Landrieu, Shaheen, Merkley, Shelby, Collins, Murkowski, Graham, Kirk, and Boozman.

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

STATEMENT OF HON. ERIC H. HOLDER, JR., ATTORNEY GENERAL

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Chairwoman MIKULSKI. Good morning. The Subcommittee on Commerce, Justice, and Science will come to order. And today, we will take testimony on the budget request from the Department of Justice.

Today, we will be listening to the Attorney General, Eric Holder, testifying in behalf of the Justice Department, and, after that, we hope to hear from the Justice Department's Inspector General, Michael Horowitz, on important oversight issues. This is a subcommittee, not only of making sure we spend the right money in the right way, but also to make sure we have the wonderful advice of an Inspector General.

We want to alert everyone, though, there could be the possibility of votes beginning at 11:30 a.m., so we're going to kind of move it.

This hearing today is one of 60 hearings in 6 weeks, where we're doing very due diligence in taking a look at the request from these agencies and the President's budget.

Today, we really take testimony from, I think, one of the most important agencies in the government constellation, the Department of Justice, who really has a very key job in making sure they keep America safe and—whether it's from Federal law enforcement, Federal prosecution, terrorism, but also the enforcement of other issues, the important enforcement of white collar crime, whether it's antitrust or mortgage fraud, to also civil rights and

hate crimes. It is the Department of Justice; it is not the Department of Anti-Crime. And we're really proud of them.

Mr. Attorney General, we want you to know we really salute the 112,000 employees who work for Justice—the 25,000 Federal agents, the roughly 18,000 prison guards and correctional staff, the 13,000 prosecutors and investigators, and those wonderful support staff, you know the GS-5, -7s, and -9s that really keep the government going. While you and I might get the headlines, they make sure that they keep it all going.

We know we've had an amazing year. The marshals have arrested over 11,000 fugitive sex offenders; the FBI has dismantled 421 criminal enterprises; the DEA, 3400 drug-trafficking organizations out of business and charged; and the U.S. Attorneys with charging over 83,000 defendants in criminal court—all that while facing sequester and slam-down government shutdown.

So, just imagine, now, what you can do with certainty in funding. Under the Murray-Ryan budget, we have canceled sequester for 2014 and for 2015. We have our top line. So, we now want to really take a look at what your requests are.

And my goals for the hearing are three priorities: community security, in terms of State and local, of course national security; oversight and accountability, in terms of spending dollars wisely; and to uphold the rule of law, protect civil liberties and communities.

There is a request in here for \$2.2 billion for State and local government that puts cops on the beat, puts away child abusers, processes rape kits, all of those things at the local level, and we will be getting your views and insights about how those partnerships are working and what, through the funding process, we can actually strengthen them to get better results and better enforcement. We also want to know that that thin blue line in the local community that protects us, like our local police officers, have the equipment that they need.

BUREAU OF PRISONS

We also want to take a look at the issues related to our prisons. We know that you are leading a review on appropriate sentencing and how we can reduce the prison population without increasing risk to our communities. And you've looked at everything from compassionate parole for those prisoners that are now in their 70s and 80s to other creative things. We'd like to hear about that, but we also want to talk about what it is that we need to fund our prisons, and we need to make sure that we keep our prison guards safe.

We met with the family and other correction officers related to Eric Williams, who was one of our prison guards murdered in a Federal penitentiary in Pennsylvania. It was just wrenching to hear what they do. They have ideas that they need for training, what they need to carry in the prisons, how they have to keep themselves safe with increasing violent criminals and increasingly mentally ill prisoners. So, we'd like to hear your thoughts on that.

BOSTON MARATHON BOMBING

About this time last year, we were all gripped with the Boston Marathon. It really showed us how important national security is, that national security isn't in the Crimea or in the Middle East or

in Iraq and Afghanistan, it was in the streets at the Boston Marathon. We had Marylanders injured. One our really beloved preschool teachers lost her leg there, cheering her mother on. They're back in Boston, and she's back on her feet. But, we want to make sure that never happens again. And we'd like your views on what we can do, in terms of national security.

CYBER SECURITY

The other threat is cyber security. Mr. Attorney General, I hope you could join with us in drawing the distinction between cyber security and surveillance. As you know, a lot of people are spooked because of the Snowden revelations. And they talk about 2/15. I will tell you, my constituents are spooked by cyber security. If you go into a Target, and you go into a Michael's, the famous crafts store—some even go into Nieman Marcus—but, most of all, most of America is in places like Target, and the cybersecurity breach has been phenomenal. The cybersecurity breach now at universities, my own University of Maryland, Hopkins, they, themselves, that are really prime-time schools, now are hacking, stealing identities, stealing everything. So, from stealing our trade secrets to the kind of thing that's going on, we need to know, what do we need to do and what are the resources in cyber security?

Every day, we count on the Justice Department to fulfill its mission and to protect our lives and protect our way of life, and to protect our Constitution. We need to hear from you what is the right funding that we need to make sure we do justice to the Justice Department.

I now turn to my Vice Chairman, Senator Shelby, a very strong advocate of—in national security and also in supporting our local law enforcement. And we're particularly appreciative of his efforts in behalf of women and children.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Madam Chair.

Welcome to the committee, again, Attorney General Holder.

Today, we will hear from Attorney General Holder about the Department of Justice's 2015 budget request. Michael Horowitz, the Department's Inspector General—as the Chairperson has already said, will testify about his work and the difficulties he has encountered in executing his oversight responsibility. Today, I welcome you both.

FISCAL YEAR 2015 BUDGET

The 2015 budget request for the Department of Justice totals \$27.4 billion. I'm concerned that, while the Department's 2015 budget purports to recognize the multifaceted nature of the Department's work, it fails to truly prioritize anything but the administration's pet projects. Programs such as Smart on Crime, Now is the Time, and nearly 12 new grant programs, I believe take center stage. Meanwhile, law enforcement and national security priorities, the main mission, central mission, of the Department, I believe take a backseat. This approach is evident in the indiscriminate

cuts required of nearly every component within the Department of Justice.

The 2015 budget requires cuts totaling more than \$500 million. These cuts are characterized as miscellaneous program and administrative reductions, and will be identified once funds are appropriated. In short, it is the Department's own version, I believe, of an arbitrary sequester.

Mr. Attorney General, Congress made a conscious decision to return to regular order, in part to put a stop, as you know, to indiscriminate cuts that your budget requires. A budget proposal that uses smoke and mirrors does not provide a stable foundation to safeguard national security, reduce violent crime, prosecute criminals, or support our State and local partners. It calls into question the Department's commitment to these requirements.

I do not support the approach this budget has taken, and I look forward to working with you, Madam Chair, to ensure that Department of Justice is appropriately funded to carry out its central, its important, missions.

INSPECTOR GENERAL

I also want to touch briefly on a topic of concern that the Chairperson has already mentioned and that directly impacts the Inspector General's ability to conduct much-needed oversight of the Department of Justice.

Since arriving in 2012, Mr. Horowitz has worked diligently to investigate a myriad of trouble spots. Throughout the course of these investigations, however, the Inspector General encountered significant roadblocks. Specifically, he has not been provided unfettered access to materials essential to ongoing investigations and audits, unless the Attorney General approves that.

Think about that. This is the Inspector General. You should provide him the material to see what's going on in your Department, good and bad.

I strongly believe that the work of the Inspector General is essential to well-functioning government agency. They are independent and should not be encumbered by individuals in positions of power, even the Attorney General of the United States.

Mr. Attorney General, yesterday the Chair and I sent you a letter on this matter. We expect that you will move swiftly to address our questions and resolve this controversy. But, without an independent Office of Inspector General that can truly carry out its oversight responsibilities, I'm concerned that the honesty and the integrity of the whole Department could be called into question. And that's something none of us want.

Madam Chair, I thank you for your time, and I look forward to hearing more from the Attorney General and also the Inspector General.

Thank you.

Chairwoman MIKULSKI. Senator Collins, did you want to say anything, or do you want to go right to the testimony?

Senator COLLINS. Madam Chair—

Chairwoman MIKULSKI. You're welcome to do what you choose. Senator COLLINS [continuing]. Thank you very much.

First of all, I want to welcome the Attorney General to the subcommittee today which has such great leadership on both sides of the aisle.

I'm going to be directing my questions to you today on several topics. One has to do with our broken asylum-granting system, which the Department of Justice has jurisdiction with the Department of Homeland Security over. Another is the testing of the boundaries of executive power by this administration; in particular, the aggressive position the administration has taken with regard to the President's enforcement discretion. And third, I hope that—if you don't do so in your testimony, I will be asking you for an update on the Department of Justice's activities to bring to justice the attackers in the Benghazi case.

So, thank you, Madam Chair.

Chairwoman MIKULSKI. Mr. Attorney General.

SUMMARY STATEMENT OF ERIC H. HOLDER, JR.

Attorney General HOLDER. Well, good morning, and thank you, Chairwoman Mikulski, Ranking Member Shelby, Senator Collins, Senator Kirk, other distinguished members of the subcommittee. I want to thank you for the opportunity to appear before you today to discuss the President's fiscal year 2015 budget for the Justice Department and to provide an overview of the Department's recent achievements and ongoing priorities.

Now, as we convene this morning, I know that we're all mindful of yesterday's mass shooting at Fort Hood. I am being regularly briefed on the situation, and I have directed that the full resources of the Department of Justice, and, in particular, the FBI, be made available to ensure the security of everyone on that base. We will work with local officials and the Department of Defense to provide assistance to those who need it and to help conduct a full and thorough Federal investigation.

As this investigation unfolds and as we work to determine exactly what happened, and why, my thoughts and prayers will be with all those whose lives have been impacted by this terrible tragedy, and with the entire Fort Hood community, which has displayed such extraordinary strength and resilience since the horrific events of nearly 5 years ago.

As President Obama said yesterday, it is heartbreaking that something like this has happened again. And we owe it to all of our men and women in uniform, and also to their families, to see that justice is done, to ensure that they are safe here at home, and to do everything in our power to prevent these too common tragedies from happening again.

My colleagues and I are firmly committed to doing just that, and we are determined to continue building upon the exceptional work, I think, that the Justice Department employees have performed over the past year. Going forward, your support will enable us to build on the results that my colleagues have obtained, and to perform the vital mission with which we are entrusted.

Many of our accomplishments over the past year are notable, and even historic, but none have been more important than our ongoing work to protect the American people from terrorism and other threats to our national security. Just last week, the Department

achieved a major milestone when we secured the conviction of Sulaiman Abu Ghaith, the son-in-law of Osama bin Laden and a senior member of al-Qaeda, on terrorism-related charges. This verdict has proven that proceedings such as these can safely occur in the city that I am proud to call home, as in other locations across our great Nation. It was appropriate that this defendant, who very publicly rejoiced over the attacks on the World Trade Center, faced trial in the shadow of where those buildings once stood. We never doubted the ability of our Article III court system to administer justice swiftly in this case, as it has in hundreds of other cases involving terrorism defendants. And this outcome vindicates, I believe, the government's approach to securing convictions of senior al-Qaeda leaders. It would be a good thing, I believe, for the country if this case has the result of putting that political debate to rest.

The President's budget request would strengthen our national security work by investing a total of \$4 billion in the Department's cutting-edge counterterrorism and national security programs, including 1.5 million to maintain and operate the FBI's new Terrorism Explosive Device Analytic Center facility in Alabama. The fiscal year budget also would invest in other key priorities, providing \$273 million to bolster the Department's vigorous enforcement of Federal civil rights laws, including \$8 million in new resources. It would also allocate \$1.1 billion to support the administration's work to reduce gun violence. It would enhance the Department's ability to combat heinous crimes, like human- and sex-trafficking, as well. And it would provide \$173 million to support our efforts to strengthen the Federal criminal justice system as a whole through the groundbreaking Smart on Crime initiative that was announced last August.

Now, this initiative comprises a range of targeted commonsense reforms, including modification to the Department's charging policies with regard to mandatory minimum sentences for certain non-violent, low-level drug crimes, along with a renewed focus on evidence-based diversion, rehabilitation, and reentry programs. The fiscal year 2015 budget would sustain investments in the Bureau of Prisons reentry programs, including the Residential Drug Abuse Program, residential reentry centers, and reentry-specific education programs. These and other proven programs will help to make our criminal justice system not only more effective, but also, by freeing up resources for police and prosecutors as well as other vital law enforcement priorities, make our system significantly more efficient. And this, in turn, would enable us to further invest in the outstanding work that's performed every day by dedicated attorneys and support staff in each of the Department's litigating divisions and United States Attorneys' offices.

CIVIL AND CRIMINAL FINES, PENALTIES, AND SETTLEMENT

Thanks to their efforts during the fiscal year ending in 2013, the Justice Department collected a total of more than \$8 billion in civil and criminal fines and penalties. And this represents more than double the approximately \$3 billion in direct appropriations that pay for our 94 U.S. Attorneys' offices and main litigating divisions.

During fiscal year 2012 and fiscal year 2013, the Department collected a combined total of more than \$21 billion, a record amount for a 2-year span, and we've obtained a series of historic resolutions and taken other significant actions to ensure that we're serving as sound stewards of taxpayer dollars and protecting American consumers from fraud and other financial crimes.

Last November, the Justice Department secured a \$13 billion settlement with JPMorgan Chase & Company, the largest settlement with a single entity in the history of the United States, to resolve Federal and State civil claims related to the company's mortgage securitization processes.

As part of our ongoing efforts to hold accountable those whose conduct sowed the seeds of the mortgage crisis, the Department also filed a lawsuit against the ratings firm S&P; and, with a \$1.2 billion agreement that we reached with Toyota just last month, again the largest criminal penalty ever imposed on an automotive company, we're making good on our determination to protect consumers and to address fraud in all of its forms.

PREPARED STATEMENT

I'm very eager to work with this subcommittee and with the entire Congress to build on these and other successes and to secure the timely passage of the President's budget request, which provides a total of \$27.4 billion in discretionary resources for the Department of Justice, including \$25.3 billion for vital Federal programs and \$2.1 billion for State, local, and tribal assistance programs, as well. This level of support will be essential to ensuring that we can continue to protect the American people and take important actions to strengthen our criminal justice system.

I want to thank you once again for this opportunity to discuss this work with you today, and I'd be happy to answer any questions that you might have.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. ERIC H. HOLDER, JR.

Good morning, Chairwoman Mikulski, Vice Chairman Shelby, and other distinguished members of the subcommittee. Thank you for the opportunity to appear before you today to highlight the President's fiscal year 2015 budget for the U.S. Department of Justice—and to discuss the Department's recent achievements and future priorities. I would also like to thank you for your leadership in securing the passage of the Consolidated Appropriations Act for fiscal year 2014, which restores Justice Department funding to pre-sequestration levels—and even adds funding for key priorities.

In February, as a result of the fiscal year 2014 appropriation, I was able to lift the Department-wide hiring freeze that had been in place for over 3 years, and had resulted in the loss of over 4,000 employees. We are now able to fill critical vacancies and resume the normal hiring process for Federal agents, prosecutors, analysts and other staff we need to fulfill our varied missions, including: protecting the American people from terrorism and other national security threats; combating violent crime; eradicating financial fraud; and safeguarding the most vulnerable members of society.

Across the board, I'm extremely proud of the exceptional work that Justice Department employees perform on a daily basis, despite escalating threats and challenges. They are a credit to the Department, to our Nation, and to the American people we are privileged to serve. Like you, I am committed to securing the resources and support the Department of Justice (DOJ) employees need to carry out

their important duties—and to keep advancing the cause of justice that remains our common pursuit.

The resources provided this fiscal year will help us carry out our critical law enforcement responsibilities and enhance public safety. The President's fiscal year 2015 budget request builds on the funds provided in fiscal year 2014 that are vital to thwarting sophisticated adversaries, protecting our citizens from gun violence and other types of crime, and maintaining safe and secure operations throughout the Federal correctional system.

The President's fiscal year 2015 budget requests \$27.4 billion in discretionary resources for the Department, including \$25.3 billion for Federal programs and \$2.1 billion for discretionary State, local, and tribal assistance programs. This represents a 0.4 percent increase over the fiscal year 2014 enacted level and allows the Department to continue its trajectory towards fiscal and operational health. More specifically, the President's fiscal year 2015 budget request:

- Invests in criminal justice reform.* The budget invests \$173 million in my “Smart on Crime” initiative, which is designed to promote reforms to the criminal justice system that will improve public safety, save money, and ensure the fair and effective enforcement of Federal laws.
- Invests in Federal civil rights enforcement.* To help meet the Nation's civil rights challenges, the fiscal year 2015 budget invests a total of \$273 million, including \$8 million in new resources, to support the Department's enforcement of Federal civil rights laws, including laws on human trafficking, hate crimes, disability rights, and many others.
- Maintains critical counterterrorism and counterespionage programs, as well as intelligence gathering and surveillance capabilities.* The budget invests a total of \$4 billion to sustain recent increases that support national security investigations, including an enhancement of \$15 million to fund the costs of the Federal Bureau of Investigation's (FBI) new Terrorist Explosive Device Analytical Center—or TEDAC—at Redstone Arsenal in Alabama.
- Supports the administration's initiative to reduce gun violence.* The budget invests a total of \$1.1 billion in Federal and grant programs in support of the President's “Now is the Time” initiative, which includes \$182 million to sustain investments provided in fiscal year 2014. These resources will help ensure that those who are not eligible to purchase or possess guns are prevented from doing so. In addition, the request delivers grant funding to continue the Comprehensive School Safety Program, to encourage the development of innovative gun safety technology, and to provide training for active shooter situations.
- Enhances efforts to combat and keep pace with increasingly sophisticated and rapidly evolving cyber threats.* Cybercrimes are becoming more common, more sophisticated, and more dangerous. The President's budget invests a total of \$722 million, including \$8 million in enhancements to Federal programs and grants, to address computer intrusions and cybercrimes and defend the security of the Department's critical information networks.
- Substantially improves the ability to provide legal assistance to foreign law enforcement partners.* In order to better assist foreign government partners with investigating and prosecuting criminals, the budget invests an additional \$24 million to reduce the current backlog of Mutual Legal Assistance Treaty requests, to process requests in a matter of weeks, and to cut overall response times in half by the end of 2015.
- Sustains financial fraud law enforcement efforts.* The budget invests a total of \$681 million in the Department's ongoing efforts to investigate and prosecute mortgage fraud and financial schemes that harm the American people and our financial markets.
- Strengthens enforcement of immigration laws and addresses the immigration case backlog.* To help increase efficiency in the immigration courts, the budget requests enhancements of \$23 million in order to add 35 new Immigration Judge Teams and 15 new Board of Immigration Appeals attorneys and to expand the successful Legal Orientation Program as well as a pilot program to implement additional efficiencies in the immigration program overall.
- Maintains safe and secure prison capacity.* The budget provides \$8.5 billion to maintain secure, controlled Federal prison and detention facilities and to continue bringing newly completed or acquired prisons on-line in order to protect public safety by alleviating prison crowding. Further, the budget includes resources to support implementation of the Prison Rape Elimination Act in Federal, State, and local prisons and jails, and to help inmates successfully transition back into their communities.
- Enhances State, local, and tribal law enforcement programs.* In total, the fiscal year 2015 budget requests \$3 billion in mandatory and discretionary funds for

State, local and tribal law enforcement assistance. These funds will allow the Department to continue to support our State, local and tribal partners who fight violent crime, combat violence against women, and support victim assistance programs. The fiscal year 2015 request will bolster the Department's efforts to ensure that Federal grant funding flows to evidence-based purposes and helps to advance knowledge of what works in State and local criminal justice systems.

In addition, the fiscal year 2015 budget proposes additional discretionary investments as part of the Administration's Opportunity, Growth and Security Initiative. This initiative targets investments for State and local assistance grants, such as the Comprehensive School Safety Program and a new youth investment program; resources to speed up the process of bringing online newly completed or acquired prisons; and funding for the investigation and prosecution of the full spectrum of financial fraud.

The fiscal year 2015 budget recognizes the multi-faceted nature of the Department's work and outlines spending priorities for critical mission areas. We must continue to grow both tougher and smarter on crime. This budget builds on the great work being done by the dedicated employees of the Department across the country and around the world to reduce violent crime and reform our criminal justice system.

BECOMING SMARTER ON CRIME

Just over 1 year ago, at my direction, the Justice Department launched a targeted review of the criminal justice system in order to identify reforms that would ensure Federal laws are enforced fairly and efficiently. In 2013, as part of this review, the Department studied all phases of the criminal justice system, including charging, sentencing, incarceration and reentry, to identify the practices that are successful at deterring crime and protecting the public.

Today, a vicious cycle of poverty, criminality, and incarceration traps too many Americans and weakens too many communities. While we will continue to aggressively enforce Federal criminal statutes, we recognize that we cannot arrest and incarcerate our way to becoming a safer nation. To be effective, Federal efforts must also focus on other critical aspects of criminal justice, including prevention and reentry.

With that in mind, the budget requests \$173 million in support of the Department's efforts to promote alternatives to incarceration for people convicted of low-level, non-violent drug offenses, and invests in reentry programs in order to reduce recidivism among formerly incarcerated individuals. Each dollar spent on prevention and reentry at the Federal, State and local levels has the potential to save far more in incarceration costs.

SAFEGUARDING THE MOST VULNERABLE MEMBERS OF SOCIETY

Last month, I had the privilege of attending a celebration commemorating the upcoming 50th anniversary of the Civil Rights Act of 1964 alongside many esteemed jurists, public servants and public safety officials. In the years that followed adoption of this landmark legislation, this struggle—to secure what President Johnson once called the “dignity of man and the destiny of democracy”—would lead to the passage of the Voting Rights Act of 1965 and a range of other reforms, both large and small. Together, these changes altered the course of the 20th century. Moreover, they led the Department of Justice to take an active role in defending the civil rights to which everyone in this country is entitled—work that remains among our top priorities today.

Since 2009, the Civil Rights Division has filed more criminal civil rights cases than at any other time in our history, including record numbers of police misconduct and human trafficking cases. Under the leadership of our Civil Rights Division and our Community Relations Service (CRS), we are using important tools like the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act 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. Under the leadership of the Civil 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 all married same-sex couples. And we are vigorously enforcing Federal voting protections to help ensure that every eligible American has access to the franchise.

The fiscal year 2015 budget will support the Department's appropriately aggressive enforcement of Federal civil rights laws in all of these areas, in addition to fair housing, fair lending, and disability rights, among many others. In total, the request

seeks \$273 million to help meet the Nation's civil rights challenges, including an additional \$8 million in program increases for the Civil Rights Division and CRS.

PROTECTING THE AMERICAN PEOPLE FROM TERRORISM AND OTHER NATIONAL SECURITY THREATS

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. The fiscal year 2015 budget provides a total of \$4 billion in direct funding to maintain critical counterterrorism, counterespionage, intelligence collection, and national security oversight programs. In addition, the budget sustains recent increases that support national security investigations. The fiscal year 2015 budget also requests a \$15 million program increase to fund the cost of operations and maintenance of the FBI's new TEDAC facility at Redstone Arsenal in Huntsville, Alabama, which will become operational in late 2014. TEDAC provides direct support to U.S. Government efforts to prevent and mitigate improvised explosive device attacks both in the United States and abroad, and has already provided critical assistance to domestic and international cases, including last year's Boston Marathon bombing.

The FBI uses intelligence and investigations to combat national security threats and protect and defend the United States against terrorism and foreign intelligence threats. In fiscal year 2013, the FBI dedicated approximately 4,500 agents to investigating more than 18,000 national security cases.

The National Security Division (NSD) is responsible for overseeing terrorism investigations and prosecutions; handling counterespionage cases and matters; and assisting the Attorney General and other senior department and executive branch officials in ensuring that the national security-related investigations and activities of the United States are consistent with the Nation's laws and regulations, including those that protect privacy interests and civil liberties. In coordination with the FBI, the Intelligence Community, and the U.S. Attorneys' Offices, NSD's primary operational functions are to prevent acts of terrorism and espionage inside the United States and to facilitate the collection of information regarding the activities of foreign powers and their agents.

The Department has had many noteworthy successes on the national security front. We have continued to: strengthen key intelligence-gathering capabilities; refine our ability to identify and disrupt potential terrorist plots; and ensure that those charged with terrorism-related offenses are 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 worked to secure the American homeland and bring those who would harm our people to justice. In fact, just last week, the Department achieved a major milestone when we secured the conviction of Sulaiman Abu Ghayth, the son-in-law of Usama bin Laden and a senior member of al Qaeda, on terrorism-related charges.

This verdict has proven that proceedings such as these can safely occur in the city I am proud to call home, as in other locations across our great Nation. It was appropriate that this defendant, who publicly rejoiced over the attacks on the World Trade Center, faced trial in the shadow of where those buildings once stood. We never doubted the ability of our Article III court system to administer justice swiftly in this case, as it has in hundreds of other cases involving terrorism defendants—and this outcome vindicates the Government's approach to securing convictions of senior al Qaeda leaders. It would be a good thing for the country if this case has the result of putting that political debate to rest.

In addition to its national security work, the Department has successfully executed ground-breaking counterintelligence operations to safeguard sensitive U.S. military and strategic technologies and keep them from falling into the wrong hands. In February, Robert Patrick Hoffman II, a cryptologic technician with the Navy, was sentenced to 30 years in prison for attempting to commit espionage on behalf of the Russian Federation against the United States. Working aboard or in conjunction with U.S. submarines for much of his naval career, Hoffman held security clearances and regularly received access to classified national defense information about U.S. submarines and their capabilities, and about adversaries, specific missions, and U.S. military and naval intelligence. Hoffman supplied to undercover FBI agents, among other things, national defense information classified at the levels of Secret and Top Secret/Sensitive Compartmented Information. By attempting to

hand over some of America's most closely held military secrets, Hoffman put U.S. servicemembers and this country at risk.

National security threats are constantly evolving, requiring significant resources to adapt to those threats. However, as President Obama noted in a speech at the Justice Department earlier this year, it is imperative that we continue working to protect our national security while upholding the civil liberties we all hold dear. In January, we and our partners in the Intelligence Community took a significant step toward fulfilling the President's commitment to greater transparency by permitting communications providers to disclose more information than ever before about the number of national security orders and requests they receive and the number of customer accounts targeted under those orders and requests. And as we move forward with the timely implementation of other reforms, my colleagues and I remain committed to working closely with Congress to implement the President's transparency directives and determine the best path forward for these programs.

IMPROVING OUR ABILITY TO IMPLEMENT AND ENFORCE GUN SAFETY MEASURES

Gun violence has touched every State and locality in America, and addressing this epidemic remains a high priority for the Department. In 2013, following the Newtown, Connecticut, school shootings, the administration proposed a range of legislative remedies to address mass shootings and reduce gun violence. The Department is working to implement a number of these actions and requests a total of \$1.1 billion in fiscal year 2015 to address violent gun crimes.

Of the total, \$1 billion in Federal law enforcement resources will allow the Department to ensure that those who are not eligible to purchase or possess guns are prevented from doing so. Within this amount, \$182 million is included for the President's "Now is the Time" initiative to support additional background checks, allow for continued focus on inspections of federally-licensed firearms dealers, improve tracing and ballistics analysis, and keep guns out of the hands of dangerous criminals and other prohibited persons. The Department also has been working to strengthen the national background check system. For example, in January 2014, the Department proposed a rule to clarify the definition of persons prohibited for mental health reasons from receiving, possessing, shipping, or transporting firearms. Further, an additional \$13 million is provided to the FBI to sustain the substantial investment made in the National Instant Criminal Background Check System (NICS) in fiscal year 2014.

The Department is also taking a hard look at our Federal laws and our enforcement priorities to ensure that we are doing everything possible at the Federal level to keep firearms away from drug traffickers and other criminals. To support the enforcement of Federal laws, the Department is requesting an additional \$22 million for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which will allow ATF to sustain the firearms enforcement and inspection efforts funded in fiscal year 2014.

The budget also requests \$147 million to help State and local governments continue to implement the administration's proposals for increasing firearms safety and supporting programs that help keep communities safe from mass casualty violence. In addition to the FBI's role with the Federal side of NICS, the Department is working to strengthen national background checks by addressing gaps in the State records currently available in NICS. Incomplete or insufficient records significantly hinder the ability of NICS to quickly confirm whether a prospective purchaser is prohibited from acquiring a firearm. In fiscal year 2015, the Department requests a total of \$55 million in grant funding to further assist States in making more records available in NICS and enhancing the National Criminal History Improvement Program.

Beyond keeping guns out of the wrong hands, we also want to help those on the ground prevent and mitigate violent situations when they do occur. To this end, the Office of Justice Programs (OJP), with the support of the FBI, will be providing a specialized training course for active shooter situations for law enforcement officers, first responders, and school officials. The Department is requesting a total of \$15 million to support this training and other officer safety initiatives. In addition, the Department is requesting \$75 million in grant funding for the Comprehensive School Safety Program, which was funded for the first time in fiscal year 2014. Finally, the budget includes \$2 million for OJP to support the administration's challenge to the private sector to develop innovative and cost-effective gun safety technology. The funding for this initiative will provide prizes for those technologies that are proven to be reliable and effective.

INVESTIGATING CYBERCRIME AND PROTECTING OUR NATION'S CRITICAL NETWORKS

Like other national security threats, cyber threats are constantly evolving and require a coordinated and comprehensive plan for protection and response. The Department has a unique and critical role in cyber security that emphasizes domestic mitigation of threat actors and involves countering the threat by investigating and prosecuting intrusion cases, gathering intelligence in support of nation state attribution, and providing legal and policy support to other agencies. The Department is also responsible for establishing effective internal network defense and serving as a model for other departments and agencies.

The fiscal year 2015 budget provides a total of \$722 million for cyber enforcement and maintains recent increases for NSD's prosecutorial efforts and the FBI's Next Generation Cyber Initiative, which has enhanced capabilities to combat cyber threats from individuals, organized groups and rogue actors. The request also includes an increase of \$3 million for the Criminal Division to strengthen its investigative and prosecutorial capabilities, and \$5 million to provide grants related to cybercrime and intellectual property enforcement.

The Department is committed to carrying out its cyber security role, emphasizing intelligence and information sharing as well as the preservation of privacy, data confidentiality, and civil liberties. The administration is working to improve Government mechanisms for providing timely cyber threat information to the private sector so it can better protect and defend itself against cyber threats. Pursuant to an Executive Order on *Improving Critical Infrastructure Cybersecurity*, each Federal department and agency is also required to develop and implement privacy and civil liberties safeguards in concert with its cyber security activities.

And although we work tirelessly to bring cyber criminals to justice, we need additional tools to strengthen the Justice Department's ability to combat crime and ensure individual privacy. I've recently called on Congress to create a strong national standard for quickly alerting consumers whose personal identifying information may be compromised. This would empower the American people to protect themselves if they are at risk of identity theft. It would enable law enforcement to better investigate these crimes. And it would hold compromised entities accountable when they fail to keep sensitive information safe. I hope I can count on your support.

IMPROVING COLLABORATION WITH FOREIGN LAW ENFORCEMENT PARTNERS

Criminal activity transcends national boundaries, requiring the United States and its foreign partners to cooperate in the provision of evidence and the extradition of persons. Mutual Legal Assistance Treaty (MLAT) requests are the formal way in which countries request assistance in obtaining evidence located in a foreign country for criminal investigations and proceedings located in another country. However, delays and difficulties in obtaining evidence, especially Internet records, through the MLAT process are increasingly becoming a source of frustration for many of our foreign partners.

Continued delays in producing this type of information to our foreign counterparts could reduce their compliance with U.S.-initiated MLAT requests and their cooperation with U.S. law enforcement agencies, thus hampering our ability to investigate crime and prosecute criminals. In his January speech on the review of signals intelligence, the President stated that he "will devote the resources to centralize and improve the process we use to handle foreign requests for legal assistance, keeping our high standards for privacy while helping foreign partners fight crime and terrorism." Pursuant to the President's commitment, the Department is leading an interagency effort to update, improve, and accelerate the handling of requests from foreign governments for evidence requested pursuant to MLATs.

Over the past decade, the number of requests for assistance from foreign authorities handled by the Criminal Division's Office of International Affairs has increased nearly 60 percent, and the number of requests for computer records has increased 10-fold. While the workload has increased dramatically, our ability to handle them has not kept pace. The Department's fiscal year 2015 budget requests a total of \$44 million, including an increase of \$24 million for the Criminal Division, the FBI and U.S. Attorneys, for the Department to significantly expand the number of personnel dedicated to reviewing and executing MLAT requests, and for technological enhancements to improve the way requests are analyzed, categorized, and prioritized. With these additional resources, the Department will implement a robust centralized processing system, reduce backlog, cut its response time by half by the end of 2015, and respond to legally sufficient requests in a matter of weeks. Additionally, the resources will support training efforts for foreign partners to ensure they can meet U.S. evidentiary standards, which will enable the Department to respond to their requests more quickly.

This MLAT reform effort involves collaboration among the Departments of Justice, State, and Commerce. Funds identified in the fiscal year 2015 President's budget for improvements to the MLAT program will be coordinated across these departments and agencies as well as the commercial sector.

PROSECUTING FINANCIAL AND MORTGAGE FRAUD

Protecting consumers, investors, and our financial markets from fraud is one of the Department's top priorities. The budget maintains support to investigate and prosecute financial and mortgage fraud, providing a total of \$681 million for financial fraud enforcement. It also continues efforts to strengthen the Department's ability to pursue large-scale financial fraud.

Fraud harms the American people and has the potential to undermine our financial markets, and fraudulent misconduct may have contributed to the worst economic crisis in recent history. With its criminal and civil enforcement tools, the Department plays a crucial role in achieving justice for those who have been victimized. Fraud cases are complex matters that can take years to investigate and prosecute. Last year, as part of our ongoing effort to hold accountable those whose conduct sowed the seeds of the mortgage crisis, the Department filed lawsuits against Bank of America and the ratings firm Standard & Poor's. Since 2009, we have filed criminal charges against more than 46,000 white-collar defendants, more than half of whom are financial fraud defendants. And in November, the Department reached a \$13 billion settlement with JPMorgan 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. They also reinforce our commitment to integrity and equal justice in every case, in every circumstance, and in every community.

ENFORCING IMMIGRATION LAWS AND ADDRESSING THE IMMIGRATION CASE BACKLOG

The Department has substantial responsibilities with respect to immigration, including enforcement, detention, judicial functions, administrative hearings, and litigation. The Department's Executive Office for Immigration Review (EOIR) maintains a nationwide presence, overseeing the immigration court and appeals processes, receiving cases directly from Department of Homeland Security enforcement personnel. EOIR's immigration court caseload is increasing to unsustainable levels. Between fiscal year 2009 and fiscal year 2013, the caseload pending adjudication grew by 56 percent—from 229,000 to 358,000.

The fiscal year 2015 budget includes \$23 million in new resources to support and advance EOIR's mission. Of this amount, \$17 million is requested for EOIR to support 35 additional Immigration Judge Teams and 15 additional Board of Immigration Appeals attorneys. An additional \$3 million is included to expand EOIR's Legal Orientation Program, which improves immigration court proceedings for those who are detained by increasing their awareness of their rights and the overall process. Another \$3 million is requested to allow EOIR to continue the development and expansion of a pilot program that provides counsel to vulnerable populations, such as unaccompanied alien children, for which funding was provided in fiscal year 2014.

MAINTAINING SAFE AND SECURE PRISON AND DETENTION FACILITIES

The Department continues to prioritize the maintenance of secure, controlled prison and detention facilities, as well as investment in programs that can reduce recidivism. Federal prisons are operating over 30 percent above rated capacity. Spending on Federal prisons consumes a quarter of the Department's budget—an unsustainable figure that is nevertheless projected to continue to increase.

As part of the "Smart on Crime" approach I announced last August, I directed a significant change to the Department's charging policies to ensure that people accused of certain low-level, non-violent Federal drug crimes receive sentences appropriate to their individual conduct—and that stringent mandatory minimum sentences are reserved for the most serious crimes. Alongside other important reforms, this change will make our criminal justice system not only fairer, but also more efficient, reducing the burden on our overcrowded prison system and freeing up resources for police and prosecutors and other vital law enforcement priorities.

The fiscal year 2015 budget includes funding to support this initiative, providing \$8.5 billion for prisons and detention, including \$6.9 billion for the Bureau of Prisons (BOP) and \$1.6 billion for Federal Prisoner Detention under the U.S. Marshals Service. Included in the total is \$29 million to sustain the investments made in fiscal year 2014 for BOP's reentry programs, including the Residential Drug Abuse Program, Residential Reentry Centers, and reentry-specific education programs. In

all, the budget requests a total of \$660 million for BOP's reentry-related activities. These resources provide critical opportunities for inmates to successfully transition back into their communities. Further, \$32 million in program increases are requested for Federal detention to pay for increases in the average daily detainee population under the U.S. Marshals Service.

INVESTING IN STATE, LOCAL AND TRIBAL ASSISTANCE PROGRAMS THAT WORK

The Department continues to support its partnerships with State, local, and tribal law enforcement. The fiscal year 2015 budget maintains these commitments without cutting the Department's Federal operational role. Simultaneously, the budget identifies efficiencies to help ensure that Federal resources are being targeted to the most effective grant programs. The fiscal year 2015 request for State, local, and tribal law enforcement assistance is \$3 billion, including \$2.1 billion for discretionary grants and \$891 million for mandatory grants.

The Department is requesting \$1.5 billion for the Office of Justice Programs' discretionary grants. The request increases funding for an evaluation clearinghouse, an indigent defense initiative, and evidence-based competitive programs. This includes funding to establish the Byrne Incentive Grants and Juvenile Justice Realignment Incentive grants, which will provide supplementary awards to States and localities using formula grant funds for evidence-based purposes. The budget also requests funding to address school safety and gun violence with resources to improve criminal history records information and for the Comprehensive School Safety Program, which initially received funding in fiscal year 2014. In addition, the budget requests \$33 million to support the Department's Access to Justice Initiative efforts, including to assess and improve the quality of indigent defense services in the United States. Finally, the request includes \$35 million for a new grant for communities to develop plans and identify the most critical needs to address sexual assault prevention, investigation, prosecution and services, including addressing untested sexual assault evidence kits at law enforcement agencies or backlogged crime labs.

The fiscal year 2015 budget includes a total of \$423 million for the Office on Violence Against Women, and continues the administration's strong commitment to providing Federal leadership in developing the Nation's capacity to combat sexual assault and violence against women. The request includes an increase of \$9 million for Legal Assistance to Victims Programs, Campus Violence, Grants to Support Families in the Justice System, and the Transitional Housing program. These programs fund proven and innovative interventions to save lives, hold abusers accountable, and rebuild families and communities. As a result of prior investments in this area, civil and criminal justice systems are more responsive to victims, and crimes of violence committed against women have declined in recent years. Even so, reducing such violence and meeting the needs of the almost 1.3 million women victimized annually by rape and sexual assault, and the nearly seven million victims of intimate partner violence each year, remains a critical priority.

Finally, the request includes \$274 million for Community Oriented Policing Services (COPS), which supports a \$71 million increase for COPS Hiring and Tribal Law Enforcement programs. These resources will fund the hiring or retention of approximately 1,300 police officers and sheriffs' deputies across the United States, thereby supporting the efforts of State, local and tribal law enforcement agencies in meeting the challenge of keeping their communities safe.

CONCLUSION

Chairwoman Mikulski, Vice Chairman Shelby, and members of the subcommittee, I want to thank you for this opportunity to share the significant accomplishments of the Department over the past year, to highlight our ongoing priorities, and to discuss how the funding proposed in the fiscal year 2015 President's budget will help make the criminal justice system more effective and efficient.

The Department recognizes the need for fiscal restraint, and we have focused our resources on priority initiatives. As evidenced by our national security and law enforcement achievements, and our continued ability to demonstrate a significant return on investment, we have proven our ability to target and respond to the Nation's highest priorities efficiently and effectively. I look forward to working with this subcommittee and with the entire Congress to build on these successes. And I would be happy to answer any questions you may have.

Chairwoman MIKULSKI. Thank you very much, Mr. Attorney General.

We're going to follow a 5-minute time limit and try to get to as many people as we can. And if there's a chance, we will do a second round.

FEDERAL PRISONS

So, let me get right to my question. Mr. Attorney General, one of the biggest areas, in terms of the Justice Department, is the funding of Federal prisons. And my question to you is—two—and we're concerned about two things—one, the adequacy of the funding; second, the protection of prison guards, looking back to that terrible death. And, number three, what is your plan? Because there are now 18,000 prison guards, doing a great job. We're very proud of our guards in the Cumberland facility—and the stress that they're under every day. But, you've got initiatives here. And now, the prison guard population is one-third of the Justice Department.

So, we've got to keep the bad people off the street, but are we just loading up our Federal prisons, and are there other ways where we protect America? It's almost impossible to keep up with this prison population demand. Could you give us your views on the resources needed and the policy directions you see going in?

Attorney General HOLDER. Well, I agree with you, Madam Chairwoman. We have to focus on looking at the intake, how many people we are bringing into our Federal prison system, and make sure that only those people who should be charged with Federal crimes are actually brought into the system. And so, that's one of the ways in which we can, I think, do a better job.

The safety of the people who work at the Federal Bureau of Prisons, the people who are there in our system on a day-to-day basis, is what we must keep uppermost in our minds. Our budget request includes a total of \$6.8 billion to maintain the enhancements provided in the 2014 budget and to support mandatory prison operations. And one of the things that we want to do, as well, is to prioritize the filling of staff positions so that we have adequate numbers of people in our prisons. That will not only mean that people are treated fairly, humanely in the system, it also keeps our employees safe. We have a renewed and good relationship with the union that represents our prison officers. And I think that, through the combination of the work that Director Samuels is doing, with the help of this committee, I think that we can keep our Bureau of Prisons adequately funded, and keep the people who work there safe.

Chairwoman MIKULSKI. Well, I met with prison—well, of course, I've been up to the Cumberland prison, but also with prison guards that were mates of—teammates, if you will, of Officer Williams, who died in Pennsylvania. They had—they, through the union, really had very specific things that they felt they could do to—that they needed to do to protect themselves. And I would encourage you to have ongoing and regular meetings with them, because it's almost like—it's not labor management negotiation, it's safety conversation on protecting them so they can protect us.

HEROIN CRISIS

In my time, I'm going to go to another question, and this goes to the heroin crisis. The heroin crisis is sweeping America. I'm now hearing it in my own State of Maryland, from county executives, cops on the beat, and so on. Heroin is selling in Baltimore today for \$6 a bag. You know, cheaper than buying a bag of kale at a gourmet grocery store kind of thing. The Governor of Vermont made it the focus of the State of the Union. Senator Leahy has spoken. Could you share with us, one, your view on this, and what are the resources needed at the Department of Justice level and how you would work with State and local law enforcement on dealing with this, really, new epidemic that is both criminal and public health?

Attorney General HOLDER. Well, I first started to hear about the resurgence of the use of heroin about 3 years or so ago as I was going around the country to various U.S. Attorneys' offices, and was struck by the fact that I was hearing about heroin. This was something that I had consigned, in my own mind, to a problem that existed in the 1960s. But, there is no question that over the course of these last few years this has become a national problem. It's not a regional problem, it's not a State problem; this is something that is national in significance.

What we need to do is have a balanced approach to dealing with this issue. We need to have a strong enforcement component to it. Our Drug Enforcement Administration takes the lead in that regard. We've recovered record amounts of heroin coming from the Mexican cartels into the United States. But now, this, I think, is important—we need to focus on the public health component as well, and work with our partners at HHS and at CDC, to come up with ways in which we can educate people about the issues that surround heroin use, and also the connected problem of prescription drug abuse, the use of opioids, and how that leads to the use of heroin.

This is all part of a problem that will require, I think, more than simply the Justice Department to really get at it, though I think we have to be in the lead, given our enforcement responsibilities that we take very seriously.

Chairwoman MIKULSKI. My—thank you very much, Mr. Attorney General—my time is up. I'm going to turn to Vice Chairman Shelby.

But, I think we cannot underestimate that this heroin matter is a new epidemic. And if we were hit by an infectious disease or a new kind of flu, we'd have Fauci, from NIH, and Francis Collins, and Sebelius on the edge of her chair, and Arne Duncan worrying about children in school needing vaccinations. I think we've got to go to the edge of our chair here.

This is prescription drugs, this is prescription drug addiction that's then leading to people buying heroin because it's easier to get. We've got suburban people driving into Baltimore looking into heroin markets that were featured in some of those awful movies about us. I mean, we are really concerned about what this is, and it's—and I think, if we marshal the resources of the Federal Government, working with the American Medical Association, doctors

in the community, et cetera, we can deal with this. This is not only crime, it is public health.

And can I count on you to take the lead in this?

Attorney General HOLDER. Yes, I will. And I will engage with other members of the Cabinet. But, beyond that, to go beyond the Federal Government to try to enlist others who I think have an interest, and should have an interest, in this—as you’ve indicated, the American Medical Association and others—so that we can really get at this problem in a balanced way. This is simply not an enforcement problem, this is something we have to deal with as a public health issue as well.

Chairwoman MIKULSKI. Right.

Senator Shelby.

Senator SHELBY. Thank you.

DRUG-RELATED CRIME

I just want to pick up on the Chairwoman’s area, there. What percent of the people in Federal prison, roughly—and you might want to furnish the exact number, if you don’t have it offhand—for the record—are in prison but related to drug abuse, drug use, drug sales, or connected to drugs?

Attorney General HOLDER. Roughly 50 percent.

Senator SHELBY. Fifty percent.

Attorney General HOLDER. Yes.

Senator SHELBY. And in the State, I believe it’s higher than that.

Attorney General HOLDER. I think that’s correct. In most States, I think that the number is probably higher.

Senator SHELBY. What is the rate of—not just drug related—what’s the rate of recidivism, repeat offenders, in the prison—that go into the prison system and go back, you know, after a while?

Attorney General HOLDER. Again, that’ll vary from State to State. I think the Federal rate is—

Senator SHELBY. I’m speaking of the Federal. The Federal.

Attorney General HOLDER. Okay. Federal rate is roughly, I think, around 35–40 percent.

Senator SHELBY. About a third, more or less—

Attorney General HOLDER. Right. I think that’s about right.

Senator SHELBY [continuing]. Of the people who go to prison come back.

Attorney General HOLDER. Right.

Senator SHELBY. So, basically, our prison systems, State and Federal, are challenged, to say the least, are they not, on rehabilitating—

Attorney General HOLDER. Yes.

Senator SHELBY [continuing]. People, getting them back in society?

Attorney General HOLDER. Absolutely.

Senator SHELBY. What percent of the Federal prison—of people in Federal prison are there connected in some way to violent crime, the people that we need to get off the streets, period?

Attorney General HOLDER. I don’t know—

Senator SHELBY. Can you furnish that for the record?

Attorney General HOLDER. Yes, we can certainly furnish that for the record—

Senator SHELBY. Do you have——

Attorney General HOLDER [continuing]. We have drug offenses, about 50 percent; weapons, explosives, arson, about 5.4 percent. So——

Senator SHELBY. But, violent-related.

Attorney General HOLDER. Yes.

Senator SHELBY. People that you wouldn't want in your neighborhood or your school or around your children——

Attorney General HOLDER. Yes.

Senator SHELBY [continuing]. You know, period.

Attorney General HOLDER. I can provide you with——

Senator SHELBY. Okay.

Attorney General HOLDER [continuing]. A more precise number, Senator.

[The information follows:]

Question. What percentage of the Federal prison population is connected in some way to violent crime?

Answer. Of the sentenced inmates in BOP custody, one third (33.8 percent) are serving time for a violent offense, defined to include homicide, robbery, aggravated assault, sex offenses, weapons and explosives (68,486 out of 202,397). Half (49.5 percent) have a previous conviction for a violent offense (100,142 out of 202,397). Data as of August 30, 2014.

Senator SHELBY. Do you believe that a lot of our prisons are overcrowded, State and Federal?

FEDERAL PRISONS

Attorney General HOLDER. Yes. If you look at the Federal prison system, we don't have enough beds for the people, and especially when you look at those people who we consider the most significant offenders. It's one of the reasons why we try to bring online more of our prisons.

Senator SHELBY. Do you believe it's the—when you make priorities, as a prosecutor, that you should look at violent crime and get people off the street, get them out of doing harm to other people in institutions first?

Attorney General HOLDER. Sure. There are a range of things that we have to——

Senator SHELBY. Absolutely.

Attorney General HOLDER [continuing]. Do in the Federal system. National security, violent crime, drug offenses. We have a range of things that we have to do, working with our State and local partners, as well. They do the vast majority of the prosecuting when it comes to violent crime.

Senator SHELBY. I know it's been said that the Department, led by you, is trying to figure ways out to lessen the impact of some tough sentencing, which is statutory, I think. So, a lot of that—a lot of the sentencing by Federal courts over—on drugs and other things, I believe that's according to statute. Is that right, Mr. Attorney General?

SENTENCING REFORM

Attorney General HOLDER. There are certain mandatory minimum sentences that exist with regard to how we charge certain crimes. We have discretion as to——

Senator SHELBY. I'm talking about after they're sentenced, they're sentenced on—based on a statute, are they not?

Attorney General HOLDER. There are guidelines that are advisory now, but they're no longer mandatory.

Senator SHELBY. Well, once a judge sentences a prisoner for X years after going through a court or a plea, do you have the power, as the Attorney General, to change that sentence?

Attorney General HOLDER. I have limited amounts of power.

Senator SHELBY. Like what? Explain.

Attorney General HOLDER. With regard to people, for instance, as the Chair was saying, people who I can release, or the director of Bureau of Prisons can release on the basis of compassionate release, somebody who is 70–80 years old, who is no longer a threat to society. I have that capacity. But, generally, the Attorney General—

Senator SHELBY. It's statutory, is it not?

Attorney General HOLDER. Yes. Statutory and regulatory. But, generally, the Attorney General does not have the ability to reduce sentences. That is something the President can do.

Senator SHELBY. And if there's any change in the laws on sentencing, it came from Congress—it had come from Congress to modify, repeal, or enact something to supersede it, is that correct?

Attorney General HOLDER. Yes. And that's why we are supporting the efforts of Senator Lee, Senator Leahy, and Senator—

Senator SHELBY. Okay.

Attorney General HOLDER [continuing]. Durbin, to try to make changes to our Federal system.

ROLE OF INSPECTOR GENERAL

Senator SHELBY. I just have a few seconds left, but this is important, I think. A lot of us—I raised it in my opening statement—we're concerned about the issues raised dealing with the Inspector General. I think Congress has been clear, as has this committee, that the Inspector General must have unfettered access to any and all documents necessary to carry out his duties. Do you disagree with that?

Attorney General HOLDER. I would say that the Inspector General should have access to those materials necessary to do the investigations that he does, and consistent with the laws that govern some of the material that he might want access to.

Senator SHELBY. Well, it's all consistent with the law, but—

Attorney General HOLDER. Well, the law is written in such a way that, with regard to certain requests that are made, the Attorney General or the Deputy Attorney General has to make a determination that it can be appropriately shared.

But, one thing I would point out. There has never been an instance, as long as I have been Attorney General, that the Inspector General has asked for materials that I have said he could not have. That has just not happened.

Senator SHELBY. It hasn't happened.

Attorney General HOLDER. Has not happened.

Senator SHELBY. Do you believe that the Inspector General should have to seek your approval to access grand jury documents

relevant to ongoing investigations, something that he's charged, statutorily, to investigate and oversee?

Attorney General HOLDER. I think, as the law exists now with regard to grand jury material, wiretap information, there is an approval process that I think is an appropriate one to go through. But, as I said, there's never been an instance where, with regard to a request made by an Inspector General, I or the Deputy Attorney General have not said, "You can't have access to that material."

Senator SHELBY. Have you, or will you, direct the Department of Justice that you oversee to grant the Inspector General unfettered access to relevant documents to carry out his investigations within the Department, even though it might be detrimental to somebody in the Department of Justice, including yourself?

Attorney General HOLDER. Yes. I mean, the question of whether or not this material is turned over or the Inspector General has access to it is not a function of who is under investigation or what harm is going to happen to the Department. It is really a function of making sure that we are following the——

Senator SHELBY. But, what if——

Attorney General HOLDER [continuing]. Laws that exist.

Senator SHELBY [continuing]. He was investigating somebody high up in the Justice Department, and he had reason to do this, and he needed documents. Would you give him access to those documents? Would you cause him trouble?

Attorney General HOLDER. They'd have access to the documents, as they have in the past.

Senator SHELBY. And you're not going to block the Inspector General from doing his work.

Attorney General HOLDER. No. There is no tension between making sure the Inspector General has the documents that he or she needs and also making sure that the laws that govern the release of those materials are followed. And we have done so in the past.

Senator SHELBY. Well, if a head of the Department, even the Justice Department, like you or, say, Secretary of Energy or Secretary of State, or whatever, if you have an Inspector General there to do oversight and uncover wrongdoing, if they could say, "You can't go there," it would impede their investigation, would it not?

Attorney General HOLDER. Yes, but the Attorney General has a unique responsibility, in that I am the possessor of, for instance, grand jury material, wiretap information that the Secretary of State or Secretary of Energy would not have access to, and so, the need for the statutory requirements that we have to go through at the Justice Department are different than what would exist in other executive-branch agencies.

Senator SHELBY. But, the Inspector General at the Department of Justice couldn't do his job unless they had unfettered access to stuff he was seeking. You seem to be stalling on giving him access to things in the Justice Department. I don't understand that.

Attorney General HOLDER. Well, you'll have the ability to talk to the Inspector General. I think he'll echo——

Senator SHELBY. Sure.

Attorney General HOLDER [continuing]. What I've just said, which is that there has never been an instance where material has been sought that has not been granted to them.

There was a question that was actually raised by Mr. Horowitz's predecessor about whether or not there was a legal basis for the position that we were taking. What we offered to do was to send it to the Office of Legal Counsel for a determination as to whether the view that the Attorney General or the Deputy Attorney General was taking was correct. The decision was made by the Inspector General not to have that OLC opinion done. We have copies of the letter, that I will be more than glad to make available to the committee, that shows that what we have done is consistent with the law and also consistent with the important responsibilities that the Inspector General has.

[The information follows:]

SUMMARY OF THE DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL'S POSITION REGARDING ACCESS TO DOCUMENTS AND MATERIALS GATHERED BY THE FEDERAL BUREAU OF INVESTIGATION

Introduction

In November 2009, the Office of the Inspector General (OIG) initiated a review of the Department's use of the material witness statute, 18 U.S.C. § 3144. Pursuant to our responsibilities under Section 1001 of the Patriot Act, a significant part of our review is to assess whether Department officials violated the civil rights and civil liberties of individuals detained as material witnesses in national security cases in the wake of the September 11 terrorist attacks. In addition, the review will provide an overview of the types and trends of the Department's uses of the statute over time; assess the Department's controls over the use of material witness warrants; and address issues such as the length and costs of detention, conditions of confinement, access to counsel, and the benefit to the Department's enforcement of criminal law derived from the use of the statute.

In the course of our investigation, we learned that most of the material witnesses in the investigations related to the September 11 attacks were detained for testimony before a grand jury. At our request, between February and September 2010 the Department of Justice National Security Division and three U.S. Attorneys' offices (Southern District of New York (SDNY), Northern District of Illinois (NDIL), Eastern District of Virginia (EDVA)) provided us with grand jury information concerning material witnesses pursuant to Fed. R. Crim. P. 6(e)(3)(D), which permits disclosure of grand jury matters involving foreign intelligence information to any Federal law enforcement official to assist in the performance of that official's duties. We also sought a wide range of materials from other Department components, including the U.S. Marshals Service, the Federal Bureau of Prisons, and the Federal Bureau of Investigation (FBI). All of the Department's components provided us with full access to the material we sought, with the notable exception of the FBI.

In August 2010, we requested files from the FBI relating to the first of 13 material witnesses. In October 2010, representatives of the FBI's Office of General Counsel informed us that the FBI believed grand jury secrecy rules prohibited the FBI from providing grand jury material to the OIG. The FBI took the position that it was required to withhold from the OIG all of the grand jury material it gathered in the course of these investigations. The FBI has also asserted that, in addition to grand jury information, it can refuse the OIG access to other categories of information in this and other reviews, including Title III materials, Federal taxpayer information; child victim, child witness, or Federal juvenile court information; patient medical information; credit reports; FISA information; foreign government or international organization information; information subject to non-disclosure agreements, memoranda of understanding or court order; attorney client information; and human source identity information. The information we have requested is critical to our review. Among other things, we are examining the Department's controls over the use of material witness warrants, the benefit to the Department from the use of the statute, and allegations of civil rights and civil liberties abuses in the Department's post-9/11 use of the statute in the national security context. The requested grand jury information is necessary for our assessment of these issues.

The FBI has also asserted that page-by-page preproduction review of all case files and e-mails requested by the OIG in the material witness review is necessary to ensure that grand jury and any other information the FBI asserts must legally be withheld from the OIG is redacted. These preproduction reviews have caused substantial delays to OIG reviews and have undermined the OIG's independence by giving the entity we are reviewing unilateral control over what information the OIG receives, and what it does not.

The FBI's position with respect to production of grand jury material to the OIG is a change from its longstanding practice.¹ It is also markedly different from the practices adopted by other components of the Department of Justice. The OIG routinely has been provided full and prompt access to grand jury and other sensitive materials in its reviews involving Department components in high profile and sensitive matters, such as our review of the President's Surveillance Program and the investigation into the removal of nine U.S. Attorneys in 2006. Those reviews would have been substantially delayed, if not thwarted, had the Department employed the FBI's new approach.

In many respects, the material witness warrant review is no different from other recent OIG reviews conducted in connection with our civil rights and civil liberties oversight responsibilities under the Patriot Act in which Department components granted the OIG access to grand jury and other sensitive material. For example, in our review of the FBI's use of "exigent letters" to obtain telephone records, at our request the Department of Justice Criminal Division and the FBI provided us grand jury materials in two then ongoing sensitive media leak investigations involving information classified at the TS/SCI level. The grand jury materials were essential to our findings that FBI personnel had improperly sought reporters' toll records in contravention of the Electronic Communications Privacy Act and Department of Justice policy.²

Similarly, in our review of the FBI's investigations pertaining to certain domestic advocacy groups, the OIG assessed allegations that the FBI had improperly targeted domestic advocacy groups for investigation based upon their exercise of First Amendment rights. In the course of this review, the FBI provided OIG investigators access to grand jury information in the investigations we examined. This information was necessary to the OIG's review as it informed our judgment about the FBI's predication for and decision to extend certain investigations. The lack of access to this information would have critically impaired our ability to reach any conclusions about the FBI's investigative decisions and, consequently, our ability to address concerns that the FBI's conduct in these criminal investigations may have violated civil rights and civil liberties.³

When the OIG has obtained grand jury material, the OIG has carefully adhered to the legal prohibitions on disclosure of such information. We routinely conduct extensive pre-publication reviews with affected components in the Department. The OIG has ensured that sensitive information—whether it be law enforcement sensitive, classified, or information that would identify the subjects or direction of a grand jury investigation—is removed or redacted from our public reports. In all of our reviews and investigations, the OIG has scrupulously protected sensitive information and has taken great pains to prevent any unauthorized disclosure of classified, grand jury, or otherwise sensitive information.

For the reasons discussed below, the OIG is entitled to access to the material the FBI is withholding. First, the Inspector General Act of 1978, as amended (Inspector General Act or the Act), provides the OIG with the authority to obtain access to all of the documents and materials we seek. Second, in the same way that attorneys performing an oversight function in the Department's Office of Professional Respon-

¹Since 2001, when the OIG assumed primary oversight responsibility for the FBI, the OIG has undertaken numerous investigations which required review of the most sensitive material, including grand jury material and documents classified at the highest levels of secrecy. Through all of these reviews, the FBI never refused to produce documents and other material to the OIG, including the most sensitive human and technical source information, and it never asserted the right to make unilateral determinations about what requested documents were relevant to the OIG reviews. On the rare occasion when the FBI voiced concern based on some of the grounds now more broadly asserted in this matter, quick compromises were reached by the OIG and the FBI. Indeed, with only minor exceptions, the FBI's historical cooperation with the OIG has been exemplary, and that cooperation has enabled the OIG to conduct thorough and accurate reviews in a timely manner, consistent with its statutorily based oversight mission and its duty to assist in maintaining public confidence in the Department of Justice.

²We described this issue in our report, *A Review of the Federal Bureau of Investigation's Use of Exigent Letters and Other Informal Requests for Telephone Records*, (January 2010).

³Our findings are described in our report, *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups* (September 2010).

sibility (OPR) are “attorneys for the government” under the legal exceptions to grand jury secrecy rules, the OIG attorneys conducting the material witness review are attorneys for the government entitled to receive grand jury material because they perform the same oversight function. Third, the OIG also qualifies for disclosure of the grand jury material requested in the material witness review under amendments to the grand jury secrecy rules designed to enhance sharing of information relating to terrorism investigations.

I. THE INSPECTOR GENERAL ACT

The FBI’s refusal to provide prompt and full access to the materials we requested on the basis of grand jury secrecy rules and other statutes and Department policies stands in direct conflict with the Inspector General Act. The Act provides the OIG with access to all documents and materials available to the Department, including the FBI. No other rule or statute should be interpreted, and no policy should be written, in a manner that impedes the Inspector General’s statutory mandate to conduct independent oversight of Department programs. *See, e.g., Watt v. Alaska*, 451 U.S. 259, 267 (1981) (A court “must read [two allegedly conflicting] statutes to give effect to each if [it] can do so while preserving their sense and purpose.”).

A. The Inspector General Act Grants the OIG Full and Prompt Access to any Documents and Materials Available to the DOJ, Including the FBI, that Relate to the OIG’s Oversight Responsibilities

The Inspector General Act is an explicit statement of Congress’s desire to create and maintain independent and objective oversight organizations inside of certain Federal agencies, including the Department of Justice, without agency interference. Crucial to the Inspectors General (IGs) independent and objective oversight is having prompt and complete access to documents and information relating to the programs they oversee. Recognizing this, the Inspector General Act authorizes IGs “to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act.” 5 U.S.C. App. 3 §6(a)(1). The Act also authorizes the IGs to “request” necessary “information or assistance” from “any Federal, State, or local governmental agency or unit thereof,” including the particular establishments the IGs oversee. *Id.* §6(a)(3); *id.* §12(5) (defining the term “Federal agency” to include the establishments overseen by the Inspectors General). Together, these two statutory provisions operate to ensure that the Inspectors General are able to access the information necessary to fulfill their oversight responsibilities.

The only explicit limitation on IGs’ right of access to information contained in the Inspector General Act concerns all agencies’ obligation to provide “information or assistance” to the Inspectors General. However, this limitation does not apply to IGs’ absolute right of access to documents from their particular agency. This circumscribed limitation provides that all Federal agencies shall furnish information or assistance to a requesting IG “insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested[.]” 5 U.S.C. §6(b)(1) (emphasis added).⁴

Another provision of the Inspector General Act grants the Inspectors General discretion to report instances of noncooperation to the head of the relevant agency,

⁴The legislative history is silent on the reason for conditioning agencies’ furnishing of “information or assistance” to all IGs on practicability or statutory restriction, but imposing no such limitation on an agency’s absolute requirement to provide its documents to its own IG. However, there are possible explanations for the distinction. For example, providing access to documents and materials maintained in agency systems and files is simple, inexpensive, and an undeniable precondition to the fair, objective, and successful exercise of the IGs’ oversight responsibilities. Accordingly, the Act’s unconditional language authorizing IGs to have access to the documents and materials of the agency it oversees is understandable and sensible. In contrast, agencies may not always be able to fulfill requests for “information or assistance” immediately, even from their agency’s IG. A request of one agency from another agency’s IG may require more careful scrutiny because it would entail information being transmitted outside of the requested agency. In addition, busy agency schedules must be accommodated when fulfilling a request for an interview; subject matter experts may not be immediately available to interpret documents or may have left the agency’s employment; responses to interrogatories often require revisions and approvals; and annotations, explanations, and written analyses of existing documents and materials can take significant amounts of time. Despite the OIG’s historical success at reaching reasonable compromises with components of the DOJ responding to requests for “information or assistance,” the OIG readily acknowledges that circumstances could arise where a component’s delay, difficulty, or even refusal in responding to a request for “information or assistance” would be reasonable. These considerations are not applicable, however, to IGs’ access to documents and materials of the agency it oversees, and therefore, that provision of the Act authorizes access in absolute terms.

whether that noncooperation impedes on the IGs' authority to obtain documents or "information and assistance." Under that section, when an IG believes "information or assistance" is "unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay." 5 U.S.C. App. 3 §6(b)(2). The FBI contends this reporting provision of the Act is a further limitation on the agencies' obligation to provide documents and "information and assistance" to the Inspectors General. The FBI has argued that the provision implicitly recognizes that requests for both documents and "information and assistance" can be "reasonably refused."

The OIG believes the FBI's reliance on this reporting section as limiting an IG's right of access to documents in the custody of the agency it oversees is misplaced. This provision of the Act is entirely consistent with the right of full and prompt access to documents and materials and does not create a limitation, explicit or implicit, on the authorities provided elsewhere in the Act. By granting the Inspectors General the discretion to decide that some instances of noncooperation by an agency do not rise to the level of a reportable incident, the provision accounts for the practical reality that many instances where Inspectors General are not granted access to documents or materials, or are not provided "information or assistance" in response to a request, do not merit a report to agency management.⁵

To summarize, the Inspector General Act provides the Inspectors General a right of full and prompt access to documents and materials in the custody of the agency they oversee, a right to request "information or assistance" from any agency that is modestly limited, and an obligation to report instances of agency noncooperation to the agency head when, in the judgment of the Inspector General, such noncooperation is unreasonable. Accordingly, the Act provides Inspectors General unconditional authority to gather documents and records in the custody of the agency they oversee, an authority necessary to obtain the basic information to conduct independent and objective reviews and investigations.

B. The Only Limitation on the OIG's Authority to Conduct Audits and Investigations within its Jurisdiction is Section 8E of the Inspector General Act, and that Limitation Must Be Invoked by the Attorney General

In the law creating the DOJ OIG, Congress inserted an exception to the normal authority granted to Inspectors General. In a section captioned "Special provisions concerning the Department of Justice," the IG Act provides the Attorney General the authority, under specified circumstances and using a specific procedure, to prohibit the OIG from carrying out or completing an audit or investigation, or from issuing any subpoena. *See* 5 U.S.C. App. 3 §8E. This authority may only be exercised by the Attorney General, 5 U.S.C. App. 3 §8E(a)(1)–(2), and only with respect to specific kinds of sensitive information. *Id.* §8E(a)(1). The Attorney General must specifically determine that the prohibition on the Inspector General's exercise of authority is necessary to prevent the disclosure of certain specifically described categories of information, or to prevent the significant impairment to the national interests of the United States. *Id.* §8E(a)(2). The Attorney General's decision must be conducted in writing, must state the reasons for the decision, and the Inspector General must report the decision to Congress within 30 days. *Id.* §8E(a)(3). These provisions represent an acknowledgement of the fact that the Department of Justice often handles highly sensitive criminal and national security information, the premature disclosure of which could pose a threat to the national interests.

These exacting procedures confirm that the special provisions of Section 8E represent an extraordinary departure from the baseline rule that the Inspectors General shall have unconditional access to documents and materials, and broad authority to initiate and conduct independent and objective oversight investigations. These procedures also confirm that only the Attorney General, and not the FBI, has the power to prohibit the OIG's access to relevant documents and materials available to the Department.

II. GRAND JURY SECRECY RULES

The Federal Rules of Criminal Procedure provide the general rule of secrecy applicable to grand jury information and various exceptions to that general rule. One of the exceptions allows disclosure of grand jury information to "an attorney for the government." This exception provides a basis, additional to and independent of the

⁵ For example, IG document requests can be very broad, particularly before IG investigators have learned the details of the program under review. In such instances, formal requests are often informally and consensually narrowed after discussions with the agency under review, and a report to the agency head is unnecessary. Similarly, an agency's failure to provide the Inspector General with access to a document is often inadvertent or such a minor inconvenience that the Inspector General could reasonably view the noncooperation as *de minimis*.

Inspector General Act, for disclosing the requested grand jury materials to the OIG.⁶ The OIG's reliance on the "attorney for the government" exception to obtain access to grand jury material is supported by an Office of Legal Counsel (OLC) opinion and a Federal court decision. OIG access to grand jury material under this exception is consistent with the broad authority granted to the OIG under the Inspector General Act, and it avoids an oversight gap so that Department employees cannot use grand jury secrecy rules to shield from review their adherence to Department policies, Attorney General Guidelines, and the Constitution. The "attorney for the government" exception allows for automatic disclosure of grand jury materials and is, therefore, particularly well suited to ensure that the OIG's ability to access documents and materials, and to access them promptly, is coextensive with that of the Department and the FBI.

A. OIG Attorneys Are "Attorneys for the Government"

In an unpublished opinion issued subsequent to *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983) (a Supreme Court opinion narrowly construing the term "attorney for the government" as used in the exception to the general rule of grand jury secrecy), the OLC determined that, even in light of the Court's decision, the Rule was broad enough to encompass Office of Professional Responsibility (OPR) attorneys exercising their oversight authority with regard to Department attorneys.

In *Sells*, Civil Division attorneys pursuing a civil fraud case sought automatic access to grand jury materials generated in a parallel criminal proceeding. The Supreme Court interpreted the exception that provides for automatic disclosure of grand jury materials to "attorney[s] for the government" for use in their official duties, as limited to government attorneys working on the criminal matter to which the material pertains. *Sells*, 463 U.S. at 427. The Court held that all other disclosures must be "judicially supervised rather than automatic," *id.* at 435, because allowing disclosure other than to the prosecutors and their assistants would unacceptably undermine the effectiveness of grand jury proceedings by: (1) creating an incentive to use the grand jury's investigative powers improperly to elicit evidence for use in a civil case; (2) increasing the risk that release of grand jury material could potentially undermine full and candid witness testimony; and (3) by circumventing limits on the government's powers of discovery and investigation in cases otherwise outside the grand jury process. *See id.* at 432–33.

In its unpublished opinion, OLC concluded that the three concerns the Supreme Court expressed in *Sells* were not present when OPR attorneys conduct their oversight function of the conduct of Department attorneys in grand jury proceedings. OLC concluded that as a delegatee of the Attorney General for purposes of overseeing and advising with respect to the ethical conduct of department attorneys and reporting its findings and recommendations to the Attorney General, OPR is part of the prosecution team's supervisory chain. Thus, OPR attorneys may receive automatic access to grand jury information under the supervisory component inherent in the "attorney for the government" exception.

OIG attorneys should be allowed automatic access to grand jury material in the performance of their oversight duties because OIG and OPR perform the identical functions within the scope of their respective jurisdictions. Like OPR attorneys conducting oversight of Department attorneys in their use of the grand jury to perform their litigating function, OIG attorneys are part of the supervisory chain conducting oversight of the conduct of law enforcement officials assisting the grand jury. Both the OIG and OPR are under the general supervision of the Attorney General, compare 28 C.F.R. 0.29a(a) (OIG) with 28 C.F.R. 0.39. Just like OPR, the Inspector General must "report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law." 5 U.S.C. App. 3, §§ 4(d) & 8E(b)(2). OIG attorneys make findings and recommendations to the Attorney General regarding the conduct of law enforcement officials assisting the grand jury, and the Attorney General then imposes any discipline or implements reform. Therefore, for purposes of the "attorney of the government" exception, the OIG is in the same position as OPR, both with respect to its oversight function and its relationship to the Attorney General.

More to the point, whatever formal differences exist in the relative structures of the OIG and OPR, the two offices are functionally indistinguishable for purposes of access to grand jury materials for all of their oversight purposes. The risks to the secrecy of the underlying grand jury proceedings from disclosure to the OIG, if any, are no different from those created by automatic disclosure to OPR. OPR's oversight

⁶ Rule 6(e)(3)(A)(i) provides: "Disclosure of a grand jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to: (i) an attorney for the government for use in performing that attorney's duty. . . ." Fed. R. Crim. P. 6(e)(3)(A)(i).

of the conduct of Department attorneys is an after-the-fact examination of what happened during the grand jury process, just as is OIG's oversight of law enforcement agents' conduct. OIG review of law enforcement conduct in such circumstances is not undertaken to affect the outcome of a civil proceeding related to the target of an underlying criminal investigation. Therefore, disclosure of grand jury materials to the OIG runs no risk of creating an incentive to misuse the grand jury process in order to improperly elicit evidence for use in a separate administrative or criminal misconduct proceeding against the target of the grand jury's investigation. Similarly, because our review is of law enforcement conduct and not of lay witnesses who are called to testify, the willingness of those witnesses to testify should not be implicated. OIG oversight also ensures that the Department's law enforcement officials who testify before the grand jury do so fully and candidly, and that Department employees do not ignore their legal obligations to the grand jury.

Moreover, the OIG's inherent supervisory role with regard to Department employees who assist the grand jury was recognized by a Federal court overseeing proceedings relating to the death of Bureau of Prisons inmate Kenneth Michael Trentadue. The district court granted the government's motion for access to grand jury materials, finding that the OIG's investigation of alleged misconduct "is supervisory in nature with respect to the ethical conduct of Department employees." The court stated that "disclosure of grand jury materials to the OIG constitutes disclosure to an attorney for the government for use in the performance of such attorney's duty[.]" *In re Matters Occurring Before the Grand Jury Impaneled July 16, 1996*, Misc. #39, W.D. Okla. (June 4, 1998).

Accordingly, there is no principled basis upon which to deny OIG attorneys the same access as OPR is allowed to review grand jury materials necessary to carry out its oversight function. Both OPR and OIG attorneys require access to grand jury materials to fulfill a supervisory function directed at maintaining the highest standards of conduct for Department employees who assist the grand jury. As such, OIG attorneys should also be able to obtain automatic access to matters that pertain to law enforcement conduct in matters related to the grand jury within the jurisdiction of the OIG.

B. The OIG is entitled to Receive Grand Jury Materials Involving Foreign Intelligence Information

Another exception to the general rule of grand jury secrecy allows an attorney for the government to disclose "any grand-jury matter involving foreign intelligence, counterintelligence . . . , or foreign intelligence information . . . to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties." Fed. R. Crim. P. 6(e)(3)(D). This exception was added in 2001 as part of the USA PATRIOT Act and was designed to enable greater sharing of information among law enforcement agencies and the intelligence community to enhance the government's effort to combat terrorism.⁷

This exception encompasses the OIG's request for the grand jury materials at issue in its material witness warrant review. The grand jury proceedings pursuant to which the materials were collected were all investigations of international terrorist activity conducted in the wake of the terrorist attacks of September 11, 2001. All of the grand jury information gathered in them is thus necessarily "related to," "gathered . . . to protect against," or "relates to the ability of the United States to protect against," among other things, "international terrorist activities." See 50 U.S.C. § 401a and Rule 6(e)(3)(D). All of the grand jury material gathered in those investigations thus constitutes foreign intelligence, counter intelligence, or foreign intelligence information (collectively, Foreign Intelligence Information).

In addition, OIG officials qualify as law enforcement officials within the meaning of the rule by virtue of the Inspector General's authority to conduct criminal investigations, apply for search warrants, make arrests, and investigate violations of civil rights and civil liberties. See, e.g., 5 U.S.C. App. 3 § 6(e)(1); USA PATRIOT ACT, Public Law 107-56, § 1001, 115 Stat. 272, 391 (2001). Also, the OIG's oversight activities constitute law enforcement duties for purposes of the foreign intelligence exception because they directly affect the design and implementation of the Department's law enforcement programs.

The OIG has discussed the access issues with Department leadership and sought their assistance in resolving the dispute with the FBI. Although the Department's consideration of all these issues is ongoing, in July 2011, the Department concluded that, at a minimum, the foreign intelligence exception authorizes an "attorney for the government" to disclose grand jury information to the OIG for use in connection

⁷ Public Law 107-56, § 203(A)(1), 115 Stat. 272, 279-81 (2001).

with OIG's law enforcement duties, such as the material witness warrant review, to the extent that the attorney for the government determines that the grand jury information in question involves foreign intelligence. Since then, an "attorney for the government" in the Department's National Security Division (a Department component under review in the Material Witness Warrant review), has been conducting a page-by-page review of the materials withheld by the FBI to determine whether they qualify as Foreign Intelligence Information under the exception before providing them to the OIG. In addition, the FBI has continued its own page-by-page review of some of the requested files to identify and redact grand jury and other categories of information, before the National Security Division attorney performs yet another review for the purpose of sending the material back to the FBI for the removal of grand jury foreign intelligence information redactions.

The Department's confirmation that the foreign intelligence exception is one basis for authorizing the OIG to obtain access to grand jury information was helpful. However, the page-by-page review of the material being conducted by the FBI and National Security Division to implement that decision is unnecessary. In our view, such page-by-page review is not necessary here because all of the grand jury material we have sought to date in the material witness review was collected in investigations of international terrorist activity conducted in the wake of the terrorist attacks of September 11, 2001, and thus necessarily falls within the very broad definitions of foreign intelligence, counterintelligence, or foreign intelligence information. See 50 U.S.C. § 401a and Rule 6(e)(3)(D). Therefore, the exception allows the OIG to receive all of the grand jury information from those investigations.⁸

Although the Department's determination that the OIG is entitled to access to the requested grand jury information in the material witness review under the foreign intelligence exception is helpful, that decision does not resolve the access issue. First, it does not address access to grand jury material that does not involve foreign intelligence information. Second, the Department's preliminary decision under the foreign intelligence exception does not address access to grand jury material in other OIG reviews. And third, the decision has been construed by the National Security Division and the FBI to require page-by-page review of the information, thereby undermining the independence and timeliness of the OIG's review as described above. Accordingly, a full decision confirming the OIG's right of access to grand jury and other information under the Inspector General Act and the "attorney for the government" exception is still necessary to enable the OIG effectively to carry out its oversight mission.

III. CONCLUSION

The objective and independent oversight mandated by the Inspector General Act depends on the fundamental principle that the Inspectors General should have access to the same documents and materials as the establishments they oversee. This principle explains why the Inspector General Act grants the IGs access to the documents and materials that are available to their establishments. It explains why OIG investigators are routinely granted access to TS/SCI materials when reviewing TS/SCI programs. It explains why OIG investigators are routinely read into some of the government's most highly classified and tightly compartmented programs, such as the President's Surveillance Program and the programs involved in the Robert Hanssen matter. And it explains why any instance of unreasonable denial of access to documents or materials under the Inspector General Act must be reported to the head of the agency, and why the Attorney General's decision to preclude an OIG audit, investigation, or subpoena must be reported to Congress.

The FBI's withholding of grand jury and other information is unsupported in law and contrary to the Inspector General Act and exceptions to the general rule of grand jury secrecy. The OIG is entitled to access under the Inspector General Act. Moreover, the OIG qualifies for two exceptions to the general rule of grand jury secrecy. See *supra*; see also 5 U.S.C. App. 3 §6; Fed. R. Crim. P. 6(e)(3)(D), 6(e)(3)(A)(i). It is true, of course, that under Section 8E of the Inspector General Act, the Attorney General could deny the OIG access to the documents at issue, as many of the documents constitute sensitive information within the scope of that Section. See 5 U.S.C. App. 3 §8E. But the Attorney General has not done so, and until he

⁸As noted above, such page-by-page reviews are also improper because they are contrary to the provisions of the Inspector General Act granting the OIG broad access to any document or material that is available to the agency overseen; undermine the independence of the Inspector General by granting a component under review unilateral authority to determine what materials the Inspector General receives, and result in unacceptable delays in the production of materials necessary for the OIG to conduct its oversight.

makes the written determination required in Section 8E(a)(2) and sets out the reasons for his decision, the OIG is entitled to prompt and full access to the materials.

Denying the OIG access to the materials it is seeking would also represent an unnecessary and problematic departure from a working relationship that has proven highly successful for years. Since its inception, the OIG has routinely received highly sensitive materials, including strictly compartmented counterterrorism and counterintelligence information, classified information owned by other agencies, and grand jury information, and it has always handled this information without incident. The OIG has always conducted careful sensitivity reviews with all concerned individuals and entities, both inside and outside the Department, prior to any publication of sensitive information, and it has been entirely reasonable and cooperative in its negotiations over such publications. The OIG's access to sensitive materials has never created a security vulnerability or harmed the Nation's interests; far from it, the OIG's access to sensitive information has markedly advanced the Nation's interests by enabling the independent and objective oversight mandated by Congress.

Simply put, there is no reason, legal or otherwise, to depart from the time-tested approach of allowing the OIG full and prompt access to documents and using a thorough prepublication sensitivity review to safeguard against unauthorized disclosure of the information therein. Access to grand jury and other sensitive materials is essential to the OIG's work, perhaps never more so than when the OIG is overseeing such important national security matters as the Department's use of material witness warrants and the FBI's use of its Patriot Act authorities. But whatever the subject matter, the authorities and mandates of the Inspector General are clear, and neither grand jury secrecy rules nor any other statutory or internal policy restrictions should be read in a manner that frustrates or precludes the OIG's ability to fulfill its mission.

Senator SHELBY. But, we want to make sure the Inspector General can do his job, even in the Justice Department.

Chairwoman MIKULSKI. Senator Shelby, why don't we, then, continue this with the Inspector General? And——

Senator SHELBY. We will.

Chairwoman MIKULSKI [continuing]. Given the fact that there's an 11:30 vote——

Senator SHELBY. Okay.

Chairwoman MIKULSKI [continuing]. We want to be sure members have a chance to——

Senator SHELBY. Thank you for your time.

Chairwoman MIKULSKI [continuing]. Answer their questions. No, and not to stifle—this is really crucial——

Senator SHELBY. It is.

Chairwoman MIKULSKI [continuing]. And we acknowledge the essential nature of this conversation. And we'll, hopefully——

Senator SHELBY. Sure.

Chairwoman MIKULSKI [continuing]. Be able to squeeze in the Inspector General.

Senator COLLINS.

Senator COLLINS. Thank you.

GRANTING ASYLUM

Mr. Attorney General, I mentioned, in my opening remarks, that the Department of Justice, along with the Department of Homeland Security, plays a critical role in reviewing claims for asylum. I believe that this system is seriously broken. It has allowed individuals to remain in this country under grants of asylum who never should have been allowed to remain here. And yet, it takes too long to adjudicate the legitimate cases of asylum-seekers, thus delaying their ability to work and support their families, and imposing a huge burden on communities' general assistance funds

while these asylum-seekers are waiting for their cases to be adjudicated.

I'd like to give you an example of both, and then get your response and find out what you're doing with the Department of Homeland Security to improve the system.

Later this month, as we who live in New England are particularly aware, it will be 1 year since the terrorist attacks at the Boston Marathon. The circumstances under which the perpetrators of the Boston Marathon bombing came to be in the United States underscores the need for reform of our asylum process. The younger of the two Tsarnaev brothers came to the U.S. on a tourist visa in 2002, and was granted asylum on his father's petition shortly thereafter. Now, asylum is supposed to be available only to those who can show a credible fear of persecution in their home country. Yet, the elder Tsarnaev came to the United States, leaving behind his wife and three other children in the country that he claimed to fear. So, it's difficult for me to understand how he possibly could have met the burden of proving a credible fear of persecution by the country in which he left his wife and remaining children.

Even more troubling are the questions surrounding the grant of asylum to Ibragim Todashev. That is the Chechen immigrant who was killed while being questioned by the FBI agents and local law enforcement regarding his association with the Tsarnaevs and also a triple homicide. It turns out that he came to the U.S. in 2008 on a J-1 visa to participate in an exchange program that was sponsored by an entity in my State, the Council on International Education Exchange. And that is a J-1 visa sponsor organization.

Now, from the start, it appears that Todashev had no intention of complying with the J-1 visa rules. And indeed, shortly after he arrived, the Council withdrew their sponsorship of him because he failed to provide the required documentation with respect to employment. That very day, the Council in Maine instructed him to make immediate plans to leave the country, recorded the information on the Federal database that is used. And yet, despite this agency doing everything correct, and despite the fact that Mr. Todashev was out of compliance with the requirements of his visa, he was later granted asylum and even a green card. This shocked the entity in Maine that reported him from being out of compliance with the visa years ago.

I find this very troubling. How is that a young man from Chechnya comes to the United States to participate in a cultural exchange program, immediately violates the conditions of his visa, is told to leave the country, and then is granted asylum? That, to me, shows there's a real problem with sharing of information and with the system.

Now, on the other side, we have the problem of legitimate asylum-seekers, and they have been forced to rely on local governments for the money that they need to live on. In Maine, for example, the cities of Portland and Lewiston, alone, have contributed \$10 million from their general assistance programs to support nearly 4,000 asylum-seekers and their families over the past 2 and a half years while they're awaiting the adjudicating of their claims to give them a work authorization.

So, we've got problems on both ends of the spectrum, which suggests to me that the entire system is broken. What is the Department of Justice doing to work with the Department of Homeland Security to solve these very serious problems?

Attorney General HOLDER. Well, the responsibility for the immigration system, I think, largely falls into the hands of DHS, but that is not to try to shirk the responsibility that the Justice Department has. We simply need more immigration judges. The number of cases that have been pending has continued to increase, an increase of 56 percent since 2009. Our budget request will enable EOIR, our EOIR, immigration component, to add 35 new immigration judge teams. That would increase our capacity to look at these cases, adjudicate them in an appropriate way, listen to the evidence, and make decisions that are based on the facts as they are actually developed. We simply don't have, at this point, the ability to do the job in as timely a way as I think we should have that ability to do.

Senator COLLINS. Well, I support your request for additional resources, but, frankly, if those judges aren't looking at the databases and aren't looking at the information from DHS, consulting with the Department of State on whether there should be a credible fear of prosecution, looking at whether there are violations of visas, adding more judges won't solve the problem. I think we need to do both.

Thank you, Madam Chairman.

Chairwoman MIKULSKI. That was an eye opener. Thank you very much. It was very meaty. And it also shows, when we do immigration reform, we have to look at these practical implementations at the local level. What Maine is paying is stunning.

Senator SHAHEEN.

Senator SHAHEEN. Thank you, Madam Chairman.

Mr. Attorney General—

Attorney General HOLDER. Good morning.

Senator SHAHEEN [continuing]. Thank you very much for being here.

HEROIN AND PRESCRIPTION DRUG ABUSE

As I'm sure you're aware, what we've seen in New Hampshire and northern New England is a real epidemic spread of heroin and prescription drug opioid use. And we're seeing that very much in New Hampshire over the last 10 years. The number of people admitted to State treatment programs has increased 90 percent for heroin use and 500 percent for prescription drug use. And, just in the last year, we've seen double the number of deaths from heroin abuse between 2012 and 2013.

Now, this summer, New Hampshire plans to institute a new prescription drug monitoring program in the State because of a Department of Justice grant that we have received. And I wonder if you could comment on how effective these types of monitoring programs have been in other parts of the country, and what other Federal resources might be available to help us in the States as we try and combat this real epidemic of heroin and prescription drug use?

Attorney General HOLDER. Well, Senator, I think you're correct to point out—and the term that's used, I think, is a correct one,

there is an epidemic. It is one that we certainly see in your State, in that region of the country, but it's something that we see nationwide. And I think we have to have a balanced approach to dealing with this. There has to be an enforcement component. The DEA will lead that. We have an increase of more than 320 percent, between 2008 and 2013, in the amount of heroin that we have taken from the cartels that was meant for our shores.

But, beyond that, enforcement alone is not enough. We have to also make sure that we identify this problem as a public health problem. Police officers, doctors, educators. We have to come up with treatment programs, prevention programs, and educational programs.

I don't think that we should repeat the mistake, frankly, that we made when we dealt with the crack epidemic, where we looked at it only as an enforcement issue. There has to be an enforcement component, but we have to bring into play all of these other resources that we have, including supporting the programs that you have described, these monitoring programs. It is why I think it is so important that our capacity to aid our State and local partners be made whole in our budget. These are issues that the Federal Government clearly has an interest in, but, on the ground, it's our State and local partners who have to do these kinds of things. And I want to have the ability, through our grant making ability, to support these efforts.

DRUG MONITORING

Senator SHAHEEN. Well, thank you. And obviously the Byrne Justice grants have been very helpful to us in New Hampshire, and there has been a real coordinated effort on the part of law enforcement. I would hope that you might consider sending someone up from the Justice Department to meet with our local law enforcement officials as we try and address this issue, because, as you point out, it's going to require a multilevel approach to really do something to make a difference as we look at how many people are being affected.

Can you talk a little bit about some of the other efforts the Department has undertaken to better integrate these kinds of strategies, other than—we know the Byrne grants are very helpful, we know that the monitoring programs are another way to try and address it. What else is the Department doing that can be helpful to States like New Hampshire?

Attorney General HOLDER. Well, we certainly have a variety of things. I mean, we have a great U.S. Attorney in New Hampshire. And so, there is—

Senator SHAHEEN. Who's doing a great job, I might add.

Attorney General HOLDER [continuing]. And so, there is certainly the help that we can give on the enforcement side there.

With regard to grants, I think that's certainly something that we want to consider. We have the COPS program, so that we have the ability to put more police officers on the ground, again, to deal with these kinds of issues. We also want to come up, I think, with programs that we work with the Department of Health and Human Services, as the Chair had suggested. This has to be something that is more than simply a Justice Department initiative. And I

think that we have the ability now to really potentially nip this in the bud. But, I think that we have a relatively small window before this potentially gets even more out of control than it is.

And I think, as I said, if we take a balanced approach involving agencies beyond the Justice Department making sure that we are supportive of our State and local partners, and so that we educate, and especially educate young people, about the dangers of prescription drug use, opioid use, and the problem with heroin use, I think that we can really have a significant impact on this problem.

Senator SHAHEEN. Thank you.

Thank you, Madam Chair.

Chairwoman MIKULSKI. Senator Shaheen, we thank you for raising the issue here. We—also, others have raised it. I hear it, too. We've asked the Attorney General to really take the lead in inter-agency, because we've got to go to—starting with the prescription drug issue up to this. So, thanks.

And I say to my members here that, as the Attorney General develops a strategy, we can arrange a staff briefing to get updates and make sure we put this in.

Senator Kirk, a well-known anti-gang fighter.

GANGS

Senator KIRK. I wanted to ask you, Mr. Attorney General, about the \$18 and a half million that this subcommittee has approved to fight gangs of national significance to also highlight the work of Anita Alvarez, the State's Attorney for Cook County, that took down an entire gang, called the Black Souls, at one shot with using resources from your Department. I would say that's a very good model that the public can get behind, taking out a whole gang. I would say that this was not one of the vast gangs—like we have the Gangster Disciples, over 18,000 members. There were 23 defendants, in the case of the Black Souls arrest in June.

GANGS OF NATIONAL SIGNIFICANCE

I would just highlight that issue as a way of attacking this problem. We do have about 253 factions of the GDs in Chicagoland. If we can execute the \$18-and-a-half-million strategy to whack a number of those factions and totally eliminate them, that you will have a lot of support from this subcommittee.

Attorney General HOLDER. Well, I certainly appreciate that, Senator. I think you're right to identify that as a challenge that we have to meet. You know, Chicago, I think, in some ways, gets an unfair rap. This is not a problem that is Chicago only. This is a problem that exists throughout the country, this problem of gangs. Our Marshal Service plans to hire gang and technical operation group investigators in seven regional fugitive task forces. And we've begun that process, because we understand this is a problem that is really nationwide in scope. And the effort that you described, where you take down significant numbers of these gang members at one time, can really tend to cripple them. And so, we're looking to make those kinds of cases.

We want to be strategic in the way in which we use the resources that we have. But, the reality is, unless we get at this gang problem, we won't get at what I think is really the root of our violence

problem in too many of our cities. And, you know, as I said, it's just not Chicago, it goes well beyond Chicago.

Senator KIRK. Yes. And——

Madam Chairwoman.

Chairwoman MIKULSKI. And, Senator Kirk, we want to continue the effort that you so ably undertook, and keep this going. You're onto something big, here, and we think it's crucial.

Senator KIRK. Thank you.

Chairwoman MIKULSKI. Senator Merkley.

FINANCIAL FRAUD

Senator MERKLEY. Thank you, Madam Chair. And thank you.

About a year ago, you set off a bit of a firestorm when you noted that one of the reasons that certain companies couldn't be prosecuted is because of the economic impact of potential indictments. And later, you backed off that a little bit. But, the general point continues to resonate that there have been a host of dramatic activities. It seems like every 3 months, we have another major scandal, and these scandals involve wrongdoing; and often at the heart of it is criminal wrongdoing, but largely the institution ends up paying a fine and everyone goes back to business as usual.

I'm just kind of stunned by the list of things that have happened during the time that I've been in the Senate. We have offshore tax evasion by international banks, we have the manipulation of the LIBOR interest index, we have structured mortgage-backed securities that were designed to fail, we have foreclosure fraud, including robo-signing. We have the laundering, of which, I think, the premier example was Hong Kong Shanghai Bank Corporation, of what was estimated to be hundreds of billions of dollars, possibly a trillion dollars, and there were laundering activities that involved terrorist activities, drug rings, they involved transactions, the proceeds of transactions with states where we have economic sanctions that are very important to our national security, like our relationship with Iran, and trying to prevent Iran from having a nuclear weapon. We have the manipulation of electricity prices in an Enron-style scheme. I mean, it just—the list goes on.

INDICTING CORPORATIONS

Have we reached a different point now? Have we successfully tackled the issue of "too big to fail" and its close cousin, which is more in your realm, of "too big to jail"?

Attorney General HOLDER. Well, what I'd say is, first, that there might have been some misinterpretation, misunderstanding about what I said. So, I wouldn't say that I necessarily pulled back from what I said in that initial statement. Maybe I clarified it. But, let me be very clear. No institution is too big, no person is too important, to be held accountable in a criminal sense, if that is appropriate.

And if you look at what we have done, beginning in 2013, and look at the guilty pleas we've gotten from financial industries—UBS, RBS, SAC Capital, Wegland, a Swiss bank; if you look at individuals, we've gotten individuals from JPMorgan, Goldman Sachs, Morgan Stanley, Credit Suisse, UBS, Rabobank, ICAP, Galileo, SAC, Stanford Financial Group. So, we have gotten pleas,

both from institutions and from individuals. We've also done creative and, I think, appropriate things—appropriately aggressive things with regard to our use of the civil law, as well.

I am proud of what this Department has done in holding accountable people who were partially responsible for the mortgage meltdown that led to our financial crisis, and other things that we have done in the financial realm. This Department's record, under my leadership, will, I think, stand the test of time. And I'll compare it to any other Justice Department, any other Attorney General, at any other time.

Senator MERKLEY. So, you would say there is no hesitation to pursue criminal charges because of the potential impact on an institution? I mean, Arthur Andersen was the example so often put forward. And certainly a large bank falling would have big reverberations. We all understand that, and that's been the dilemma. But, are you saying, today, that dilemma doesn't exist and it's not weighed at all by the Justice Department?

Attorney General HOLDER. There are factors that we considered. There was a process that was begun under a Deputy Attorney General named Holder, back in the Clinton administration, where we put out a certain number of factors that have to be considered before a determination is made about when an institution is criminally prosecuted.

If you go after an organization, and you put that organization out of business as a result of the indictment, that is something that I think you should appropriately consider. There are innocent people who then get punished—potentially, employees, shareholders. Doesn't mean that you shouldn't—you might have to make the determination that because the company is a recidivist or the harm is so great that that is, in fact, the price that innocent people will have to pay.

But, these are the kinds of things that we have to consider. And I think our track record shows that, where we have made the determination that people and institutions should be held accountable, we have not hesitated in doing so.

Senator MERKLEY. Well, I'll close with this. I think what really stuck in my mind is that, the same week that the settlement came out with HSBC, which, I may be wrong, but I don't think involved any individuals being prosecuted—that same week, there was a story about a woman whose boyfriend stashed his drug money in a coffee can in her attic. And, if I recall right, I think she is serving 15 years in prison. And so, one involved a few dollars, the other hundreds of billions of dollars. And it just seemed like the sort of thing that sticks in people's minds as to whether the justice system is not weighted heavily in favor of the powerful. And I just want to encourage you to do all you can—and I understand that often it makes sense when individuals are involved, to go after the individuals rather than the institution, for the reasons we're discussing. But, it's important to our system in the United States that the powerful don't pay a fine while the ordinary person goes to prison.

Attorney General HOLDER. Senator, you make an excellent point—

Chairwoman MIKULSKI. Thank you very much. Thank you.

Attorney General HOLDER. I was just going to say this. One of the reasons why our Smart on Crime initiative has at its base the notion that there has to be proportionality in regard to how we enforce the criminal law. And so, what I'm trying to do is work with Congress so that we put some sense of balance back into the system that has gotten a little out of balance. But, the concerns that you raise are very legitimate ones.

Chairwoman MIKULSKI. Thank you very much, Senator Merkley. Senator Murkowski.

DRUGS

Senator MURKOWSKI. Thank you, Madam Chairman. Madam Chairman, you have raised, as well as Senator Shaheen, the issue of apparent heroin and what we need to do as we move forward. And you've used the terminology that we need to be on the edge of our chair when it comes to issues like heroin.

I would suggest, also—and I present this to you, Mr. Attorney General—that we are seeing an increasing level of synthetic drugs that are coming into our communities and doing great damage. And, of course, the problem is that, as a State, you can say that, based on this formulary, this is a drug under this schedule, but all these individuals have to do is change that formulary, and they evade or avoid those laws. We're seeing some really devastating impact in some of our very, very remote communities, where the only way to get these drugs is by the mail. And the drugs are coming into the community through the mail, and——

Chairwoman MIKULSKI. Through the Post Office?

Senator MURKOWSKI. Through the United States Post Office, Madam Chairman.

Attorney General HOLDER. Yes.

Senator MURKOWSKI. And it is—it's something that we've been trying to work on some issues up north, but, again, we're seeing—I don't know whether we call it an epidemic, a crisis, but we are being beat on these issues and the impact to our communities, again, utilizing legal processes to get these drugs in there that are, in many cases, wiping out families. So——

Attorney General HOLDER. Well, Senator——

Senator MURKOWSKI [continuing]. We need some assistance, here.

Attorney General HOLDER. Senator, you've raised something that I think is a point that we really need to focus on. And I had the same reaction that the Chair did when I first heard about this. But, you're right, the Postal Service, the mail, is being used to facilitate drug dealing. We need to work with the Postal Service to come up with ways in which we get at that problem. It is shocking to see the amount of drugs that get pumped into communities all around this country through our mail system. And we have to deal with that. That's a major problem that we have to deal with.

Senator MURKOWSKI. It is major. We need to be talking further about this. I've got some ideas, but we need to get on it yesterday.

PROSECUTION OF SENATOR STEVENS

Mr. Attorney General, as you know, I continue to seek further answers in the miserable prosecution that brought Senator Ted

Stevens down. We had the FBI Director, Mr. Comey, before the committee last week. He indicated, at that time, to me that the FBI agent who had brought about this whole issue, that he had been severely disciplined. He—the investigation came under scrutiny, he was severely disciplined. He didn't indicate what that was. And I think we all know there may be varying degrees of—what might be severe discipline to one is a slap on the wrist to another. Can you shed any light on the status of that individual, whether he's still working for the FBI? If so, in what capacity? I have requested from Mr. Comey a copy of the report to be submitted here to the subcommittee so we can further review it. But, it is important that we understand what happened.

Attorney General HOLDER. Yes. I'll support that effort to make sure that you get that information with regard to the FBI agent. There also were two prosecutors, two lawyers, who were found to have acted inappropriately. They have been sanctioned. They have appealed the penalties that we sought to impose. And their appeals are now presently pending before the Merit Systems Protection Board. Once that body makes its determination, we'd be more than glad to share with you—I think that's appropriate—to share with you what the Board decides to do with those lawyers. But, we imposed sanctions against those lawyers, and that is now—as I said, that has been appealed to the MSPB.

Senator MURKOWSKI. And so, they're still working with the FBI?

Attorney General HOLDER. I'm talking about the lawyers. The lawyers are still at—still at—

Senator MURKOWSKI. Excuse me. With Department of Justice.

Attorney General HOLDER. They're still at the Department, yes.

Senator MURKOWSKI. So, I—again, I would suggest, you know, Is this really harsh discipline?

Let me inquire further in this area. Last year, I introduced the Fairness in Disclosure of Evidence Act, and what we're attempting to do is ensure that the obligation to disclose the exculpatory evidence to Federal defendants, in accordance with Brady rules, is uniformly applied across the districts. I think we saw, in the Stevens case, that this was part of the problem. This bill was endorsed by broad spectrum of folks, but, at the end of the day, apparently was unacceptable to the Department. And yet, there was no real assistance or guidance, in terms of what was not acceptable to the Department.

So, what I would ask of you—I mean, I can keep trying to write bills on this. I'm not going to give up. I think that this is too important. But, if you would be willing to work with us to determine what might be acceptable, in terms of those parameters—because, again, I think, when we lack uniformity with regards to these—this obligation to disclose this evidence, you're going to get outcomes that will not only be upsetting, but are difficult, then, to defend from within your Department.

So, if you would give me some assurance that we can be working with you to try to better define this, I'd appreciate it.

Attorney General HOLDER. Well, certainly we want to work with you and certainly maybe make available to you, or aware of, the training that we do in the Department. There—

Senator MURKOWSKI. We've been told about the training. But, again, you've got—you don't have uniformity across the districts. And so, if you're—if you've got training going on over here, and you focus in one area, and the application is different than we have over there, it doesn't achieve the same end result.

Attorney General HOLDER. Yes. And that's something we've tried to eradicate through this training so that there is one person in every office, every U.S. Attorneys' Office—at least one—who can be seen as almost an ethics guru, a person to whom you can go if you have a question about what materials should be turned over. And we also try to make sure that every prosecutor understands his or her obligations under what is clear Supreme Court law, as defined in Brady and in subsequent cases.

I think that the problems that were identified in the Senator Stevens case, and which I think justified my decision to dismiss the case, are not typical of what happens with Federal prosecutors around this country who, in millions of cases, making millions of decisions, are complying with their Brady and other ethical obligations.

And I think there's a danger that we paint with too broad a brush the really terrible experience that we had in Stevens, and blame other people, other prosecutors who have not done anything improper, inappropriately, and they are seen in the same light.

So, I'd be more than glad to work with you and talk to you about this issue, and try to come up with a way in which we can satisfy you that we are doing a good job. And if there are suggestions that you have about ways in which we can do this better, I'd be more than glad to sit down and talk to you and work with you in that regard.

Senator MURKOWSKI. Thank you, Madam Chairman.

Chairwoman MIKULSKI. Senator Landrieu.

Senator, before you begin, I want to advise the committee that the votes at 11:30 a.m., have been postponed to late this afternoon, now pending at approximately 4:30. Who knows.

Senator Landrieu.

SAFETY OF CORRECTIONAL OFFICERS

Senator LANDRIEU. Thank you, Attorney General Holder, for your service. And thank you, Madam Chair, for your leadership.

I have three questions. One of them is about the safety of our corrections officers in some of our high-security Federal prisons. As you know, one of the challenges that the Chairwoman of this committee has taken up, and the Nation is focused on, is the overcrowding of our prisons, the per-capita—you know, the per-capita statistics about the number of people in prison in the U.S. We've had discussions about this, this morning. We need to change our policies, we need to provide additional resources. But, I want to focus specifically on the safety of our corrections officers.

You may be aware that in Louisiana we had one of our corrections officers brutally—

Attorney General HOLDER. Right.

Senator LANDRIEU [continuing]. Brutally beaten and stabbed. He, because of the rules of the Department of Justice and the staffing

requirements, was on a floor, Madam Chair, with 100 prisoners out of their cells, and there was one security officer.

PRISON STAFFING

Now, in the letter that I wrote to you, and you responded, one of the responses—part of the response was that you all had provided pepper spray for some of these officers. Now, I'm not sure how effective pepper spray is going to be, Mr. Secretary, in the hands of one officer with 100 prisoners out of their cells.

So, the budget request to help upgrade the security for these officers was \$79 million. It was not submitted in your budget. There are other priorities, I understand. But, did you—did this come up to you? Did it come to a lower level of decision about the allocation of resources to protect these officers that we're asking to do pretty dangerous jobs in pretty dangerous situations? And would you reconsider?

Attorney General HOLDER. Well, the concerns you've raised are very legitimate, Senator. And what we're trying to do is work at this from two angles:

First, to work with the union. We have a different relationship with the new leadership of the union, a new director of the Bureau of Prisons, and I think we have made really substantial progress in that relationship. It is not as antagonistic as it once was. And, I think, through that relationship and through the interaction that they're going to have, I think we'll do better.

We're also prioritizing the filling of staff positions. The fiscal year 2015 request supports the hiring of 4300 new officers that were included in our 2014 enacted appropriation. We need, simply, more bodies, and that is why we are prioritizing filling staff positions, so that we have more people there, in addition to whatever else that we're doing with the union.

Senator LANDRIEU. Okay. Well, I would appreciate your continued focus on that. The prison in Pollock is this particular situation, but I understand there have been literally dozens, if not, you know, hundreds, of incidents of attacks against correctional officers. And, while we do want to focus on the safety of the prisoners, which is important, as well, we really want to focus on the safety of the men and women in uniform doing their job to keep order in the prison and in our country.

TRANSITION TECHNICAL ASSISTANCE PROVIDERS

My second question is about domestic violence. It's something that the Chairman and I have supported, and many members of this committee, literally for years and years. There's some kind of new provision that you all are encouraging in the budget called "transition officers"—I'm sorry, "technical assistance providers" to the domestic violence shelters around the country. I've been hearing some complaints about that from my network of—that I trust; in and out of administrations, Republican and Democrat, they've been very, very good to do this work. They're saying that some of these transition technical assistance providers come in without a lot of knowledge about what's actually happening on the ground in our regions and in our cities. I'm encouraged that your budget includes 423 million to reinforce efforts to combat domestic violence.

We rank, Louisiana, one of the top States, unfortunately, for domestic violence in the country.

But, can you comment about this office, this new contractual arrangement with technical assistance providers? What are they supposed to be doing, and why are they needed?

Attorney General HOLDER. Well, I'll be very honest with you, I'm not familiar with the complaints that you have raised. And perhaps our staffs can get together and we can get some more specifics about the complaints that have been raised so that we can examine who these people are and what the nature of the problems might be.

We have an Office on Violence Against Women budget request of \$423 million, and this whole notion of combating domestic violence, sexual assaults, and violence against women generally, is a priority for this Justice Department, and it has been a priority of mine throughout my career. To the extent that there are issues in the way in which we are using all—those resources, I'd—

Senator LANDRIEU. Well, I would—

Attorney General HOLDER [continuing]. Like to spend some more time with you —

Senator LANDRIEU [continuing]. Appreciate that, because I know it's been a priority, and I want to commend you and the President for your emphasis on it. But, that's what worries me, when this came up. So, I'll follow—

And, Ms.—Madam Chairman, I'm just going to submit this question to the record.

The New Orleans Police Department entered into a consent decree with your office. There doesn't seem to have—they don't have the review that was required yet. My question, in writing, What is causing the delay? And what process are you using to review the NOPD Justice? And I'll submit that in—

[NOTE: See response to Senator Landrieu's question in the "Additional Committee Questions" at the end of the hearing.]

Attorney General HOLDER. Okay.

Senator LANDRIEU [continuing]. Writing.

Attorney General HOLDER. Thank you.

Chairwoman MIKULSKI. Senator, that was excellent.

Senator BOOZMAN, you've been very patient.

Senator BOOZMAN. Thank you, Madam Chair, as always.

And thank you for being here.

I was looking—when you look back 15 years ago, the Bureau of Prisons' enacted budget was \$3.1 billion. I think this year we're asking for—fiscal year is \$6.9 billion, which I'm very supportive of. Senator Landrieu has outlined some of the problems that we have. I've had the opportunity to visit some prisons, and see that there are really difficult situations. The problem is—right now, it's taking up 25 percent of your budget—as opposed to, not too long ago, just 16 percent. So, we've got to do something to bend the cost curve.

DRUG COURTS

One of the things that I'm being supportive of, very interested in, is drug courts. And a GAO study in 2011 confirmed that drug courts reduce crime by up to 58 percent. The best drug courts cut

crime rates in half, return \$27 to their communities for every \$1 invested.

The other thing is, when people go off to prison, usually they're working, and help to support the family——

Attorney General HOLDER. Right.

Senator BOOZMAN [continuing]. So you leave the family destitute.

So, I would really encourage us to look at that. I think it's something—to me, it's just a no-brainer. We don't do a good job of supporting at the Federal level, our States aren't doing a good job of it. We do need to look and make sure that—I say the good drug courts are returning that—we do need to have standards and make sure that they're doing things appropriately. But, again, if you could look at that, and I know that you are interested in, it's something that we can get done.

The other thing I'm really concerned about as has been mentioned on several occasions today, is the prescription drug problem. Now, we don't want to put meth on the back burner, which it seems to be done a little bit, because, when I talk to our sheriffs—though it might not be used as much, it's the cause of the violent crime. It's the—when you look at who's in prison, you've got all these people using different things, but the people that are actually in prison causing violent crimes are meth-related. So, there's just something about that drug that totally rewires your system.

But, in regard to the prescription drug problem, I really do wish you'd get a task force together. This is something that the CDC needs to be involved, the NIH and research, our prescribers—there's no good data as to how addictive this stuff is. And so, it's being overprescribed. We need to educate the prescribers more than we need to educate the individuals that are doing it.

We all have these drug take-back days. You can go into some little community, and they have a drug take-back, and there'll be pounds and pounds of this stuff that come in. These are the good people, that actually go to the trouble to drop it off. As I visit with my sheriffs, going to the rehab centers and asking them where they're getting it, many of the people that got their prescription drug pills through the mail or whatever, it was sold to them through senior citizens that are supplementing their Social Security. The VA's been terrible about this, and they're doing a better job. You know, we're staying after——

So, I guess what I would really encourage, we really need to get all of those groups together. Prescribing is a huge issue. We need to get really aggressive. I think that—my understanding is that probably the leading cause of accidental death in young people now is——

Attorney General HOLDER. Drugs.

Senator BOOZMAN [continuing]. Prescription drugs and alcohol. If we had the same sort of casualty rate overseas, with young people dying as a result of some sort of situation we were in, as far as a war, there would be a tremendous uproar.

But—I've gone on too long, but if you would just consider those things, I think we can actually do some good.

Attorney General HOLDER. Well, Senator, I actually think that you didn't go on too long, because I think what you've talked about is extremely important. The use of drug courts is extremely impor-

tant. About a third of our budget now is taken up by expenses connected to the Bureau of Prisons. And we certainly have to do all that we can to keep people who work in our prisons safe. But, if a third of the budget, and increasingly more of the budget, is going to the Bureau of Prisons, that's fewer prosecutors that we can hire, fewer agents who we can put out on the streets. And drug courts are a way in which we can handle these kinds of problems in a way that's more cost-effective, reduce the prison population, and that has all kinds of benefits that flow from it.

We have focused on heroin here today, but your focus on meth is exactly right. This continues to be a problem that is directly connected, for whatever reason—pharmacological, I'm not sure—with violence. And we cannot lose sight of that problem, as well.

So, the approaches that you are talking about, I think make a great deal of sense and are consistent with the approaches that we are trying to push as part of the Smart on Crime initiative, where we are looking at new, innovative ways—evidenced-based ways in which we can deal with these issues. Strong enforcement—we're not giving up on that at all—but also looking at ways in which we deal with these drug problems in new ways, through, for instance, as you describe, drug courts, which I think have a great record, if done well, of turning people around, getting them off their habits, and cutting the recidivism rates, which ultimately saves us money.

Senator BOOZMAN. Thank you, Madam Chair.

Chairwoman MIKULSKI. I'm turning to Senator Leahy, who spoke to me about the heroin problem and has continued to speak in a very forceful way.

And you can hear where we are here, Mr. Attorney General. Senator Boozman has really outlined how, in some ways, the Federal Government are enablers, from the Post Office to the VA, giving drugs to one group, et cetera. And we've got—this is where the Interagency Task Force needs to happen, and I think sooner rather than later.

Senator Leahy, I know you've spoken on this, and, of course, you're the chair of our Judiciary Committee. We're eager to hear your questions and, again, your—

Senator LEAHY. Well, I—

Chairwoman MIKULSKI [continuing]. Expertise in this area.

Senator LEAHY. Madam Chair, I appreciate what you've said and what Senator Shaheen said earlier about what I've been doing up in Vermont. The Attorney General and I have known each other for a long time, long before he was Attorney General. We've talked about this a great deal.

DRUGS

I saw the article, the other day on the front page of the Post, about where they've tried to—I guess this was in New Jersey—have a program set up so that if somebody is having an overdose and one of the people with the person can call for medical help without being arrested—

Attorney General HOLDER. Right.

Senator LEAHY [continuing]. Themselves. We actually did this in a thing called The Place, in Burlington, Vermont, for 7 or 8 years, back in the late '60s and early '70s, because, as chief law enforce-

ment officer of that county, I could put it off limits. The police agreed with me on that. Somebody could come in, having an overdose, their friends could come in. They just had to empty their pockets of any drugs they had, but nobody would follow up the record. We had young interns and residents at the medical school who volunteered their time to be there, one of whom is now a very noted surgeon in this area.

So, I appreciate what you said. And Senator Shaheen and Senator Boozman and I have talked about this before.

Also, just my—and—well, this is not the issue here today—Senator Murkowski talked about the Senator Stevens case. Just so it doesn't appear to be partisan, I totally agree with her. And you and I discussed that. I applauded your decision to dismiss that case. It should not have been handled the way it was. And I agree with that.

On a happier note, when the Justice Department arrested Sulaiman Abu Ghaith, Osama bin Laden's son-in-law, you received a huge amount of criticism because you had read him his Miranda rights and did not bring him straight to Guantanamo so he might face a military commission and instead you said that America's strong enough, we can use our courts, the best in the world, and brought him to New York. And he was convicted—in fact, I'd much rather be the prosecutor in that case than the defense attorney—and demonstrated that—I think we've had three or four convictions in the military tribunals, we've had several hundred in our Federal courts. So, thank you for doing that. It proved that—proved to the rest of the world, we use our system, it works. And you got a good conviction there. So, I commend you on that.

In Burlington, Vermont, we've implemented a community impact team approach, law enforcement tools for targeting drug traffickers, but also steering addicts to treatment. I would urge you and the Department to continue helping local and State governments in these kinds of programs.

Attorney General HOLDER. Well, that is certainly our intention. It is interesting, I'd like to hear more about The Place and see how that worked. Those are the kinds of locally based, innovative kinds of things that we want to identify. If the evidence shows that they are effective, we want to try to support it. And that's why I think the grant making function of the Justice Department can be so important.

We are working, as best we can, to deal with this epidemic of heroin, the continuing problem of meth. Drugs continue to be a problem for this Nation. The connection between drugs and violence is inescapable. The number of people who are on drugs or have drug-related crimes who are in our prisons is still exceedingly high. And no one should take from this Smart on Crime initiative any sense that we are retreating from our enforcement responsibilities in that regard. All we're trying to do is to come up with ways in which we can be more effective and ultimately knock down the recidivism rate by dealing with people who have drug problems that tend to breed crime.

Senator LEAHY. Well, your excellent U.S. Attorney in Vermont, Tris Coffin, has worked with the local and State, and that's been very helpful, to have the Justice Department so involved.

I—in that regard, I know the Office of Juvenile Justice and Delinquency Prevention, we’ve mentioned, has indicated an intention to change eligibility requirements for grantees on a national mentoring program by requiring they have a presence in just 30 States rather than the current requirement they serve at least 45 States. Obviously, when you’re representing the second-smallest State in the country, I worry—are you going to give priority to national programs that have shown a proven capacity?

Attorney General HOLDER. Yes, we certainly want to support—again, what we want to do is try different things. And, for those things that the evidence shows work, we want to support those. And, to the extent that you have a concern about OJJDP’s perhaps pulling back, that’s something I’d like to talk to you about, or our staffs could talk about, because I don’t want size to be the prime determinant as to how we are apportioning our funds or how we’re using our grant making capability. We want to make sure that, in large cities and in small towns, to the extent that we can, a positive Justice Department presence is there.

IMMIGRATION COURTS

Senator LEAHY. And lastly, if I just might note, Madam Chair, the Nation’s immigration courts are understaffed—you’ve got 32 vacancies, nearly half of the 200 immigration judges eligible for retirement, pending caseload has grown by 50 percent. You’ve requested \$17 million to support an additional 35 immigration judges to help process the backlog of over 350,000 cases. Is this a priority? Because I really worry that we’re going to reach such a tipping point that justice will just be totally denied.

Attorney General HOLDER. Yes. It is a priority. We have made a specific request for those 35 immigration judge teams. We think that that would have the potential to reduce a caseload, I think, of between 20- and 35,000 cases. We have to get at the backlog that exists. We can do that, I think, by coming up with innovative procedures and processes. But, I think, at base, we just simply need more immigration judges, and that’s why we have included in our fiscal year 2015 request those additional funds for those additional teams.

Senator LEAHY. Thank you very much.

Thank you, Madam Chair.

Chairwoman MIKULSKI. And, Senator Leahy, we’re sharing with the Attorney General your idea on how to look at cops on the beat involved in heroin, as well as the interagency.

Senator Graham.

Senator GRAHAM. Thank you, Madam Chairman.

SEX TRAFFICKING

My Reserve unit last night got a briefing from the FBI about 69 task forces that are dealing with crimes of sex trafficking, exploitation of young women, in particular. And I was just really impressed with what I saw. So, I want to come visit and see how can we maximize that. I think the committee would be astonished as to what’s going on out there. At least I was, I’ll just speak for myself. And I just want to commend you on that program.

EFFECTS OF SEQUESTRATION

So, tell us, if you could—in 2016, sequestration kicks back in. Could you walk through, fairly quickly, what does it mean to your Department, future Attorney Generals, to be able to protect this Nation if sequestration is fully implemented, going forward?

Attorney General HOLDER. I can tell you that it will have a devastating impact, as it did over the course of the last couple of years. Since I put into effect a hiring freeze, I guess 3 years or so ago, we lost about 4,000 people, in total, in the Justice Department—about 1,470 attorneys and support staff, 900 attorneys and support staff. We lost 6 percent of the roughly 10,000 lawyers in the Department. The FBI lost over 900 agents, analysts, and other staff. DEA lost 700; ATF, 500; United States Marshals, 300.

Those are pretty daunting numbers, and you can't expect the Justice Department to do the job that the American people want us to do, and that we want to do, if we are faced with that kind of issue again.

I would not wish this upon any of my successors.

Senator GRAHAM. And it gets worse over time, right?

Attorney General HOLDER. Absolutely. We have in place now a budget for the next 2 years that will, I think, help us make up some of the lost ground. But, unless we have, in 2016, a realistic budget that deals with the need—we can't have another flat budget, and we certainly can't go to sequestration—unless we have a budget that increases the amount of money that goes to the Justice Department, we're going to find ourselves in the same place. And, at the end of the day, it's going to have at some point, an effect on performance. It simply will.

Senator GRAHAM. We'll be less safe as a Nation?

Attorney General HOLDER. I think that's absolutely right.

TERRORISM

Senator GRAHAM. Do you agree with me that we're still involved in a war against radical Islam, for lack of a better definition?

Attorney General HOLDER. For lack of a better definition, I would agree with that, yes.

Senator GRAHAM. Okay. And homegrown terrorism is a threat that we have to deal with now? It's probably growing.

Attorney General HOLDER. Absolutely, and it's—

Senator GRAHAM. So, our—

Attorney General HOLDER. It is growing. That is the one that keeps me up at night.

Senator GRAHAM. Yes. Rightly so.

Cyber attacks on this country, we're going to have to get ahead of that. A lot of infrastructure to be built. Do you agree?

Attorney General HOLDER. Yes.

Senator GRAHAM. So, the threats we face are growing, and our budgets are shrinking?

Attorney General HOLDER. That's right.

Senator GRAHAM. Who would have thought of that? The Congress. Okay? Not you. So, I hope the Congress will rethink this and we can, in bipartisan fashion, give some relief to sequestration,

where Republicans give, Democrats give, and we replace it with something that will make sure the country's safe.

Now, back to my favorite topic, how to defend America that's at war. I've always told you that I agree that Article III courts have a very viable role in the war on terror. And you've told me that you believe there's a place for military commissions. Are we still on the same sheet of music?

Attorney General HOLDER. Agreed, yes.

Senator GRAHAM. Okay. Do you agree with me that enemy combatant status being conferred on a potential terrorist suspect is still lawful in this country, and we can hold somebody as an enemy combatant if they meet the criteria?

Attorney General HOLDER. If they meet the criteria, yes, there is a legal basis to do that.

Senator GRAHAM. Okay. Do you agree with me that intelligence-gathering is very important when it comes to stopping potential attacks against the country?

Attorney General HOLDER. I totally agree with that, and we've done so in the use of our Article III system, gathered intelligence from people before we have prosecuted them.

Senator GRAHAM. Okay. Now, how long have we held people at Guantanamo Bay as enemy combatants? Isn't there a group being held for years down there?

Attorney General HOLDER. Yes, I think there are people there for—

Senator GRAHAM. Yes.

Attorney General HOLDER [continuing]. There 10, 11, 12 years.

Senator GRAHAM. So, this idea that bin Laden—we caught him because of waterboarding. People say that's not true. And I'm in that camp. I think we were able to catch bin Laden because we gathered intelligence over a long period of time from people held at Guantanamo Bay, and we put the puzzle together. Do you think that's a fair statement?

Attorney General HOLDER. Yes, I think there were a variety of things that led to the death of bin Laden. Some was intelligence gathered from people who were detained at Guantanamo.

Senator GRAHAM. And some was outside.

Attorney General HOLDER. Some outside.

Senator GRAHAM. Now, here's what I want to make sure you understand. I will support Article III courts, but, Mr. Attorney General, you'll never convince me that the criminal justice system is the best way to gather intelligence in a war. I don't know of any military in the world that uses their criminal justice system to gather intelligence from enemy combatants. They have a military intelligence-gathering process, which is a completely different legal endeavor. Do you agree that gathering intelligence is different than prosecuting?

Attorney General HOLDER. Yes, it is. And it's why the process that we have put together involves the use of the HIG—

Senator GRAHAM. The HIG, yes, good system.

Attorney General HOLDER. We put the HIG in there, they talk—

Senator GRAHAM. Yes.

Attorney General HOLDER [continuing]. To people who we capture. We then put in a whole different team that's responsible for the trial of the case.

Senator GRAHAM. Okay. Convictions are great. I'm more worried about finding, from that suspect, what the enemy's up to. The trial is important. The son-in-law of bin Laden, how long was he interrogated before his Miranda rights were read?

Attorney General HOLDER. I believe about a week or so. I'm not sure about that.

Senator GRAHAM. I think it's hours, not days.

Attorney General HOLDER. All right. Well, I'm not——

Senator GRAHAM. And here——

Attorney General HOLDER [continuing]. I'd have to——

Senator GRAHAM. Right.

Attorney General HOLDER [continuing]. Get you a more——

Senator GRAHAM. Here's my only point. I think the Article III trial was the right venue for him. Here's where we differ. If we keep criminalizing the war—when we capture these guys, if we don't hold them for a period of time to gather intelligence, and put them right into the criminal justice system, I believe we're missing great opportunities to find out what the enemy's up to, because I personally believe that once you Mirandize someone and give them a lawyer, it is much harder to gather intelligence than it would be if you let your military and CIA officers lawfully—not torture—gather intelligence.

So, I just hope that you'll be sensitive to this, because I think we're giving up intelligence-gathering opportunities by putting people in court right off the bat. And it makes it more likely we get attacked if we go down criminalizing the war. That's just my two cents' worth.

Attorney General HOLDER. Well, I think our experience has shown—and I think, in some ways, it's surprising—that once we come into contact with these people, and even after they're given their rights, there is still, for whatever reason, a desire on their part to talk, and they waive their rights, frequently, and speak with us, and we've had, I think, very fruitful interactions, where we have gathered usable intelligence in the Article III setting. People, I think, tend to forget that—I have sent people to the military commissions. I think we have to have both. But, I don't think we should shy away from using a system that is tried and true——

Senator GRAHAM. I——

Attorney General HOLDER [continuing]. And that I think has——

Senator GRAHAM. I'm way over my time. I couldn't agree——

Chairwoman MIKULSKI. You are.

Senator GRAHAM [continuing]. With you more. I just want to make sure that, before we put them in the military commission and Article III courts, that we try to gather as much intelligence as possible, lawfully, before we try them. That's all I'm saying.

Attorney General HOLDER. And look—and that's what we try to do.

Chairwoman MIKULSKI. Mr. Attorney General, we thank you for your testimony today. And, as you could see, this is a pretty smart, aggressive committee, and—but, most of all, where we're—we really want to work across the aisle and, really, protecting our people,

starting first of all with the Constitution. So, we want to protect the Constitution, we want to protect the people against all enemies, foreign and domestic. And that means the scam and scum who prey on people with greed, like mortgage fraud, all the way up to these despicable acts of terrorism. You've got a big job, and we wish you had a bigger budget, but we're going to take a good look at it and see how we can support you.

Yes.

Attorney General HOLDER. I just—maybe I could say just one thing, and that is a thank you to this committee and to the Chair, as well as Senator Shelby. We had dark days in 2013, and the flexibility that you allowed us with regard to moving money around meant that people at the Justice Department did not have to be furloughed, it meant that people had the basic ability to pay mortgages, to keep their kids in school, to buy groceries. It allowed the Justice Department to do its job, under very trying circumstances. We would not have been able to do that without the flexibility that you gave us.

So, on behalf of the 113,000 men and women of the Justice Department, I want to thank you—this committee generally, but you two specifically—for that flexibility.

Chairwoman MIKULSKI. Well, really, we could not have done it had we not worked on a bipartisan partnership and, really, with our colleagues in the House, Congressmen Rogers and Lowey. But, this is where we're trying to say, we're here—we're all in it together. We all take the same oath to the Constitution and to protect it. And so, we thank you for that. And you're in the front lines, and we're going to worry about the bottom lines.

So, we're going to excuse you now and say that if there are questions related to the Attorney General, the record will be open, and we—

Senator SHELBY. Madam Chair.

Chairwoman MIKULSKI [continuing]. Ask them to respond in 30 days.

We're going to go to the Inspector General now.

Senator Shelby.

Senator SHELBY. Madam Chair, I have several questions for the record for the Attorney General, but I'm sure others do, too.

Chairwoman MIKULSKI. Yes. So, the Senator's right will be protected, as are others.

We're really doing these 60 hearings in 6 weeks, so there are many who wanted to come, but couldn't. So, there'll be additional questions.

Thank you very much, Mr.—

Attorney General HOLDER. Thank you.

Chairwoman MIKULSKI [continuing]. Attorney General.

So, we now call upon the Inspector General, Michael Horowitz.

Mr. Horowitz, we're glad to see you, and we're glad a changing in the vote schedule allows us to take your testimony in person. Both Senator Shelby and I are vigorous supporters of the Inspector General system, and we look forward to your testimony and your advocacy here.

Please proceed, sir.

STATEMENT OF HON. MICHAEL E. HOROWITZ, INSPECTOR GENERAL

Mr. HOROWITZ. Thank you, Madam Chairwoman and Ranking Member Shelby, members of the subcommittee. Thank you for inviting me to testify today, and for your continued strong support of our work.

It would be hard for me to overstate the importance of having an appropriated budget this fiscal year that we can plan around and that will enable us to rebuild our staff, which shrunk by nearly 10 percent over the past 2 years. Moreover, removing furlough and shutdown threats provides a much-deserved boost to the morale of our staff, which has steadfastly performed at an extraordinarily high level over the past 2 years.

Since my appearance before you last June, our office has issued numerous reports that have important implications for the Department's budget and that promote transparency and increased efficiency. Just last month, for example, we reported on the Department's efforts to address mortgage fraud, we examined the operations of the Organized Crime Drug Enforcement Task Force Fusion Center, we audited the FBI's management of Terrorist Watch List nominations, and we reported on the Federal Bureau of Prisons' efforts to improve acquisitions through strategic sourcing, and we continue to conduct extensive oversight of the Department's cyber security efforts and its national security initiatives.

For example, we are reviewing the FBI's implementation of its next-generation cyber initiative, as well as the FBI's regional computer forensic laboratories. We are reviewing, with three other inspector generals, the U.S. Government's handling and sharing of intelligence information leading up to the Boston Marathon bombing. We also continue our efforts to ensure that allegations from whistleblowers are reported, investigated, and handled appropriately.

I'm proud that our efforts were recently recognized with certification from the Office of Special Counsel. We will continue to foster an open and effective environment for whistleblowers to come forward with information about waste, fraud, abuse, and misconduct.

Late last year, in our Annual Top Management Challenges Report, we identified six areas where the Department is facing major challenges: addressing the crisis in the Federal prison system, protecting taxpayer funds from mismanagement and misuse, enhancing cyber security, safeguarding national security consistent with civil rights and civil liberties, ensuring effective and efficient law enforcement, and restoring confidence in the integrity, fairness, and accountability of the Department. I'd like to highlight the first two of those areas today.

The crisis in the Federal prison system continues today. During my testimony before this subcommittee last year, I discussed at length two interrelated crises in the Federal prison system. The first is that costs continue to consume an ever-larger share of the Department's budget, with no evidence that the cost curve has been broken. For example, the BOP's budget continues to increase over the last 2 years at an even faster rate than the Department's budget. Moreover, while the number of Department employees has decreased since fiscal year 2012, the number of BOP employees has increased during that same time. As a result, one out of every

three Department employees now works for the BOP. In the past year, the Department has announced several new initiatives to address this challenge, but much will depend on the success of their implementation, which we will, of course, monitor.

In connection with this challenge, the Department must consider its growing number of elderly inmates. From fiscal year 2010 to fiscal year 2013, the population of BOP inmates over age 65 increased by 31 percent, while the population of inmates 30 or younger decreased by 12 percent. This demographic trend has significant budgetary implications, because older inmates have higher healthcare costs and are more expensive to incarcerate. The OIG is currently conducting a review in this important area.

The other half of the prison crisis, which was discussed earlier today, is ensuring the safety and security of staff and inmates in overcrowded Federal prisons. Despite having a nearly \$7 billion budget as of November 2013, the BOP was operating its facilities at approximately 36 percent over rated capacity. Moreover, the BOP's inmate-to-staff—inmate-to-correctional-officer ratio has remained at approximately 10 to 1 for more than a decade. In comparison, in 2005 the five largest State correctional systems had no more than an inmate-to-correctional ratio of over 6 to 1. Thus, not only must the Department evaluate the BOP's cost structure, it must also find ways to address capacity and staffing challenges.

Avoiding wasteful and ineffective spending is another fundamental responsibility of Federal agencies in any budgetary environment, but it's particularly important in the current climate. In 2013, the OIG reports identified more than \$35 million in questioned costs and more than \$4 million in taxpayer funds that could have been put to better use. The Department must remain vigilant on the monies it gives to third parties, whether contractors or grants, and make sure that they demonstrate that the money—the value that's being received is worth the money that's being given out.

Let me turn briefly now to two areas of our effectiveness that I'd like to address. Providing strong and independent oversight of the IG's—of the ability of the IG to oversee the Department is critical. For any oversight agency to be conducted effectively, we must have complete and timely access to all records in our agency's possession that we deem relevant to our ongoing reviews. This is the principle Congress codified in Section 6 of the IG Act. Most of our audits and reviews are conducted with full and complete cooperation from the Department. However, there have been occasions when our office has had issues arise with timely access to certain records due to the Department's view that access was limited by other laws. Ultimately, in each instance, the Attorney General or the Deputy Attorney General provided the OIG with permission to receive the materials, and they have made it clear they will continue to do so, as necessary, going forward.

However, requiring an Inspector General to request and receive permission from Department leadership in order to review critical documents impairs our independence and can delay our work unnecessarily. Stated simply, under the Inspector General Act, an Inspector General should be given prompt access to all relevant documents within the possession of the agency it is overseeing.

Let me turn briefly to an issue, finally, that was discussed during my testimony before you last June. Unlike Inspectors General throughout the Federal Government, our office does not have the authority to investigate alleged misconduct by lawyers in the Department. In those instances, the Inspector General Act grants exclusive investigative authority to the Department's Office of Professional Responsibility. My office has long questioned the distinction between the treatment of agents who engage in alleged misconduct and those of Department attorneys. Last month, the independent, nonpartisan Project on Government Oversight issued a report that was critical of the OPR's lack of transparency, and recommended that Congress empower our office to investigate misconduct by DOJ attorneys.

PREPARED STATEMENT

Our office's statutory and operational independence from the Department ensures the integrity of our investigations and that they occur through a transparent and publicly accountable process. Giving the OIG the ability to exercise jurisdiction on all attorney misconduct cases, just as it does in matters involving non-attorneys, would enhance the public's confidence in the outcomes of these important investigations and provide our office with the same authority as every other Inspector General.

Thank you again. I look forward to working with the subcommittee, and I look forward to answering your questions.

[The statement follows:]

PREPARED STATEMENT OF HON. MICHAEL E. HOROWITZ

Chairwoman Mikulski, Senator Shelby, and members of the subcommittee:

Thank you for inviting me to testify at today's hearing on the Department of Justice's (Department or DOJ) fiscal year 2015 budget request. At the outset, I want to thank the subcommittee for its continued strong support of our work. Perhaps the biggest challenge I have had in my 2 years as Inspector General has been trying to manage the staffing and budget for our 400-plus person agency as we faced, seemingly every few months, another budget crisis, with ever-present threats of furloughs and shutdowns. It would be hard for me to overstate the importance of having an appropriated budget for this current fiscal year that we can now plan around. Our current budget will enable us to rebuild our staff, which has shrunk by nearly 10 percent over the past 2 years, thereby enhancing our ability to conduct oversight of the Department. Our fiscal year 2015 budget request is relatively straightforward—we are seeking funding at our current base level of \$86.4 million, plus \$2.2 million in adjustments to base to cover, for example, rent increases and other inflationary costs.

Having a budget, and removing the furlough and shutdown threats, also provides a much-deserved boost to morale among Office of the Inspector General (OIG) employees, who have remained admirably dedicated to the office's mission despite the significant budget uncertainty of the past few years. As we prepare later this month to mark the 25th anniversary of our office's creation in April 1989, I am confident that we are an organization capable of conducting the high quality, independent oversight that Congress mandated so many years ago.

In my testimony today, I would like to highlight some examples of our recent and ongoing oversight work, discuss two significant challenges facing the Department that will impact its fiscal year 2015 budget, and briefly comment on two legislative initiatives that I believe would materially enhance the OIG's ability to conduct timely and independent oversight.

RECENT DOJ OIG OVERSIGHT OF THE DEPARTMENT'S OPERATIONS

Our office has issued numerous reports since my appearance before the subcommittee last June that have important implications for the Department's budget, and that promote transparency, increase efficiency, and enhance our national secu-

ity. The findings from four reports that we issued in just the last month exemplify these results. First, our audit of the Department's efforts to address mortgage fraud identified examples of DOJ-led efforts to prioritize the investigation and prosecution of mortgage fraud cases, but also found that, despite having been appropriated significant funding for the purpose, DOJ and the Federal Bureau of Investigation (FBI) did not uniformly ensure that mortgage fraud was prioritized at a level commensurate with its public statements. The OIG also found significant deficiencies in DOJ's and the FBI's ability to report accurately on its mortgage fraud efforts. Second, our report examining the operations of the Organized Crime Drug Enforcement Task Forces (OCDETF) Fusion Center (OFC) found deficiencies in the OFC's operations that could limit its contribution to the OCDETF Program's effectiveness in dismantling significant drug trafficking and money laundering organizations. We also found that OFC management took actions during our review that created difficulties for the OIG in obtaining information from OFC employees, and that there were reasonable grounds to believe that two OFC employees who met with us to describe concerns they had about the OFC's operations were subsequently subjected to adverse retaliatory personnel actions. Third, our follow-up report on the FBI's management of terrorist watchlist nominations found that the FBI's time requirements for the submission of watchlist actions could be strengthened and identified weaknesses in the database used by the FBI to submit, monitor, and track non-investigative subject nominations. Finally, our report on the Federal Bureau of Prisons' (BOP) efforts to improve acquisition through strategic sourcing found that while the BOP had established national contracts and blanket purchase agreements, it had not established a program to implement and oversee the General Services Administration's (GSA) Federal Strategic Sourcing Initiative or other Federal strategic sourcing initiatives, and thus may be missing an opportunity for greater cost savings.

Reviews completed at the end of the last fiscal year were similarly important. In September, we issued a report on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) income-generating undercover operations in which we found that ATF did not properly authorize, manage, or monitor these investigations, misused their proceeds, and failed to properly account for 2.1 million cartons of cigarettes that were associated with these investigations, the retail value of which was more than \$127 million. Also in September, we issued an interim report on the Department's use and support of unmanned aircraft systems (UAS), often referred to as "drones," in which we found that the technological capabilities of drones—such as their ability to fly for extended periods of time and maneuver effectively yet covertly around residences—and the current, uncoordinated approach of Department components to using UAS may merit the Department developing consistent UAS policies to guide their use. Notably, that report also found that two of the Department's grantmaking components had failed to require award recipients to report specific data necessary to measure the success of UAS testing, or to share the results of their programs with the Department.

In addition, we continue to conduct extensive oversight of the Department's efforts to combat significant crime issues, such as cyber security, and its national security initiatives. For example, we have initiated a review of the FBI's implementation of its Next Generation Cyber Initiative and a review of the FBI's Regional Computer Forensic Laboratories, among two of the Department's most important efforts to respond to the serious, rapidly evolving threat posed by cyber criminals. On national security issues, we are reviewing, with three other Inspectors General, the U.S. Government's handling of intelligence information leading up to the Boston Marathon bombings. This review is examining the information available to the U.S. Government before the bombings and the information-sharing protocols and procedures followed between and among the intelligence and law enforcement agencies. We also are continuing our reviews of the FBI's use of National Security Letters (NSL), requests for business records under Section 215 of the *Foreign Intelligence Surveillance Act* (FISA), the Department's use of pen register and trap-and-trace devices under FISA, and the Department's use of the material witness warrant statute, 18 U.S.C. § 3144. We are also continuing our review of the Federal Witness Security Program and will evaluate the Department's progress in implementing corrective measures in response to the recommendations contained in the interim report, which we discussed during my appearance before the subcommittee last June.

In addition, our Investigations Division's case load continues unabated: during fiscal year 2013, it received more than 12,000 complaints, had dozens of arrests and convictions resulting from corruption and fraud cases, and investigated allegations that resulted in more than 250 administrative actions against Department employees.

Finally, before turning to our assessment of the challenges facing the Department, I would like to give you a brief update on our efforts to ensure that allegations

against whistleblowers are reported, investigated, and handled appropriately. Among other initiatives, last year we developed an education program on whistleblower rights and protections for our employees, posted informational posters at our offices, and created a section on our public Web site containing information about whistleblower rights for employees throughout the Department. I am proud to report that we were recognized for our efforts last year with certification from the Office of Special Counsel under 5 USC § 2302(c). Additionally, we continue to lead a working group of Federal Whistleblower Ombudspersons that we helped launch through the Council of Inspectors General on Integrity and Efficiency (CIGIE). I will continue to increase awareness among my staff and provide the training and reporting mechanisms necessary to foster an open and effective environment for whistleblowers to come forward with information about waste, fraud, abuse, and misconduct within the Department.

FUTURE WORK AND TOP CHALLENGES FACING DOJ

Let me turn now to the issues that we feel represent significant challenges facing the Department of Justice in 2014, and will impact its budget in the coming fiscal year.

In December 2013, we identified the following six major challenges for the Department:

- Addressing the Crisis in the Federal Prison System;
- Safeguarding National Security Consistent with Civil Rights and Liberties;
- Protecting Taxpayer Funds from Mismanagement and Misuse;
- Enhancing Cybersecurity;
- Ensuring Effective and Efficient Law Enforcement; and
- Restoring Confidence in the Integrity, Fairness, and Accountability of the DOJ.

I would like to highlight for the subcommittee two challenges with potentially significant impacts on the Department's budget, and on its operational efficiency and effectiveness. A detailed discussion of our assessment of each challenge is available on the "Top Challenges" section of our Web site, <http://www.justice.gov/oig>.

The Crisis in the Federal Prison System Continues

During my testimony before the subcommittee last year, I discussed at great length the two interrelated crises the Department is facing regarding the Federal prison system. The costs of the Federal prison system continue to escalate, consuming an ever-larger share of the Department's budget. In an era of flat budgets, the continued growth of the prison system budget poses a threat to the Department's other critical programs—including those designed to protect national security, enforce criminal laws, and defend civil rights. Second, Federal prisons are facing a number of important safety and security issues, including, most significantly, that they have been overcrowded for years. Meeting this challenge will require a coordinated, Department-wide approach in which all relevant Department components participate in helping to reduce the costs and crowding in our prison system.

The Department's leadership has acknowledged that rising prison costs threaten the Department's ability to fulfill its mission in other areas. Yet the costs of the Federal prison system continue to grow, with no evidence that the cost curve has been broken. For example, even though the Department's discretionary budget increased slightly from fiscal year 2012 to fiscal year 2014, the BOP's budget once again increased at an even faster rate, resulting in the BOP's share of the Department's budget continuing to grow. Moreover, while the number of Department employees has actually decreased since fiscal year 2012, the number of BOP employees has increased during that same time. As a result, the BOP now has over 38,000 employees, or approximately one-third (33 percent) of all the employees at the Department.

To its credit, in the past year the Department has announced several new initiatives to address this issue, such as an initiative to limit the number of defendants charged under statutes carrying mandatory minimum sentences, and the Smart on Crime initiative, which sets out five principles designed to identify reforms to enforce Federal laws more fairly and efficiently. Efforts to better align the investigative and prosecutive policies that drive incarceration costs with the Department's current budget situation represent important steps toward addressing rising Federal prison costs, but much will depend on the success of their implementation.

The Department must also ensure that it is identifying and addressing the growing challenges that will affect the Federal prison budget in coming years. One ongoing challenge is BOP's management of its private prison contracts, which is the subject of an ongoing OIG review. Another such challenge is the increasing number of elderly inmates. From fiscal year 2010 to fiscal year 2013, the population of inmates

over the age of 65 in BOP-managed facilities increased by 31 percent, from 2,708 to 3,555, while the population of inmates 30 or younger decreased by 12 percent, from 40,570 to 35,783. This demographic trend has significant budgetary implications for the Department because older inmates have higher medical costs. The National Institute of Corrections has estimated that elderly inmates are roughly two to three times more expensive to incarcerate than their younger counterparts. For example, according to BOP data, in fiscal year 2011, the average cost of incarcerating a prisoner in a BOP medical referral center was \$57,962 compared with \$28,893 for an inmate in the general population. Moreover, inmate health services costs are rising: BOP data shows that the cost for providing health services to inmates increased from \$677 million in fiscal year 2006 to \$947 million in fiscal year 2011, a 40 percent increase. The OIG is currently reviewing the trends in the BOP's aging inmate population, the impact of incarcerating a growing population of aging inmates, the effect of aging inmates on the BOP's incarceration costs, and the recidivism rate of inmates age 50 and older who were recently released.

Managing the cost of the Federal prison system is just part of the Department's challenge; it must also ensure the safety of staff and inmates in Federal prison and detention facilities. This task has been made exponentially harder by the prolonged, system-wide overcrowding in BOP's correctional facilities: as of November 2013, the BOP was operating with its facilities at approximately 36 percent over rated capacity, with medium security facilities operating at approximately 45 percent over rated capacity and high security facilities operating at approximately 51 percent over rated capacity.

The growth of the inmate population, along with the Department's tightened budget situation in recent years, has prevented the BOP from reducing its inmate-to-correctional officer ratio, which has remained at approximately 10-to-1 for more than a decade. In comparison, the Congressional Research Service reported that among the five largest State correctional systems in 2005—California, Texas, New York, Florida, and Georgia—the highest ratio of inmates to correctional officers was just over 6-to-1. And importantly, overcrowding at BOP institutions is not just a problem for the BOP; it also has a significant impact on the U.S. Marshals Service (USMS), which is responsible for housing pre-trial detainees and is projected to detain an average of 62,131 individuals per day in fiscal year 2014, a 15-percent increase since fiscal year 2004. The USMS estimates that the BOP will only be able to house approximately 18 percent of USMS detainees, meaning that the USMS must pay to house the remainder—an average of about 50,000 detainees per day—in approximately 1,100 State, local, or private facilities.

There are several other important safety and security issues at Federal prison and detention facilities that the OIG is monitoring carefully. For example, the *Prison Rape Elimination Act of 2003* (PREA) expanded the Department's responsibility to prevent the sexual abuse of inmates in BOP facilities and detainees in the custody of the USMS. The OIG's agents have long been involved in leading investigations of staff on inmate sexual misconduct, resulting in numerous criminal convictions and administrative actions by the BOP and the USMS. PREA also required the Department to issue national standards for preventing, detecting, reducing, and punishing sexual abuse in prison, which it did in May 2012. With national standards in place, the Department must ensure that those standards are being met, which will require careful oversight of BOP, USMS, and Federal contract facilities, including residential reentry centers, and an extensive program for compliance auditing. The OIG intends to monitor the Department's efforts to ensure that the national standards are met.

DOJ Must Continue its Efforts to Protect Taxpayer Funds from Mismanagement and Misuse

Avoiding wasteful and ineffective spending is a fundamental responsibility of Federal agencies in any budgetary environment, but in the current climate of budget constraints the Department needs to take particular care to ensure that it is operating as efficiently and effectively as possible. The OIG's recent oversight work has demonstrated the challenges facing the Department. In fiscal year 2013 alone, the OIG's reports, including those related to audits performed by independent auditors pursuant to the *Single Audit Act*, identified more than \$35 million in questioned costs and more than \$4 million in taxpayer funds that could be put to better use.

The Department must remain particularly vigilant when taxpayer funds are distributed to third parties, such as grantees and contractors. In part due to the sheer volume of money and the large number of recipients involved, grant funds present a particular risk for mismanagement and misuse: according to the USASpending.gov Web site, from fiscal year 2009 through fiscal year 2013 the Department awarded

approximately \$17 billion in grants to thousands of governmental and non-governmental recipients.

These risks were evident in a recent OIG audit which questioned nearly all of the more than \$23 million in grant funds awarded by the Department to Big Brothers Big Sisters of America (BBBSA), which resulted in the Department's Office of Justice Programs (OJP) deciding to freeze the disbursement of all grant funds to BBBSA. Even so, it is my understanding that BBBSA subsequently submitted an application to the Department of Labor for grant funds and was awarded a grant totaling \$5 million. This situation demonstrates the importance of ensuring that there is appropriate information sharing between grant-making agencies across the Federal Government.

The Department has reported taking important steps toward improving its management of this vast and diverse grantmaking effort. For example, the Associate Attorney General's Office established a Grants Management Challenges Workgroup that is responsible for developing consistent practices and procedures in a wide variety of grant administration and management areas. In January 2012, the Department issued policy and procedures the workgroup developed to implement the Department-wide high risk grantee designation program, which allows the Department to place additional restrictions on the use of funds it provides to grantees who, for example, are deemed financially unstable or have failed to conform to the terms and conditions of previous awards. The Department should continue to be aggressive in identifying high risk grantees and placing appropriate restrictions on their funds—or halting their funding altogether. It should also use the other tools at its disposal to mitigate the risk of releasing funds to grantees, such as ensuring that grantees have adequate accounting procedures in place to track their use of Department funds and actively seeking suspension and debarment of grantees in appropriate cases, especially where doing so will help to protect grant funds administered by other Federal agencies.

STRENGTHENING THE INDEPENDENT OVERSIGHT OF THE DOJ

Providing strong and effective independent oversight over agency operations is at the core of any OIG's mission. The taxpayers rightly expect much from Inspectors General, and it is important that we have the necessary tools to allow us to conduct our significant oversight responsibilities. The Inspector General Act provides us with many of those tools. However, there are several areas where our ability to conduct effective and independent oversight can be strengthened. I would like to highlight for you today two such areas that directly affect the work of the DOJ OIG.

Access to Documents Relevant to OIG Reviews

For any OIG to conduct effective oversight, it must have complete and timely access to all records in the agency's possession that the OIG deems relevant to its review. This is the principle codified in Section 6(a) of the Inspector General Act, which authorizes Inspectors General "to have access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." This principle is both simple and important, because refusing, restricting, or delaying an OIG's access to documents may lead to incomplete, inaccurate, or significantly delayed findings or recommendations, which in turn may prevent the agency from correcting serious problems in a timely manner.

Most of our audits and reviews are conducted with full and complete cooperation from Department components and with timely production of material. However, there have been occasions when our office has had issues arise with timely access to certain records due to the Department's view that access was limited by other laws. For example, issues arose in the course of our review of Operation Fast and Furious regarding access to grand jury and wiretap information that was directly relevant to our review. Similar issues arose during our ongoing review of the Department's use of Material Witness Warrants. Ultimately, in each instance, the Attorney General or the Deputy Attorney General provided the OIG with permission to receive the materials because they concluded that the two reviews were of assistance to them. The Attorney General and Deputy Attorney General have also made it clear that they will continue to provide the OIG with the necessary authorizations to enable us to obtain records in future reviews, which we of course appreciate. However, requiring an Inspector General to rely on permission from Department leadership in order to review critical documents in the Department's possession impairs the Inspector General's independence and conflicts with the core principles of the Inspector General Act.

We have had similar issues raised regarding our access to some other categories of documents. And I understand from the Inspector General for the Peace Corps that her office has had a similar issue regarding access to records within her agency. Although our office has not yet had an instance where materials were ultimately withheld from us that were necessary to complete a review, we remain concerned about the legal questions that have been raised and the potential impact of these issues on our future reviews. Moreover, issues such as these have, at times, significantly delayed our access to documents, thereby substantially impacting the time required to complete the reviews.

My view, and I believe the view of my colleagues in the Inspector General community, is straightforward and follows from what is explicitly stated in the Inspector General Act: an Inspector General should be given prompt access to all relevant documents within the possession of the agency it is overseeing. For a review to be truly independent, an Inspector General should not be required to obtain the permission or authorization of the leadership of the agency in order to gain access to certain agency records, and the determination about what records are relevant and necessary to a review should be made by the Inspector General and not by the component head or agency leadership. Such complete access to information is a cornerstone of effective independent oversight.

Limitations on the DOJ OIG's Jurisdiction

Let me briefly turn to an issue that was discussed during my testimony last June before this subcommittee, which is an oversight limitation that is unique to my office: unlike Inspectors General throughout the Federal Government, our office does not have authority to investigate all allegations of misconduct within the agency we oversee. While we have jurisdiction to review alleged misconduct by non-lawyers in the Department, under Section 8E of the Inspector General Act, we do not have the same jurisdiction over alleged misconduct committed by Department attorneys when they act in their capacity as lawyers—namely, when they are litigating, investigating, or providing legal advice. In those instances, the Inspector General Act grants exclusive investigative authority to the Department's Office of Professional Responsibility (OPR). As a result, these types of misconduct allegations against Department lawyers, including those that may be made against the most senior Department lawyers (including those in leadership positions) are handled differently than misconduct allegations made against law enforcement agents or other Department employees.

My office has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by other Department employees. Such a system cannot help but have a detrimental effect on the public's confidence in the Department's ability to review misconduct by its own attorneys. In recent months, others have expressed a similar concern. For example, the independent, non-partisan Project on Government Oversight (POGO) issued a report last month that was critical of OPR's longstanding lack of transparency and recommended empowering our office to investigate misconduct by DOJ attorneys. And I would like to thank Senator Murkowski for co-sponsoring S.2127, a bipartisan bill that would amend the Inspector General Act to enable our office to investigate allegations of attorney misconduct.

The jurisdictional limitation on our office is a vestige of the fact that OPR preexisted the creation by Congress in 1988 of the DOJ OIG, resulting in the statutory carve-out on our jurisdiction. The Department has consistently taken the position that because OPR has specialized expertise in examining professional conduct issues involving Department lawyers, OPR should handle professional misconduct allegations against Department attorneys. Whatever merit such an argument may have had in 1988 when the OIG was established by Congress, it is surely outdated.

Over the past 25 years, our Office has shown itself to be capable of fair and independent oversight of the Department, including investigating misconduct allegations against its law enforcement agents. Indeed, a similar argument was made many years ago by those who tried to forestall our Office's oversight of alleged misconduct by FBI agents. This argument against Inspector General oversight of the FBI was rejected, and we have demonstrated through the numerous investigations and reviews involving Department law enforcement matters since then, including our Operation Fast and Furious review, that our office has the means and expertise to handle the most sophisticated legal and factual issues thoroughly, effectively, fairly, and independently. Moreover, Inspectors General across the Federal Government have the authority to handle misconduct allegations against lawyers acting as such within their agencies, and they have demonstrated that they are fully capable of dealing with such matters. Seen in this context, the carve-out for OPR from our Office's oversight jurisdiction is best understood as an unnecessary historical artifact.

Eliminating the jurisdictional exception for OPR in the Inspector General Act would ensure the ability of our Office to fully review and, when appropriate, investigate allegations of misconduct of all Department employees. Moreover, even with such a jurisdiction change, the Department's OPR would almost certainly remain in place to handle "routine" misconduct allegations that do not require independent outside review by an OIG, much as the internal affairs offices at the FBI and the Department's other law enforcement components remain in place today even though the OIG's jurisdiction was expanded years ago to include those components. The current system with the law enforcement components works well, particularly given the OIG's limited resources. Each day, the OIG reviews new allegations of misconduct involving law enforcement personnel and determines which ones warrant investigation by an independent OIG, such as those that involve high-level personnel, those that involve potential crimes and other serious misconduct, and those that involve significant issues related to conduct by management. Those that we determine do not meet these standards are returned to the law enforcement component's internal affairs unit for handling, although the OIG frequently requires the internal affairs unit to report back to the OIG on the outcome of its investigation or review.

Our Office's statutory and operational independence from the Department ensures that our investigations of alleged misconduct by Department employees occur through a transparent and publicly accountable process. Unlike the head of OPR, who is appointed by the Attorney General and can be removed by the Attorney General, the Inspector General is a Senate confirmed appointee who can only be removed by the President after notification to Congress, and the Inspector General has reporting obligations to both the Attorney General and Congress.

Giving the OIG the ability to exercise jurisdiction in all attorney misconduct cases, just as it does in matters involving non-attorneys throughout the Department, would enhance the public's confidence in the outcomes of these important investigations and provide our office with the same authority as other Inspectors General.

CONCLUSION

Due in large part to the continued support of this subcommittee, fiscal year 2013 represented a strong and productive year for the OIG, which we are continuing in fiscal year 2014. I look forward to working closely with this subcommittee to ensure that our office can continue its vigorous oversight through fiscal year 2015 and beyond.

This concludes my prepared statement. I would be pleased to answer any questions that you may have.

Chairwoman MIKULSKI. Thank you, Mr. Horowitz. You and your team do such a great job.

And, tell me, how many employees do you have?

Mr. HOROWITZ. We have on board now about 405, roughly.

Chairwoman MIKULSKI. And what is your budget?

Mr. HOROWITZ. \$86.4 million is our base, and we've asked for that for the next fiscal year, plus 2.2 million in enhancements.

Chairwoman MIKULSKI. So, it would be 2.2 million more.

Mr. HOROWITZ. Correct.

Chairwoman MIKULSKI. Is that correct? Well, we ask you to do a very important job overseeing \$37 billion.

CYBER SECURITY IMPROVEMENTS

I know Senator Shelby will be raising questions about access to records. I want to welcome your insights on prison reform, but I'm going to go to cyber security. It's an area of keen interest with me—

Mr. HOROWITZ. Yes.

Chairwoman MIKULSKI [continuing]. And have been an advocate. And one of the things I fear is techno-boondoggles.

Mr. HOROWITZ. Right.

Chairwoman MIKULSKI. You know, we go through the FBI case file thing. Now, we understand the FBI—excuse me, the fiscal '15

budget request from Justice is 722 million. They're actually decreasing it, though the threat is increasing. You note that—you cite 130 open recommendations for improving the security of the Department's own IT system. Could you comment on what you think are—where you think appropriate in an open and public session, so we don't tip any bad guys, here—

Mr. HOROWITZ. Right.

Chairwoman MIKULSKI [continuing]. What you think they need to do to improve their cyber security. And do you think it's money, do you think it's management, or do you think it's a government wide problem?

Mr. HOROWITZ. Our—

Chairwoman MIKULSKI. I have my own views. I would like to hear yours, sir.

Mr. HOROWITZ. Yes. Our 130 recommendations come from our FISMA audits, which are obviously marked sensitive, given the nature of the information, but generally they have involved the handling of configurations of systems and account management of those systems, as well. We've made a number of very specific requests, and have outlined the issues that I think need to be addressed. I think, generally, it is a function of both the needs—additional needs, potentially, for the systems, as well as the possibility of the requirement for additional personnel. We, ourselves, for example, are struggling with both of those issues, as well, in a tightening budget environment, making sure we've got the right IT people, as well as enough funding for the right systems. And so, that's one of the things I've tried to do with our budget this year, is catch up, essentially, from where we fell behind over the last 2 years.

Chairwoman MIKULSKI. Do you feel that the Justice Department is prime time in implementing your recommendations?

Mr. HOROWITZ. I think that, in a number of areas, the Department needs to do a better job in implementing the recommendations we make faster, and going and looking at them seriously and taking them seriously. We continue to push on that. The Attorney General and the Deputy Attorney General, have supported that effort, and we will continue to press on that.

Chairwoman MIKULSKI. So, you feel you have the support. So, again, I'll come back, is it a resource issue? Is it a consistent resource issue? Senators Shelby, Graham, others, have raised, you know, sequester—

Mr. HOROWITZ. Right.

Chairwoman MIKULSKI [continuing]. Closed—you know, slam down and shut down, furloughs. What's the issue, here? We can't hire tech people?

Mr. HOROWITZ. I think it's probably a combination of both issues that you identified, that the needs continually change, they're continually evolving, technology is continually evolving, the threats are continually evolving; and that's one of the reasons, frankly, we've undertaken the next cyber initiative review, because Congress has given a substantial amount of money to the Department to undertake that effort, and that is a very significant part of the Department's budget and a critical part of dealing with threats, going forward.

Chairwoman MIKULSKI. Well, thank you.

We could ask more, but I'm going to turn to Senator Shelby, here.

Senator SHELBY. Thank you.

Thank you, Mr. Inspector General. We appreciate the work you're doing, your dedication. And, as the Chairman said, we want to make sure you have the tools to do your job, because the Inspector General, whether it's in the Justice Department, whether it's in the Pentagon, or whether the—we created that position for a reason——

Mr. HOROWITZ. Right.

Senator SHELBY [continuing]. And so forth. You know this well.

INSPECTOR GENERAL ACCESS

Do you believe that you, the Inspector General of the Department of Justice, should have to seek approval of the Attorney General to access grand jury documents, or any documents, relevant to ongoing investigations?

Mr. HOROWITZ. I don't, Senator. It's inconsistent, in my view, with the——

Senator SHELBY. With your mandate, is it?

Mr. HOROWITZ. Correct. And the—with the Inspector General——

Senator SHELBY. Because, even though it's the Justice Department, but it could be any Department——

Mr. HOROWITZ. Right.

Senator SHELBY [continuing]. If you have to go to the head of the Department, the Secretary——

Mr. HOROWITZ. Right.

Senator SHELBY [continuing]. For example, a Cabinet-level position, to approve what you're seeking, it seems that could be, under dire circumstances, an impediment to doing your job.

Mr. HOROWITZ. Well, and ultimately—that's correct—and ultimately, the letters that we've gotten from the Attorney General or the Deputy Attorney General——

Senator SHELBY. Yes.

Mr. HOROWITZ [continuing]. Giving us access have focused on a finding that the review was important to their oversight of the Department. The Act sets it up such a way that the oversight decisions, I think, should be made by Inspectors General, not by the Secretaries or Cabinet hats.

Senator SHELBY. Have you been, basically—have you had unfettered access to relevant documents?

Mr. HOROWITZ. In—with regard to certain records, we have only gotten them after the Attorney General——

Senator SHELBY. Right.

Mr. HOROWITZ [continuing]. Or the Deputy General have made a determination——

Senator SHELBY. After you had to jump through a lot of hoops, right?

Mr. HOROWITZ. After we had to get a letter from them to the component, informing them that they had the permission to give us the documents.

Senator SHELBY. Do you know if your fellow Inspector Generals, say, at the Department of State or Pentagon or Agriculture or, you

name it—Commerce—do they have to jump through these hoops to do that?

Mr. HOROWITZ. Well, I understand that there's one Inspector General at the Peace Corps, for example, who has tried to get records to do the oversight I think Congress expected in connection with sexual attacks on volunteers overseas, that has an opinion from her general counsel indicating that the IG Act does not give her authority to look at those records.

AUTONOMY OF OFFICE

Senator SHELBY. Have you thought about whether or not perhaps we need to address this legislatively, to be direct on this to Secretaries and—Attorney General, whoever—that they must furnish unfettered access to documents? Otherwise, you can't do your job.

Mr. HOROWITZ. I think it's critical that Inspectors General have that ability to make the decision for themselves, and legislation obviously would clear it up entirely, and it's a relatively small fix, understanding legislation is always difficult to get enacted.

Senator SHELBY. Well, it might not be that hard to get enacted, when the Chair of an Appropriations Committee—who knows. But, I think that we need to make sure, under all circumstances, that you and your fellow Inspector Generals have unfettered access to documents that could root out wrongdoing in any Department.

Mr. HOROWITZ. I couldn't agree more, Senator. And, I think, ultimately, that what's set up now is—Who should make that decision? Should it be the Inspector General who decides what's relevant—

Senator SHELBY. No.

Mr. HOROWITZ [continuing]. And what's needed?

Senator SHELBY. I think you're put there to do that job, in your sworn oath to do that job.

Thank you, Madam Chair.

Chairwoman MIKULSKI. We believe the Inspector Generals—this is a bipartisan—

Mr. HOROWITZ. Right.

Chairwoman MIKULSKI [continuing]. Approach that—should have access to the information, compliant with existing law. There are certain rules and so on. I'm not a lawyer. But, you know, there's legal compliance and there's access. So, that's one thing.

Second thing, I am familiar with this—or becoming familiar with this Peace Corps situation. A young lady, who was a Peace Corps volunteer, saw another Peace Corps volunteer allegedly sexually assault, reported it, and then the Peace Corps server who reported it was murdered. Well—this is big.

So, we want to maintain the integrity of the Inspector General process. We believe in the Inspector General process. Government should be never so big or so insulated or so isolated that it does not have an independent Senate-confirmed institution to red-team their work for waste, fraud, or other forms of mismanagement. So, we look forward to working with you on this.

And, Mr. Inspector General, you come with an extensive background in sentencing, incarceration, and so on. You actually were head of the Sentencing Commission.

Mr. HOROWITZ. I was a member of the Sentencing—

Chairwoman MIKULSKI. Yes, sir. So, you come with, actually, hands-on experience. And you've seen the good and bad and ugly.

Mr. HOROWITZ. Yes.

Chairwoman MIKULSKI. So, we really welcome your insight on how we can reduce the prison population without increasing the risk to our communities. And also, the thoughts on how we can look out for the safety of our prison guard population, where they, themselves, don't feel that they're captive by the prisoners.

You bring up a compassionate situation, the over 65. We welcome your insights. I think evidence shows that, if you committed murder, you're not likely to commit murder after 65. But, if you're a sexual predator, you'll be—you could be out in that playground once again.

Mr. HOROWITZ. Right.

Chairwoman MIKULSKI. So, we welcome your insights on how we can work constructively, evidence-based conceptual thinking, and your own experience, because you—you bring the experience of long-itude from, really, enforcement to sentencing, and now the Inspector General. We're—we really appreciate your service.

So, I'm going to ask the staff, on both sides of the aisle, because this has been raised—

Mr. HOROWITZ. Yes.

Chairwoman MIKULSKI [continuing]. By other members, so this is not a party thing—

Mr. HOROWITZ. Right.

Chairwoman MIKULSKI [continuing]. This is a committee thing—to meet with our staff on how we can implement, working with the Attorney General, prison reform. We also want to work with you—Senator Shelby and I—for you to get the access to the information that you need.

Mr. HOROWITZ. Thank you.

Chairwoman MIKULSKI. So, we're going to possibly be having votes soon, so—we could talk with you all day, but we're going to thank you for your service, look forward to these reports, ask staff to work hands-on—

Mr. HOROWITZ. Absolutely.

Chairwoman MIKULSKI [continuing]. With you, and look forward to bringing about some much needed reform.

ADDITIONAL COMMITTEE QUESTIONS

Chairwoman MIKULSKI. If there's no further questions—Senators may submit additional questions—this committee stands in recess to the call of the Chair.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO HON. ERIC H. HOLDER, JR.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

STOPPING CHILD PREDATORS

Question. What was the level of funding for each component agency handling Adam Walsh Act efforts at the Department in fiscal year 2013 and what is the level in fiscal year 2014? How does the Department coordinate efforts?

Lead-in information from original document.—

The National Center for Missing and Exploited Children (NCMEC) estimates there are over 100,000 non-compliant sex offenders at-large in the United States. The Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248) gave the U.S. Marshals Service the authority to treat convicted sex offenders as fugitives if they fail to register, as well as to assist jurisdictions to locate and apprehend these individuals.

Answer. The Department received a total of \$186.5 million in fiscal year 2013 and \$200.2 million in fiscal year 2014 for Adam Walsh Act (AWA) programs. The funding levels in thousands of dollars by component are as follows:

Component	Fiscal year 2013 funding	Fiscal year 2014 funding
Bureau of Prisons	9,741	9,838
Criminal Division	4,389	4,639
INTERPOL, Washington	1,490	1,924
Office of Justice Programs	54,386	57,730
Office on Violence Against Women	22,281	27,000
United States Attorneys	40,757	43,660
United States Marshals Service	52,429	55,425
Total, Adam Walsh Act Resources	186,473	200,226

The primary vehicle for coordination of the AWA enforcement is the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office, which is part of the Office of Justice Programs and was authorized by the Adam Walsh Child Protection and Safety Act of 2006. The United States Marshals Service (USMS) Sex Offender Investigations Branch (SOIB) and National Sex Offender Targeting Center (NSOTC) work in conjunction with SMART to assist at all levels of domestic, international, military, and tribal law enforcement to identify, locate, and prosecute non-compliant sex offenders. In addition, USMS Sex Offender Investigations Coordinators (SOIC) coordinate sex offender enforcement with all necessary law enforcement partners in their districts, including Assistant U.S. Attorneys, registering agencies, local law enforcement, U.S. Probation, and local prosecutors.

Personnel from the USMS and the National Center for Missing and Exploited Children (NCMEC) are assigned to the NSOTC, along with an agent from the Department of State's Diplomatic Security Service (DSS) and two members of the United States Army. The NSOTC has also assigned an intelligence analyst to the Customs and Border Protection Targeting Center, a Senior Inspector to USNCB-INTERPOL's Human Trafficking and Child Protection Division, and a contractor to serve as a liaison with the SMART Office. These employees work to track and verify information on sex offenders who travel abroad. The NSOTC also meets with the Office of Tribal Justice (OTJ) to discuss and coordinate DOJ programs and training related to Native American sex offenders.

In addition, the Bureau of Justice Assistance administers the reallocation of funds derived from penalties against Byrne Justice Assistance Grant (JAG) awards to States that have not yet substantially implemented the requirements of the Sex Offender Registration and Notification Act (SORNA). The SMART Office assists interested jurisdictions in developing and/or enhancing programs designed to meet SORNA implementation requirements.

Question. In fiscal year 2012, the Marshals Service estimated it needed a dedicated force of 500 deputies to fully implement the Adam Walsh Act. Have they reached this level yet? If not, why not and when will they reach this level?

Answer. The USMS has an estimated 211 positions (160 operational and 51 administrative) and approximately \$56 million available to support the AWA. With these resources, and with the growing partnerships with State, local, and tribal authorities, in fiscal year 2013, the USMS opened 2,191 criminal investigations for violations of 18 U.S.C. § 2250. From those investigations, 316 Federal warrants were issued and 279 convictions were obtained. Additionally, the USMS planned and participated in over 390 sex offender related enforcement operations with 1,368 law enforcement agencies, resulting in 39,854 compliance checks of known registered sex offenders.

USMS continues to vigorously pursue violators of the AWA to stem the violence against children by targeting apprehension of sex offenders who prey on children; augment staffing in areas of the country with large numbers of non-compliant sex offenders; expand the staff at the NSOTC; and provide broader support to States

in enforcing sex offender registration laws and in prosecuting non-compliant sex offenders.

Question. In December 2012, the Marshals Service received administrative subpoena authority for these investigations in the Child Protection Act (Public Law 112–206). When were deputies first able to start using this authority? How many fugitive sex offenders have been arrested due to this authority?

Answer. Following enactment of this legislation, the USMS formed a working group to ensure appropriate implementation of the administrative subpoena authority. The USMS realized the critical importance of developing clear policy and protocols with sufficient controls, oversight, and accountability to address privacy concerns with the information collected. The USMS analyzed risks involving privacy information and met with stakeholders to craft a policy that addressed and resolved several concerns. During this time, the USMS reviewed other systems and devised an implementation strategy that safeguarded the privacy of information. Because the administrative subpoena language limits and restricts its use, the USMS also addressed changes to its law enforcement database system to restrict access to the collected information.

As of August 2014, all USMS Sex Offender Investigations Branch (SOIB) personnel and full-time Sex Offender Investigations Coordinators have been trained on the policy, standard operating procedures and updates to the Criminal Case Module in the Justice Detainee Information System (JDIS) including administrative subpoena enhancements. The enhancements allow the administrative subpoena process to be managed entirely within JDIS and allow access to documents and information to be restricted to only those with a vested interest in the case. Training sessions for district management were provided last October 2014. This training provided a brief overview of the USMS Administrative Subpoena program and a detailed presentation on the request and approval process. The USMS/SOIB will continue to provide training on administrative subpoenas including programmatic and legal updates to USMS investigators during the SOIC Basic Training courses, and to district senior management during regional management trainings.

The widespread use of administrative subpoenas did not begin until September 1, 2014. To date, 34 administrative subpoena requests have been submitted, of which 31 were approved and served, two were denied, and one is currently going through the approval process.

HUMAN TRAFFICKING

Question. With multiple Justice Department agencies involved in fighting human trafficking, how are you coordinating efforts and tracking results?

Lead-in information from original document.—

Human trafficking crimes involve the act of compelling or coercing a person's labor, services, or commercial sex acts. The coercion can be subtle or overt, or physical or psychological. Trafficking doesn't just mean smuggling people in or out the country as traffickers have demonstrated their ability to exploit other vulnerable populations like runaway children and documented guest workers.

The Justice Department has multiple agencies working on issues related to human trafficking and in fiscal year 2013, made 161 forced labor and sex trafficking prosecutions, a 25 percent increase, and the highest number of human trafficking cases on record. Prosecutions are handled by the U.S. Attorneys Office and Civil Rights Division, grant funding is provided through the Office of Justice Programs and the FBI is the lead investigative agency. For fiscal year 2015, the Department requests \$45 million to combat human trafficking across the Department, a decrease of \$3 million below fiscal year 2014.

Answer. As the Department's anti-trafficking enforcement efforts continue to grow in scope, complexity, and impact, we are continuing to strengthen coordination among the many DOJ components participating in these efforts. The Department's Human Trafficking Working Group coordinates between and among DOJ components involved in victim assistance programs, State and local law enforcement grants and technical assistance programs, and Federal law enforcement. The Federal Enforcement Working Group coordinates among the Civil Rights Division's specialized Human Trafficking Prosecution Unit (HTPU), the Executive Office for United States Attorneys (EOUSA), the U.S. Attorneys' Offices (USAOs), FBI, and other Federal law enforcement agencies. HTPU and the Child Exploitation and Obscenity Section of the Department's Criminal Division (CEOS) coordinate extensively on cases and issues that affect child sexual exploitation, including sex trafficking of minors, which is within the subject matter expertise of CEOS, and international sex trafficking, sex trafficking of adults by force, fraud, and coercion, and

forced labor which is within the subject matter expertise of HTPU. The Office of the Deputy Attorney General coordinates among DOJ agencies on policy issues, performance data, and interagency matters affecting multiple DOJ components.

Question. How does the Justice Department collaborate with other Federal agencies like the Department of Homeland Security and Department of Labor? Do agencies regularly share information?

Lead-in information from original document.—

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Answer. Coordination among the Department of Justice (DOJ), Department of Homeland Security (DHS) and Department of Labor (DOL) has never been stronger. All of these agencies participate in the Federal Enforcement Working Group (FEWG), which brings together the National Program Managers and subject matter experts from HTPU, EOUSA, FBI Civil Rights Unit, DHS—Homeland Security Investigations—Human Smuggling and Trafficking Unit, DOL—Wage and Hour Division and DOL—OIG to streamline coordination among Federal investigators and Federal prosecutors both at the HQ level and at the regional level. Through the efforts of this interagency FEWG, in 2011 the Attorney General and Secretaries of Homeland Security and Labor jointly developed the Anti-Trafficking Coordination Team (ACTeam) Initiative. During Phase I of this Initiative, the FEWG conducted a nationwide rigorous, competitive, interagency selection process culminating in the launch of six Phase I Pilot ACTeams charged with implementing a coordinated interagency strategy to advance Federal human trafficking investigations and prosecutions. Based on the results of Phase I, the interagency FEWG unanimously agreed to initiate Phase II during 2014. In connection with this initiative, DOJ, DHS, and DOL jointly developed and delivered an intensive week-long Advanced Human Trafficking Training Program for interagency teams of Federal investigators and Federal prosecutors.

In addition, DOJ and DHS collaborate extensively on their U.S.-Mexico Bilateral Enforcement Initiative which has established coordination structures to exchange leads and evidence with Mexican law enforcement counterparts to more effectively apprehend traffickers, rescue victims, recover victims' children, and dismantle trafficking networks operating across the U.S.-Mexico border. DOJ and DOL meet regularly to collaborate on cross-training and cross-referral protocols to enhance victim identification capacity.

To strengthen victim services, DOJ, HHS, and DHS co-chaired an interagency effort to develop the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017. The plan outlines Federal government-wide goals for short- and long-term improvements in identifying and serving victims of human trafficking. A draft plan was circulated for informal public comment in April 2013 and a series of weekly interagency meetings was held to review the comments and improve the plan. The final plan was released at a survivor forum in January 2014 and is available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

Question. How is the Department addressing sex trafficking on the Internet?

Lead-in information from original document.—

Human trafficking crimes involve the act of compelling or coercing a person's labor, services, or commercial sex acts. The coercion can be subtle or overt, or physical or psychological. Trafficking doesn't just mean smuggling people in or out the country as traffickers have demonstrated their ability to exploit other vulnerable populations like runaway children and documented guest workers.

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Office of Justice Programs and the FBI is the lead investigative agency. For fiscal year 2015, the Department requests \$45 million to combat human trafficking across the Department, a decrease of \$3 million below fiscal year 2014.

Answer. The Department of Justice shares Congress's concerns about sex trafficking on the Internet. The Department has attacked this problem with a robust investigative and prosecutorial response, as well as through training and outreach. The Criminal Section of the Civil Rights Division (CRT) and CRT's Human Trafficking Prosecution Unit (HTPU), in collaboration with United States Attorneys' Offices (USAOs) nationwide, have principal responsibility for prosecuting human trafficking crimes, except for cases involving sex trafficking of minors. The Child Exploitation and Obscenity Section of the Department's Criminal Division (CEOS) shares responsibility and collaborates closely with USAOs nationwide in the investigation and prosecution of Federal cases involving child sexual exploitation, including the prostitution of children and the extraterritorial sexual abuse of children.

In 2011, the Department expanded Project Safe Childhood (PSC). Founded in 2006, PSC had initially focused on the effective prevention, investigation, and prosecution of technology-facilitated child sexual exploitation crimes. In 2011, the Department broadened the program to cover all Federal child sexual exploitation crimes, including the sex trafficking of children and child sex tourism. As a result of the expansion of PSC, U.S. Attorneys conducted threat assessments of the harm posed in their districts by crimes involving the commercial sexual exploitation of children, resulting in enhanced ability to develop and share expertise on the prevention and prosecution of these crimes. In the Department's Strategic Plan for fiscal year 2014–2018, one of the four priority goals is to protect vulnerable populations by increasing the number of investigations and prosecutions concerning child exploitation, human trafficking, and non-compliant sex offenders, and by improving programs to prevent victimization, identify victims, and provide services. The Department co-lead an interagency effort to develop the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, which is available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>. This plan is intended to improve the response to all victims of trafficking, including those whose trafficking was facilitated by the Internet.

The sections below provide examples of the Department's successful prosecutions, ongoing initiatives and partnerships with law enforcement agencies, and training and outreach efforts involving sex trafficking on the Internet.

1. A. Prosecutions

United States v. Daniel Burton (D. Md.): In January 2014, Daniel Burton, a/k/a Snoop, age 30, of Capitol Heights, Maryland was sentenced to 262 months in prison followed by a lifetime term of supervised release following his guilty plea to the sex trafficking of a minor. According to his plea agreement, in March 2008, Burton recruited a 13-year-old girl to engage in prostitution for him. Burton drove her to hotels, photographed her in lingerie, and advertised her on Craigslist for sexual services. The girl had sex with many clients that responded to the ads, and Burton kept all the money she earned. Burton provided the girl with alcohol, marijuana, and ecstasy. On April 8, 2008, law enforcement saw a Craigslist ad for the girl's sexual services and arranged a "date." Law enforcement arrived at the hotel and arrested Burton, who was sitting outside.

The case was investigated by the FBI-led Maryland Child Exploitation Task Force (MCETF), created to combat child prostitution, with members from 10 State and Federal law enforcement agencies. MCETF also partners with the Maryland Human Trafficking Task Force, formed in 2007 to discover and rescue victims of human trafficking while identifying and prosecuting offenders.

United States v. Weylin Rodriguez, et al. (M.D. Fla.): In March 2013, Weylin Rodriguez received a sentence of life imprisonment following his conviction in November 2012 by a Federal jury for sex trafficking of three minors and two adults through the use of force, fraud, and coercion, as well as firearms offenses. Co-conspirators Tatjuana Joye and Pria Gunn pled guilty to one count of conspiracy to engage in sex trafficking of minors and by force, fraud and coercion. In December 2012, Gunn was sentenced to 46 months incarceration and in February 2013, Joye, who cooperated with the Government's investigation, was sentenced to time served. Rodriguez ran a prostitution ring called "GMB" (aka "Get Money Bitch") and lured several minors and young adults into his ring through a variety of means, including promising them jobs as models. Rodriguez advertised the victims on backpage.com and also forced the victims to walk the streets to pick up "dates." The victims were required to follow numerous rules and give all the money from their "dates" to

Rodriguez. To prevent the victims from leaving his ring, Rodriguez inflicted severe beatings on them and threatened them with guns.

The FBI's Tampa, Florida Office, the Orlando Metropolitan Bureau of Investigation, and the Orange County (Florida) Sheriff's Office investigated the case, with additional investigation conducted by the Osceola County (Florida) Sheriff's Office and the Charlotte-Mecklenburg Police Department (North Carolina).

1. B. Investigations and Initiatives

In 2003, the FBI established the Innocence Lost National Initiative (ILNI) as a means to combat the increasing frequency of commercial sexual exploitation of children through prostitution, much of which is initiated online via advertisements. The ILNI is victim centered, and is primarily designed to identify and recover children. Over the past 11 years, the FBI and its partners have developed specific operations to target both the supply side (individuals responsible for the facilitation of this crime problem) and the demand side (those who pay to engage in sex with children).

Over 2,100 investigations opened since the inception of the ILNI have resulted in over 1,450 convictions on Federal, State, and local charges, and over 3,100 children recovered and/or identified. The youngest victim was 9 years old. Substantial sentences of convicted pimps have been obtained, including 13 life sentences and many sentences ranging from 25 to 50 years in prison.

The FBI has partnered with nearly 400 State, local, and Federal agencies to form 69 Child Exploitation Task Forces (CETF) throughout the United States. FBI field offices focus their resources on criminal enterprises engaged in the transportation of juveniles for the purpose of prostitution, using intelligence driven investigations and employing sophisticated investigative techniques. The FBI uses the Internet as an investigative tool to identify online advertisements for prostitution involving children located on over 100 Web sites.

In addition, the FBI has coordinated seven iterations of Operation Cross Country (OCC) since June 2008. OCC is a national enforcement operation, conducted over 3-to-5-day periods, to combat commercial sexual exploitation of children through prostitution in the United States. FBI field offices, working with their law enforcement partners, participated in the operation by targeting venues such as truck stops, motels, and casinos where children are exploited, as well as the Internet. Law enforcement officers from over 450 local, State, and Federal law enforcement agencies joined together to recover victims and apprehend those who have victimized them. As a result of these operations, 434 child victims have been safely recovered and 581 pimps engaged in the commercial sexual exploitation of children have been arrested.

1. C. Training

The Department has led and participated in numerous training events in recent years. CEOS provides advice and training to prosecutors, law enforcement personnel and government officials both worldwide and in the United States. The FBI also provides training and promotes interagency sharing of skills in investigating sexual exploitation offenses to develop a nationwide capacity to provide a rapid, effective, and measured investigative response to crimes against children.

CEOS attorneys travel all over the world to conduct trainings for investigators, law enforcement and others involved in investigations and prosecutions of child exploitation offenses, including sex trafficking over the Internet. For example, CEOS attorneys participated in three separate training conferences in Mexico in 2013, including presenting at the Homeland Security Investigations Immigration and Customs Enforcement (HSI ICE) Human Trafficking Seminar in August 2013. CEOS also consults with numerous foreign delegations in the United States to discuss efforts to enhance worldwide efforts against child sexual exploitation crimes, including commercial sexual exploitation of children.

Furthermore, in the United States, CEOS conducts trainings and participates in coordination meetings with law enforcement and prosecutors' offices. The FBI provides training on child exploitation investigations as well. Since 2003, the FBI has partnered with NCMEC to host Protecting Victims of Child Prostitution training courses. To date, over 1,300 law enforcement officers and prosecutors have received this training on the comprehensive identification, intervention, and investigation of the commercial sexual exploitation of children.

Question. What is being done to address human trafficking on tribal land?

Lead-in information from original document.—

Human trafficking crimes involve the act of compelling or coercing a person's labor, services, or commercial sex acts. The coercion can be subtle or overt, or physical or psychological. Trafficking doesn't just mean smuggling people in or

out the country as traffickers have demonstrated their ability to exploit other vulnerable populations like runaway children and documented guest workers.

The Justice Department has multiple agencies working on issues related to human trafficking and in fiscal year 2013, made 161 forced labor and sex trafficking prosecutions, a 25 percent increase, and the highest number of human trafficking cases on record. Prosecutions are handled by the U.S. Attorneys Office and Civil Rights Division, grant funding is provided through the Office of Justice Programs and the FBI is the lead investigative agency. For fiscal year 2015, the Department requests \$45 million to combat human trafficking across the Department, a decrease of \$3 million below fiscal year 2014.

Answer. The Department of Justice's strong commitment against human trafficking is represented in every United States Attorney's Office in each district. All USAOs participate in a human trafficking taskforce, where Indian country cases are discussed. In particular to Indian country, the Executive Office for United States Attorneys recently conducted a forensic interviewing class wherein DOJ employees were trained to better interview victims of human trafficking (including Native victims).

Additionally, the FBI investigates human trafficking and other crimes that occur in Indian country. The FBI is also making a concerted effort to increase awareness through training of Federal and tribal law enforcement and victim specialists as well as supporting investigations as they are identified. The FBI is working to also provide training opportunities that highlight victim identification, investigative techniques, and available resources.

From July 8, 2013 through July 12, 2013, the Department's Office on Violence Against Women (OVW) conducted a site visit to western North Dakota meeting with local law enforcement, tribal leaders, victim advocates, the U.S. Attorney for North Dakota, State and tribal coalition leaders, and service providers from both North Dakota and Montana. OVW is exploring providing funds to law enforcement and victim service providers in western North Dakota and eastern Montana to address domestic violence, sexual assault, stalking, and trafficking. In fiscal year 2012, the Bureau of Justice Assistance (BJA) solicited proposals to address the issue of human trafficking in Native American communities by developing and providing training to build awareness of the existence of human trafficking in Indian Country, and providing law enforcement and community stakeholders with the tools necessary to begin the process of victim identification, rescue and restoration, while providing appropriate consequences for perpetrators in a consistently applied manner. BJA received four applications through a competitive process and awarded \$305,000 to the Upper Midwest Community Policing Institute (UMCPI) to develop and pilot the training.

Since the award to UMCPI was made in September 2013, UMCPI, working with BJA, developed curriculums and delivered human trafficking trainings to tribal law enforcement. A summary of the curriculums and the training sessions is provided below.

Curriculum Development

The *Human Trafficking in Native American Communities* curriculum was developed by UMCPI, based on recommendations from a focus group of subject matter experts that included State, tribal and municipal law enforcement personnel, some with expertise in human trafficking; Federal officials from the U. S. Attorney's Office—Western Washington and Department of Homeland Security; and State Social and Health Indian Child services unit. The curriculum provides training for tribal law enforcement, tribal leaders and community stakeholders that includes components covering: (1) basic understanding of human trafficking; (2) outreach to the community, tribal leaders and service providers; (3) the development of protocols and policies to increase the community's capacity to address human trafficking; and (4) specialized investigative and case coordination training for law enforcement.

Tribal Youth Peer-to-Peer Human Trafficking in Indian Country Prevention Curriculum is an interactive, culturally responsive curriculum that is to be delivered by persons who currently work with Native American youth and who have completed the required train-the-trainer program, offered by UMCPI. The curriculum is designed to provide Native American youth with an understanding of the types of human trafficking that can occur; how human trafficking can occur in their community and provide them with information to help them identify internal and external resources that can serve as protective factors against human trafficking crimes.

UMCPI is also reviewing its other existing human trafficking training, to explore how such training may be customized for the Native American Community.

Trainings

- Representatives from law enforcement, tribal council, social services, casino security, wildlife law enforcement, courts, and a gaming regulatory commission attended the Human Trafficking in Native American Communities pilot training.
- Representatives from education, recreation, tribal wellness organizations and tribal council and a research organization attended two Tribal Youth Peer-to-Peer Human Trafficking in Indian Country Prevention pilot trainings.

Future Trainings

—Two additional Human Trafficking in Native American Communities pilot trainings are scheduled to be held between August and December 2014. BJA is currently working with UMCPI to determine available funding for future training classes. Additional information about UMCPI's human trafficking training is available at its Web site, <http://www.umcpi.org/Services/NationalInitiatives/HumanTrafficking.aspx>.

TASK FORCES

Question. How does the Department ensure there is not duplication of effort across task forces? How is task force effectiveness measured? Which component agencies have the largest number of task forces?

Lead-in information from original document.—

The Justice Department has 570 task forces covering areas from terrorism and fugitive apprehension to intellectual property and child recovery. These task forces are comprised of teams of not only Federal law enforcement but State and local police and intelligence agencies working together to identify and respond to crime at the local level.

Answer. While several DOJ components operate task forces with similar missions, each component brings a unique set of experience and skills to its investigations. Further, DOJ has several deconfliction mechanisms, such as DEA's Special Operations Division (SOD) and the Organized Crime Drug Enforcement Task Forces (OCDETF) Fusion Center, to ensure that task forces are not conducting investigations of the same target. In fiscal year 2012 and fiscal year 2013, the Department consolidated or eliminated more than 40 task forces to reduce intra-agency overlap and ensure efficient task force management. The Department recently adopted a mandatory policy regarding the use of deconfliction systems in the course of all current and future investigative activity, which took effect on May 30, 2014. Implementation of this policy will address investigative, target, and event data; improve effective coordination and collaboration of investigative activity; maximize departmental performance; and most importantly ensure officer safety. Regarding effectiveness, each of the agencies' task forces have a unique mission, defined goals, and individualized performance metrics incorporated into their overall agency leadership and culture. DEA operates 250 task forces, including its regional task forces, its Tactical Diversion Squads, and High Intensity Drug Trafficking Area (HIDTA) task forces. FBI operates 217 Safe Streets and Safe Trails task forces focused on violent gangs, violent crime, and major theft, and the USMS operates 67 fugitive task forces, including its 7 Regional Fugitive Task Forces.

Question. How have cuts by State and local governments to their law enforcement agencies impacted these operations? Have there been demands for additional task force help in communities or States that have had to downsize their public safety budgets? Or has participation in task forces declined because States and localities can't spare the personnel to participate?

Answer. DOJ's investigative agencies have seen mixed impacts on State and local task force participation. For example, DEA's Tactical Diversion Squads have seen a significant increase in participation while participation on ATF's task forces and FBI's Joint Terrorism Task Forces has remained stable. In some localities, participation is down on FBI's criminal task forces while requests for operational assistance have increased.

ASSETS FORFEITURE

Question. What has been shared with State and local partner agencies via equitable sharing programs or as part of asset forfeiture in fiscal year 2012 and 2013 and what is expected to be shared in fiscal year 2014?

Answer. The Department's Asset Forfeiture Program (AFP) made payments of \$447.3 million in fiscal year 2012 and \$657.2 million in fiscal year 2013 to State and local partner agencies through the equitable sharing program. In fiscal year

2014, the AFP made equitable sharing payments of \$425.1 million to State and local partner agencies.

Additionally, the Department's AFP made available \$140.5 million in fiscal year 2012 and \$154.7 million in fiscal year 2013 and fiscal year 2014 for expenses incurred by State and local law enforcement officers participating in joint law enforcement operations with Federal agencies.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

IMMIGRATION COURTS

Question. What will be the real impact, of an additional 35 immigration judge teams, to the existing backlog when the staffing needs appear to be so dire?

Lead-in information from original document.—

I am concerned about the large and expanding docket of our Nation's immigration court system. Between 2009 and 2013, the pending caseload grew 50 percent. The Executive Office for Immigration Review has stated the court system has 32 vacancies. To make matters worse, nearly half of the 200 immigration judges are eligible for retirement. However, I was encouraged the Department of Justice requested a \$17 million to support an additional 35 Immigration Judge teams to help process the backlog of over 350,000 cases.

Answer. The addition of 35 Immigration Judge Teams will allow EOIR's immigration courts to process a greater number of pending cases. The number of pending cases over time depends on the volume of existing cases, new charging documents filed by DHS, and case completions. EOIR's current pending caseload volume in fiscal year 2014 is approximately 389,000 proceedings. The number of annual completions by an Immigration Judge varies according to a number of factors, including the type of docket to which the judge is assigned. Taking into account variable completion rates among judges, EOIR estimates that 35 additional IJ teams will likely complete between 21,000 and 28,000 proceedings annually. The effect of this added productivity upon the pending caseload or backlog will depend on the number of additional charging documents filed by DHS during the same period. Finally, any gains in staffing and productivity may be lowered slightly due to normal staff attrition.

Question. What other steps is EOIR taking to promote efficiencies to address the immigration court backlog?

Answer. EOIR continues to work closely with DHS, other government agencies, and non-profit organizations to explore ways to promote efficiencies to address the immigration courts pending caseload. In conjunction with these groups, EOIR has conducted test pilots across the country in the areas of non-contested dockets, alternatives-to-detention, pre-trial conferences, and unaccompanied alien children scheduling adjustments to try to streamline immigration proceedings.

To improve the effective and efficient adjudication of immigration removal proceedings for vulnerable populations, such as unaccompanied alien children and detained aliens who are deemed mentally incompetent to represent themselves in immigration proceedings, EOIR dedicated over \$3 million in fiscal year 2014 resources to provide legal aid services to these populations.

Additionally, in fiscal year 2014, EOIR dedicated approximately \$6.6 million for the Legal Orientation Program (LOP), which improves efficiencies in immigration court proceedings for detained aliens by increasing their awareness of their rights and the overall process. As a result of the increased funding provided in fiscal year 2014, EOIR expanded the program to provide these services at five additional adult facilities and four family detention facilities. Today, the LOP is available at 32 sites across the country. Evaluation reports have shown that LOP participants complete their immigration court cases in detention an average of 12 days faster than detainees who do not participate in an LOP, which saves the Government approximately \$12.3 million annually. EOIR has requested another \$2.8 million in fiscal year 2015 to respond to elevated demand at existing LOP sites and to add 12 more sites.

FORENSICS REFORM

Question. Would you agree that there must be national leadership in the area of forensic science, and that the Department of Justice, working with the FBI and other elements of the executive branch, can play a central role in the development of this important part of our criminal justice system?

Lead-in information from original document.—

Last month, I introduced a comprehensive bill aimed at strengthening and improving the forensic sciences used in the criminal justice system. I am pleased that Senator Cornyn has joined as a cosponsor of this bill, and hope that we can continue to build support for this bipartisan, commonsense bill. I know that the Department of Justice has been a leader in the forensic sciences, particularly with regard to DNA analysis in their FBI crime labs. But I think you will also agree with me that more work needs to be done.

Answer. Yes, the Department of Justice (DOJ) agrees that there must be national leadership in the area of forensic science. To that end, DOJ, in collaboration with the National Institute of Standards and Technology, established the National Commission on Forensic Science to provide Federal leadership in forensic science while also encouraging strong State and local participation. The Commission will have an important role in strengthening the validity and reliability of the forensic sciences and enhancing quality assurance and quality control. Scientifically valid and accurate forensic analysis supports all aspects of our justice system.

Question. Will you commit to working with me on the forensics reform bill that I introduced last month?

Answer. The Department is committed to working closely with you and others in Congress to strengthen forensic science. We are grateful for your interest in this important issue and will be glad to work with Congress on efforts to enhance the validity and reliability of forensic sciences.

BUDGET CUTS

Question. Can you describe what DOJ programs have faced shrinking budgets in recent years and what impact, if any, this threatens to have on public safety?

Lead-in information from original document.—

In recent years the Bureau of Prisons' budget has expanded at unprecedented levels despite overall funding for the Justice Department remaining relatively stagnant.

Answer. Since fiscal year 1994, the Federal prison population more than doubled, and the detention population more than tripled. As a result, the budget for prisons and detention has constituted an increasing portion of the Department's total budget. Prisons and detention costs increased from 27 percent of DOJ's discretionary budget in fiscal year 2000 to 31 percent in fiscal year 2013, leaving less funding for other DOJ functions even before sequester. During this same period, including grants for State and local law enforcement, funding for grants decreased from 26 percent of DOJ's fiscal year 2000 budget (\$4.0 billion) to 8 percent (\$2.0 billion) in fiscal year 2013.

If this trend continues unabated while DOJ's total authority remains flat, the discretionary funding available for other DOJ activities that protect public safety—including resources for investigation, prosecution, prevention, intervention, and assistance to State and local law enforcement—will decrease.

This reality has only served to intensify the need for smarter investments to protect public safety. For this reason, on August 12, 2013, the Attorney General announced his "Smart on Crime" initiative, which prioritizes prosecutions of the most serious cases, reforms sentencing policies to help control Federal prison spending and ensure that people convicted of low-level, non-violent drug offenses receive appropriate sentences, invests in alternatives to incarceration for low-level, non-violent offenders, and improves reentry to curb repeat offenses and re-victimization.

PRISONER REENTRY

Question. In furthering its goal of ensuring public safety, what has the Department of Justice found to be the most effective tools or methods to reducing recidivism rates?

Lead-in information from original document.—

Last year, Senator Portman and I introduced the Second Chance Reauthorization Act, which is aimed at improving prisoner reentry.

Answer. The Department of Justice (DOJ) is committed to fulfilling the objectives outlined in the Second Chance Act (SCA). Reentry programming provides a major opportunity to reduce recidivism, save taxpayer dollars and make our communities safer. One of the primary goals of the SCA has been to reduce recidivism by using risk and needs assessments to identify returning offenders with moderate- to high-risk of returning to prison or jail. Focusing on these moderate- to high-risk offenders

allows agencies to concentrate their resources on those offenders with the most significant needs. The Department's Bureau of Justice Assistance (BJA) manages the SCA grant programs and believes that the most effective tools to prevent recidivism are a set of "comprehensive wrap-around services" based on evidence-based programs that meet the identified needs of individual offenders. For example, it does little good to find an offender a job if his or her substance abuse or mental health problems are barriers to keeping the job. Likewise, simply having a place to live may not stabilize an offender unless he or she has access to supportive case management services designed to help him or her adjust to independent living situations. There are no "silver bullets" that will magically eradicate recidivism; rather, it takes a complete tool box of services to apply to each unique situation based on the specific needs of the returning offender.

Bureau of Prisons (BOP) also offers a variety of programs to help inmates return to their communities as law-abiding citizens, including work, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services and counseling, and other programs that impart essential life skills.

To strengthen the focus on its reentry mission, BOP created the Reentry Services Division (RSD) in fiscal year 2013. RSD will enhance reentry programming and community resource transition, thereby decreasing the recidivism rate of released offenders and increasing public safety. RSD is comprised of five branches that were previously part of the Correctional Programs Division: National Reentry Affairs, Chaplaincy Services, Residential Reentry Management, Female Offenders, and Psychology Services.

Some of BOP's most successful programs include:

- Federal Prison Industries (FPI or trade name UNICOR) is one of the BOP's most important correctional programs. Approximately 13,000 inmates work in FPI. It has been proven to substantially reduce recidivism. Research has demonstrated that inmates who participate in the FPI are 24 percent less likely to reenter the Federal system than similar non-participating inmates. FPI gives inmates the opportunity to develop marketable work skills and a general work ethic—both of which can lead to viable, sustained employment upon release. This is particularly noteworthy for reentry given the barriers to post-release employment many offenders face. FPI also keeps inmates productively occupied; inmates who participate are substantially less likely to engage in misconduct.
- FPI inmate employment has significantly decreased in recent years. This decrease is a result of the downturn in the economy, a decrease in supplies needed to support the war effort, as well as legislative changes. Legislation enacted over the past few years (including various provisions in Department of Defense authorization bills and appropriations bills) also have weakened FPI's standing in the Federal procurement process by requiring FPI to compete for the work of Federal agencies in many instances where it was previously treated as a mandatory source of supply.
- More recently, Congress has enacted legislation to assist in enhancing inmate work opportunities. Staff in BOP's New Business Development Group are dedicated to developing repatriation and Prison Industries Enhancement Certification Program (PIECP) opportunities, and are enthusiastically pursuing many different products and working with a number of different potential partners.
- Educational programming provides inmates with an opportunity to learn the functional skills that support their reintegration into the community. Inmate education programs include literacy, English-as-a-Second Language (ESL), occupational education, advanced occupational education (AOE), parenting, release preparation courses, and a wide-range of adult continuing, wellness, and structured and unstructured leisure time activities. At the end of fiscal year 2013, 34 percent of the designated inmate population was enrolled in one of more education/recreation program. Empirical research has found that participation in educational programs leads to a 16 percent reduction in recidivism by inmates who participate in these programs.
- The BOP's substance abuse strategy includes a required drug education course, non-residential drug abuse treatment, residential drug abuse treatment, and community transition treatment. Because certain non-violent offenders who successfully complete all components of this recidivism-reducing program are eligible for an incentive of up to 1 year off their sentence, inmates are strongly motivated to participate. Empirical research has shown that inmates who complete the residential drug abuse treatment program are 16 percent less likely to recidivate and 15 percent less likely to have a relapse in their substance use disorder use within 3 years after release (male inmates).

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

PROSECUTING GITMO DETAINEES IN U.S. COURTS

Question. Now that we have seen that conviction rates have been higher in Federal criminal courts than in Military Commissions, aren't there some GTMO detainees who we would be better off prosecuting in Federal criminal court, especially for conspiracy and material support?

Answer. The Department has never doubted the ability of the Article III court system to administer justice swiftly and effectively in terrorism-related prosecutions. Hundreds of terrorism-related cases have demonstrated the effectiveness of this approach, including the March 2014 conviction by a Federal jury in Manhattan of Sulaiman Abu Ghayth, the son-in-law of Usama bin Laden and a senior member of al Qaeda, and the May 2014 conviction by a Federal jury in Manhattan of Mustafa Kamel Mustafa a/k/a "Abu Hamza al Masri", another al Qaeda-linked figure who, among other things, conspired to establish a terrorist training camp here in the United States. The decision of whether to prosecute terrorism cases in Article III courts or in military commissions must be based on the facts and circumstances and our national security interests on a case-by-case basis. As you know, however, Section 1034 of the National Defense Authorization Act for fiscal year 2014 continues the ban against using Department of Defense funds to transfer Guantanamo detainees into the United States for any type of trial or any other purpose.

Question. If GTMO detainees can be held safely and securely before, during, and after their trial in Federal criminal courts, when will we start bringing GTMO detainees into the United States for prosecution again?

Lead-in information from original document.—

Like you, I was pleased to see that, last month, a senior al-Qaeda figure named Sulaiman Abu Ghayth was convicted in Federal criminal court of all three counts against him, which could bring a sentence of life in prison.

With the high rate of convictions we have seen in the Federal courts since 9/11, I'd like to get your thoughts on transferring detainees from Guantanamo for prosecution in the U.S. Although Abu Ghayth was not transferred from Guantanamo, he was a senior al-Qaeda figure. And there is the precedent of Guantanamo detainee Ahmed Ghailani being transferred to New York City where he was sentenced to life in prison in Federal court for conspiracy to kill Americans even though he was acquitted of most of the other charges against him.

Answer. There is ample evidence that terrorism defendants can be held safely and securely before, during, and after trial in the United States. As you know, however, the National Defense Authorization Act for fiscal year 2014 continues the ban against using Department of Defense funds to transfer Guantanamo detainees into the United States for trial or any other purpose.

Question. Will you please work with this Committee to oppose any restrictions on these transfers to the U.S. that would make it harder to bring these terrorists in Guantanamo to justice?

Answer. The Administration remains committed to closing the detention facility at Guantanamo Bay, as continued operation of the facility weakens our national security. We welcomed the loosening of some of the restrictions related to the transfer of detainees to foreign countries in the National Defense Authorization Act for fiscal year 2014. However, the continuing restrictions on transfer of Guantanamo detainees to the United States and the remaining restrictions on transfer of detainees to third countries unnecessarily curtails the flexibility and options available to the executive branch. The Justice Department will continue to work with Congress to remove these transfer restrictions.

TERRORIST ASYLUM

Question. Mr. Attorney General, as you know, one of the arguments critics use to justify their position that more terrorists should be sent to Guantanamo is that they can be granted asylum if they are prosecuted on U.S. soil. What is your response to that claim?

Answer. As explained more fully in the recently submitted congressional report requested by Section 1039 of the National Defense Authorization Act for fiscal year 2014, no Guantanamo detainee relocated to the United States would have a right to receive a grant of asylum in the United States. Asylum is a discretionary form of relief generally available to an alien who demonstrates, inter alia, that he was persecuted or has a well-founded fear of persecution in his country of nationality on account of his actual or imputed race, religion, nationality, membership in a par-

ticular social group, or political opinion. Although an alien who is physically present in the United States may, with limited exceptions, file an application for asylum, that application may be denied as a matter of discretion even if the alien were able to satisfy the eligibility requirements. Moreover, in many cases involving Guantanamo detainees, one or more of a number of statutory bars to eligibility could also apply. For example, an alien who has engaged in terrorist activity as described in INA § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B), is ineligible for asylum. An alien is also barred from obtaining asylum where he has ordered, incited, assisted, or otherwise participated in persecution on account of a protected ground or where there are reasonable grounds for regarding the alien as a danger to the security of the United States. Additionally, where an alien, having been convicted of a particularly serious crime, poses a danger to the community or where there are “serious reasons for believing that the alien has committed a serious nonpolitical crime” outside the United States, the alien is also barred from receiving asylum.

FUNDING FOR THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF)
ATTRITION

Question. 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?

Answer. ATF’s ability to effectively address violent crime in our communities and neighborhoods is directly tied to the number of special agents and industry operations investigators in our workforce. ATF faces several challenges including the anticipated retirement and attrition of hundreds of special agents in the next few years. While ATF has traditionally worked in partnership with State and local law enforcement agencies to leverage its capabilities and impact on violent crime, these approaches alone are not sufficient to overcome significant losses within its agent cadre. The loss of hundreds of special agents jeopardizes ATF’s mission capacity; however, the fiscal year 2014 Appropriation began to address this challenge and ATF was able to hire approximately 217 special agents in fiscal year 2014. With the funding requested in the fiscal year 2015 President’s budget, ATF will be able to sustain the hiring effort started this year.

Question. What steps is ATF taking to address this attrition?

Answer. ATF hired approximately 217 special agents in fiscal year 2014 in an effort to offset the impact of recent attrition as well as projected future attrition and retirements. ATF anticipates that a sustained hiring effort will be required over the next several years in order to maintain the special agent cadre and ensure that there is no degradation of ATF’s mission capability as a result of personnel loss.

ATF is also revitalizing and expanding its advanced agent training programs and leadership development programs. For example, ATF has undertaken course redesign/review efforts related to its advanced investigations training program, the advanced firearms training program, and the Industry Operations Investigator (IOI) training programs. The goal for these efforts is to create updated curricula that can be broken out into individual modules and delivered by instructors already in the field. ATF is also accelerating its leadership development efforts. For example, ATF has completed development and implementation of the ATF Leadership Philosophy, which provides a consistent contextual basis for developing and emphasizing leadership principles throughout the organization. ATF has also initiated development of a new Leadership and Command course for agents in the supervisory and managerial ranks, addressing a critical need within those cadres. Further, ATF is investing in additional training opportunities for managers through the Center for Creative Leadership (CCL) and is increasing its support for its Aspiring Leaders and Leadership Enhancement programs.

While hiring new agents serves as a numerical offset to attrition, many years of training and experience are required before a new agent is fully capable of replacing a senior agent. ATF is working to accelerate that development process, taking advantage of the existing experience of senior agents within the workforce to prepare new agents for the technical and leadership challenges that lie ahead.

Question. How does the President’s budget request for ATF address this attrition?

Answer. ATF anticipates that a sustained hiring and training effort will be required over the next several years in order to maintain ATF’s special agent cadre and ensure that ATF’s mission capability is not degraded due to retirements and attrition. ATF hired approximately 217 special agents in fiscal year 2014 in an effort to offset the impact of recent attrition as well as projected future retirements and the fiscal year 2015 President’s budget sustains these hiring efforts.

Question. How imperative is it that Congress fully fund ATF in line with the President’s budget request?

Answer. The fiscal year 2015 President's budget request includes \$22 million in adjustments to base that sustains the momentum and positive steps the Bureau is made in fiscal year 2014 to address areas of concern and vulnerability. In particular, ATF anticipates that a sustained hiring and training effort will be required over the next several years in order to maintain ATF's special agent cadre and ensure that ATF's mission capability is not degraded due to retirements and attrition.

UNACCOMPANIED ALIEN CHILDREN

Question. 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?

Lead-in information from original document.—

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. Many of these children wind up in the custody of the Office of Refugee Resettlement. I applaud the work done for these children by the Legal Orientation Program. However, the Program doesn't serve children who have been released from custody. Considering the increased numbers of these children, and the fact that many of those already released from custody still have pending immigration cases, more has to be done to ensure these children have Child Advocates and attorneys to represent them navigate immigration court.

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."

Answer. EOIR has established "juvenile dockets" throughout the country to facilitate consistency, encourage child-friendly courtroom practices, and promote pro bono representation for unaccompanied alien children (UAC). Currently, there are juvenile dockets in 26 immigration court locations. In addition, DOJ has appointed an Assistant Chief Immigration Judge (ACIJ) for vulnerable populations, who has the responsibility for continuing the development and implementation of EOIR policy concerning vulnerable populations. The ACIJ is focusing on the UAC population in particular, and is working with EOIR's Office of Legal Access Programs and the various immigration courts to further improve training for court staff, as well as examine and implement improved procedures for handling UAC cases.

Question. Will the DOJ take steps to allocate funds to provide legal representation for unaccompanied children?

Answer. The Department of Justice, through EOIR, entered into a strategic partnership with the Corporation for National and Community Service (CNCS), which operates the AmeriCorps national service program, to provide legal aid to certain unaccompanied minors and to improve the effective and efficient adjudication of immigration removal proceedings involving those children. The Justice Department and CNCS partnership, known as Justice AmeriCorps, responds to Congress' direction to EOIR in its fiscal year 2014 appropriation "to better serve vulnerable populations such as children [and to] improve court efficiency through pilot efforts aimed at improving legal representation." On September 12, 2014, CNCS awarded \$1.8 million in grants to organizations and coalitions providing services at approximately 17 sites. It is anticipated that the organizations and coalitions will begin providing legal representation services in January 2015.

In addition, EOIR allocated \$200,000 in funding to the Vera Institute of Justice to provide direct legal representation for unaccompanied children appearing before the Baltimore Immigration Court. The Baltimore Representation Initiative for Unaccompanied Children will be operational January 2015.

Question. Will the DOJ commit to looking at how to expand access to legal counsel for immigrant children?

Answer. The Department of Justice is committed to looking at how to expand access to legal counsel for immigrant children. In addition to launching the Justice AmeriCorps program and the Baltimore Initiative to provide legal aid to unaccompanied children, the Department continues to work closely with other government agencies and non-profit organizations to explore ways to increase access to legal services for unaccompanied children in removal proceedings, as well as other vulnerable populations. Over the past several years, EOIR, together with its government

and non-governmental partners, has made great strides to improve the adjudication process for children. These include:

- Issuing guidance to immigration court staff to implement more child-friendly court practices and improve access to pro bono legal services.
- Creating special children’s dockets at the majority of immigration courts to better accommodate pro bono legal services and implement more child-friendly court practices.
- Expanding Immigration Judge training for hearing cases involving children.
- Facilitating Legal Access Programs funded by the Office of Refugee Resettlement (ORR), which provides “know your rights” presentations and pro bono legal services at all ORR shelter care locations.
- Creating the Legal Orientation Program for Custodians of UAC (LOPC), which funds non-governmental organizations to provide legal orientation presentations and pro bono referral services to the custodians (adult caregivers) of UACs. The purpose of this program is to inform UAC custodians of their responsibilities in ensuring the child’s appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation and trafficking. In fiscal year 2014, EOIR allocated \$2.5 million in funding to this program.
- Engaging public stakeholders to improve access to pro bono legal services, especially for children and family groups. These ongoing efforts have included large stakeholder meetings with EOIR’s Director, Deputy Director, and Assistant Chief Immigration Judges in cities with the largest unaccompanied child populations.

IMMIGRATION COURT BACKLOG

Question. Assuming that the 35 new immigration judge teams were to be filled, would that suffice for EOIR’s needs?

Answer. Hiring 35 Immigration Judge teams will assist EOIR with managing the incoming caseload. As of November 2014, EOIR’s Immigration Judge Corps consists of 241 Immigration Judges, which is below an optimal staffing level to appropriately address the incoming and pending caseload. In light of the ongoing surge in immigration, especially along the Southwest Border, EOIR initiated the hiring of more than 30 Immigration Judges in fiscal year 2014 to address a longstanding shortfall exacerbated by a 5 percent to 10 percent attrition rate per year. EOIR anticipates the above-mentioned 35 Immigration Judge teams in 2015 will allow EOIR to better address the incoming caseload and begin to reduce the pending caseload.

Question. What impact will an additional 35 immigration judge teams have on the existing backlog?

Answer. The addition of 35 Immigration Judge Teams will allow EOIR’s immigration courts to process a greater number of pending cases. The number of pending cases over time depends on the volume of existing cases, new charging documents filed by the Department of Homeland Security (DHS), and case completions. EOIRs current pending caseload volume in fiscal year 2014 is approximately 389,000 proceedings. The number of annual completions by an Immigration Judge varies according to a number of factors, including the type of docket to which the judge is assigned. Taking into account variable completion rates among judges, EOIR estimates that 35 additional Immigration Judge (IJ) teams will likely complete between 21,000 and 28,000 proceedings annually. The effect of this added productivity upon the pending caseload or backlog will depend on the number of additional charging documents filed by DHS during the same period. Finally, any gains in staffing and productivity may be lowered slightly due to normal staff attrition.

Question. What other steps is EOIR taking to promote efficiencies to address the immigration court backlog?

Answer. EOIR continues to work closely with DHS, other government agencies, and non-profit organizations to explore ways to promote efficiencies to address the immigration courts pending caseload. In conjunction with these groups, EOIR has conducted test pilots across the country in the areas of non-contested dockets, alternatives-to-detention, pre-trial conferences, and unaccompanied alien children scheduling adjustments to try to streamline immigration proceedings.

To improve the effective and efficient adjudication of immigration removal proceedings for vulnerable populations, such as unaccompanied alien children and detained aliens who are deemed mentally incompetent to represent themselves in immigration proceedings, EOIR dedicated over \$3 million in fiscal year 2014 resources to provide legal aid services to these populations.

Additionally, in fiscal year 2014, EOIR dedicated approximately \$6.6 million for the Legal Orientation Program (LOP), which improves efficiencies in immigration court proceedings for detained aliens by increasing their awareness of their rights

and the overall process. As a result of the increased funding provided in fiscal year 2014, EOIR expanded the program to provide these services at five additional adult facilities and four family detention facilities. Today, the LOP is available at 32 sites across the country. Evaluation reports have shown that LOP participants complete their immigration court cases in detention an average of 12 days faster than detainees who do not participate in an LOP, which saves the Government approximately \$16.6 million annually. EOIR has requested another \$2.8 million in fiscal year 2015 to respond to elevated demand at existing LOP sites and to add 12 more sites.

Question. Since many people in immigration court lack attorneys and a basic understanding of the immigration court process, what steps is EOIR employing, or considering, to give these people better access to information so they can move through court proceedings more expeditiously without sacrificing due process?

Answer. EOIR has established an Office of Legal Access Program to administer several programs and initiatives to provide people with better access to legal information and counsel. The programs and initiatives include: the Legal Orientation Program (LOP), the Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC), Self Help Legal Centers, Self Help Guides, Model Hearing Program, and Pro Bono Liaison Judge meetings.

QUESTIONS SUBMITTED BY SENATOR MARY L. LANDRIEU

NEW ORLEANS CONSENT DECREE

Question. What is causing the delay in Department of Justice's review of the New Orleans Police Department's policies?

Lead-in information from original document.—

As you know the New Orleans Police Department entered into a consent decree with the Department of Justice in 2012. A Federal court imposed an October deadline for the review of important policies and those policies have not been fully reviewed.

Answer. A comprehensive Consent Decree designed to bring the New Orleans Police Department (NOPD) into compliance with the Constitution is in place, and in July 2013 the court appointed an experienced monitoring team to oversee implementation of the Decree.

The Department and the city of New Orleans, with the Court's approval and oversight, have worked cooperatively to devise a policy review process that will allow the NOPD to adopt and implement policies that are consistent with the law as quickly and efficiently as possible.

NOPD has provided a limited number of policies to DOJ and the Consent Decree Monitor ("Monitor"), and both DOJ and the Monitor have provided comments and suggestions regarding those policies in a timely manner. NOPD, DOJ, and the Monitor have worked together to revise those policies to ensure that they comply with the Consent Decree and applicable law, and to ensure that they will be effective for NOPD's particular needs. In some instances, that process is ongoing. In others, that process has been completed and DOJ and the Monitor have provided final approval for NOPD to adopt and implement those policies.

The Department continues to work closely with the city and police department, as well as the Monitor, to facilitate transformative change and ensure reform of the New Orleans Police Department. The Department has reviewed, and will continue to review, all policies submitted to it in a timely fashion and in compliance with the Decree and all Court Orders.

Question. What process is the Department of Justice utilizing to review NOPD's policies? Are there subject matter experts within the DOJ who are actively engaged in the review of the policies? If not, are the DOJ lawyers qualified to adequately and efficiently review the policies?

Answer. Once NOPD submits policies to DOJ and the Monitor, DOJ lawyers review those policies to ensure that they comply with the law and the Consent Decree, are internally consistent, and provide NOPD officers with effective guidance. In performing that review, DOJ lawyers consult the Monitoring team, subject matter experts, and any other necessary sources in order to ensure that the review is thorough and effective.

Question. Did the Department of Justice analyze the effects of creating the office of police secondary employment in New Orleans? Has the Department of Justice ever included provisions related to secondary employment in any other consent decree? If so, in which municipalities?

Answer. The Department's investigation of NOPD revealed that NOPD's unregulated system of secondary employment was a significant contributor to unconstitutional policing in New Orleans. As detailed in the Department's findings letter, unregulated secondary employment both undermines the accountability structure within NOPD and encourages corruption, favoritism, and unprofessional and unconstitutional policing more broadly. For these reasons, which were specific to NOPD, for the first time, provisions related to secondary employment were included in the Consent Decree, which the city has agreed, and the Federal courts have found, is fair, adequate, and reasonable. In crafting the Consent Decree, DOJ worked with the city to create a system that would allow officers to continue to work secondary employment, but that would also address the ways in which secondary employment has contributed to a pattern or practice of unconstitutional conduct. DOJ remains committed to working with the city to ensure that its secondary employment system is fair and accountable.

Question. Has the Department of Justice undertaken any efforts to regulate the Orleans Parish Sheriff's Office's paid detail system? Does the Department of Justice have a position on whether OPSO's staffing levels in the jail are affected by deputies performing paid details? Has the Department of Justice undertaken that analysis in light of its stated position that staffing is a major issue at the jail?

Answer. The Department of Justice is enforcing compliance with the consent judgment it achieved in *Jones v. Gusman*, 12cv859, a pattern or practice civil rights case addressing conditions in the Orleans Parish Prison. Secondary employment by Sheriff Deputies is beyond the scope of that agreement. As required by the Prison Litigation Reform Act (PLRA), the terms of the consent judgment are narrowly tailored to address the constitutional violations in the jail. Among other terms, the consent judgment requires correctional staffing and supervision that is sufficient to adequately supervise prisoners, fulfill the terms of the consent judgment, and allow for the safe operation of the jail, consistent with constitutional standards. In February 2014, as required by the consent judgment, the Orleans Parish Sheriff's Office provided a staffing analysis and plan to all parties to the consent judgment and to the city of New Orleans. Staffing remains a very serious problem at the jail and the United States is attempting to determine the causes of the problem in the context of the litigation. The United States is aware of a substantial increase in the hiring of Deputies for paid details and assessing whether that increase has an impact on the implementation of the consent decree or raises justiciable issues. The Department of Justice is committed to vigorously enforcing the consent judgment, including all PLRA-compliant measures to achieve adequate staffing and supervision to address the ongoing unconstitutional conditions and unacceptable levels of violence in the jail.

QUESTIONS SUBMITTED BY SENATOR JEFF MERKLEY

WHITE COLLAR CRIME PROSECUTION

Question. How many criminal prosecutions and convictions has the DOJ secured related to the 2008 crisis? If there is a stark difference, why is that so? To what degree have inadequate resources constrained DOJ's efforts? How many DOJ prosecutors work full time on white collar crime? Can you give me specific numbers on the following types of crimes (differentiate between full time and as a percentage of individual portfolios, please also differentiate from those who have been detailed to other assignments):

- mortgage and securities fraud;
- market manipulation in derivatives, oil or other commodities, financial indices, or currencies;
- offshore tax evasion;
- money laundering and sanctions; and
- payment system and other financial fraud.

Lead-in information from original document.—

In the Savings and Loan Crisis in the 1980's pervasive fraud led to economic disaster. The DOJ during those years aggressively stepped up its white collar task forces and over 150 people from DOJ and Treasury worked on Savings and Loan fraud full time. By 1992, there had been over 1,100 criminal prosecutions with over 839 convictions.

By contrast, the DOJ's response to the recent crisis appears much more muted.

Answer. With regard to your first question on the number of criminal prosecutions and convictions that the Department has secured related to the 2008 crisis, it must be stated at the outset that the Department's position is, and always has been, that no person, and no corporation, is above the law. The Department is committed to aggressively investigating allegations of wrongdoing at financial institutions and, along with our law enforcement and regulatory partners, holding individuals and corporations responsible for their conduct through the criminal, civil, and administrative enforcement tools available to us. That being said, it is difficult to pinpoint precisely which cases are and are not directly related to the catastrophic economic events that began unfolding in 2008. What we can report is that the Department has prosecuted an incredible number of financial fraud cases since the inception of the financial crisis. Specifically, from fiscal year 2008 through the second quarter of fiscal year 2014, the United States Attorneys' Offices filed 21,544 financial fraud cases against 31,349 defendants.¹ During that same time period, 28,496 defendants were convicted of financial fraud crimes, and 18,063 were sentenced to prison for such crimes. Some of the more notable individuals in the financial industry prosecuted in the aftermath of the financial crisis are:

- JP Morgan (London Whale individuals)
- Goldman Sachs (Rajat Gupta; Matthew Taylor)
- Morgan Stanley (Garth Peterson)
- Credit Suisse (Kareem Serageldin and several others)
- UBS (2 London Interbank Offered Rate (LIBOR) individuals and individuals in antitrust cases)
- Rabobank (3 LIBOR individuals)
- ICAP (3 LIBOR individuals)
- Galleon (Rajaratnam and several others)
- SAC Capital (many)
- Stanford Financial Group (Allen Stanford and others)

Further, with respect to prosecutions of institutions, beginning in 2013, the Department has obtained guilty pleas from the following financial industry institutions:

- UBS Subsidiary (LIBOR) (plus \$100 million fine)
- RBS Subsidiary (LIBOR) (RBS parent paid \$100 million penalty)
- SAC Capital (plus \$1.8 billion in fines and forfeiture)
- Wegelin (Swiss Bank)

Moreover, in November 2013, the Department announced the largest settlement with a single entity in American history: a \$13 billion settlement with JPMorgan, to resolve Federal and State civil claims arising out of the packaging, marketing, sale and issuance of residential mortgage-backed securities by JPMorgan, Bear Stearns and Washington Mutual.

With regard to your second question on the differences between the 1980s savings and loan (S&L) crisis and the 2008 financial crisis, the circumstances of the two situations and the types of criminal conduct found in those two events were vastly different. In the S&L crisis, in part because of pervasive speculative lending practices by financial institutions, financial institution examiners and Federal investigators were confronted with hundreds of failed financial institutions across the country. The FBI's investigations of failed financial institutions reached its peak at 758 in July 1992. Financial Institution Fraud Unit, Financial Crimes Section, FBI, Financial Institution Fraud and Failure Report—Fiscal Year 2002 at 2–3 (2002), <http://www.fbi.gov/stats-services/publications/fiff-2002>. Moreover, during the period of the late 1980s to the early 1990s, approximately 60 percent of the fraud reported by financial institutions related to bank insider abuse. *Id.* at 1. Those financial practices, which often involved collusion between bank insiders and outsiders as well as falsification of records by bank insiders regarding particular loans and borrowers, were vastly different in types from those associated with the 2008 crisis.

With regard to your third question, concerning the degree to which inadequate resources have constrained the Department's efforts, the Department has sought appropriate resources to pursue all types of white-collar crime. The Department's efforts to combat financial fraud will continue to play a key role not only in ensuring that those who have engaged in fraudulent activities will be held accountable for their illegal conduct, but in deterring future fraudulent conduct and in recovering funds for fraud victims.

¹Financial fraud encompasses the following program categories: Federal procurement fraud; Federal program fraud; financial institution fraud; bankruptcy fraud; advance fee schemes; other fraud against businesses; consumer fraud; securities fraud; commodities fraud; other investment fraud; mortgage fraud; or corporate fraud.

With regard to your fourth and fifth questions, regarding the number of Department of Justice prosecutors who “work full time on white collar crime,” the Department does not maintain the precise type of statistical data you are seeking. While Assistant United States Attorneys often specialize in certain areas of criminal law and are assigned to specific sections within their offices’ criminal divisions, they are generally not required to work full-time in any one area. This allows the United States Attorneys’ offices flexibility in assigning cases and managing workload. Prosecutors track their time using category codes that describe the types of cases on which they have worked (e.g., white collar crime, violent crime, immigration). In fiscal year 2008, the United States Attorneys’ offices devoted more than 831 full-time equivalent (FTE) workyears to white collar crime.² That number has increased every fiscal year since then. The largest increase was between fiscal year 2008 and fiscal year 2009, when the number of FTE devoted to white collar crime rose by more than 100 FTE. The table below shows the FTE workyears for white collar crime over the last six fiscal years, including overtime hours (hours in excess of 40 hours per week) that average more than 200 additional FTE per fiscal year.

[See Table below]

Although there are white collar crime subcategories to which prosecutors can assign time, they are limited to financial institution fraud and healthcare fraud. Consequently, the Department cannot break down white collar crime FTE workyears according to the specific categories you identified. There are, however, specific components of the Department that are dedicated exclusively to prosecuting one or more types of white collar crime. With regards to the types of white-collar crime mentioned in your questions, relevant components would include the Fraud Section of the Criminal Division, the Criminal Enforcement Sections of the Tax Division, and the Criminal Sections of the Antitrust Division. The Fraud Section of the Criminal Division has approximately 100 trial attorneys and supervisors, the Criminal Enforcement Sections of the Tax Division also have approximately 100 trial attorneys and supervisors, and the Criminal Sections of the Antitrust Division have approximately 101 trial attorneys and supervisors.

WHITE COLLAR CRIME FTE

Workyears	Fiscal year 2008	Fiscal year 2009	Fiscal year 2010	Fiscal year 2011	Fiscal year 2012	Fiscal year 2013
Attorney Workyears	831.66	944.80	982.71	1028.79	1029.76	1067.29
Attorney 40 + Workyears	180.65	194.32	226.29	227.75	226.07	225.75
Attorney and 40 + Workyears	1012.31	1139.12	1209.00	1256.54	1255.83	1293.04

PAYMENT FRAUD

Question. I’m very concerned about financial institutions and payments providers engaging in payments fraud or providing services to those engaged in illegal activities, such as lending into States in violation of State payday lending laws. Are you committed to continuing to investigate and pursue payment fraud and crack down on institutions that clear payments for illegal lenders?

Answer. The Department of Justice (DOJ) is committed to protecting the American people from fraudulent practices in all industries. The Financial Institutions Reform, Recovery and Enforcement Act (“FIRREA”) allows for civil penalties in a variety of situations in which frauds are perpetrated affecting federally insured financial institutions. Those situations include instances where a financial institution knowingly participates in a fraud or processes transactions deliberately ignoring evidence that they are fraudulent. One key DOJ mission is to investigate violations of Federal law, especially those involving fraudulent conduct that threatens to harm the American public. We are working diligently to protect the public from this fraud by holding accountable those banks and payment processors that violate Federal law.

QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER A. COONS

VICTIMS OF CHILD ABUSE ACT

Question. Last year, Congress demonstrated its commitment to helping victims of child abuse by appropriating \$19 million under the Victims of Child Abuse Act. I

² One FTE equals 2080 hours.

welcome DOJ's fiscal year 2015 request of \$11 million for these programs, especially compared to levels in past budgets. Does DOJ plan to embrace an increased role in helping victims of child abuse in 2015 and beyond?

Answer. The fiscal year 2015 President's budget request for the Office of Justice Programs (OJP) reflects the administration's strong support for addressing the needs of young people within the justice system and its commitment to promoting evidence-based programs and practices throughout the criminal and juvenile justice systems. The fiscal year 2015 President's budget request supports programs to serve victims of child abuse, to prevent and address youth violence, to improve outcomes of young people involved in the juvenile justice system, and ensure that all kids, particularly at-risk kids, are not swept up into the juvenile justice system. The request includes increased or continued funding for programs such as the Defending Childhood/Children Exposed to Violence Program (\$23 million), Missing and Exploited Children's Programs (\$67 million), and Title V Prevention Programs (\$42 million)—a combined \$34 million increase in fiscal year 2015 over the fiscal year 2014 enacted levels for these programs.

DOJ remains committed to utilizing existing resources to address the most urgent national priorities and to ensure the most efficient possible use of the juvenile justice funding appropriated under OJP. OJP will continue to respond to the changing needs of the juvenile justice community by providing greater flexibility in the use of funding (where allowed by statute) and improving coordination of these programs with other juvenile justice programs. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) also will look at how other resources can be leveraged to help the Child Advocacy Centers (CACs) and Multi-Disciplinary Teams (MDTs) operate more efficiently and cost effectively.

BULLETPROOF VEST PROGRAM

Question. In your proposed fiscal year 2015 budget, you requested \$22.5 million for the Bulletproof Vest Partnership Program. As you may know, I have joined several other Senators in advocating for a \$30 million appropriation for this program. What impact would this additional \$ 7.5 million have on DOJ's ability to help State and local law enforcement acquire this life-saving equipment?

Answer. The Bulletproof Vest Partnership (BVP) Program fills a critical need for State, local, and tribal law enforcement and public safety agencies by reimbursing them for up to half of the cost for qualifying, life-saving body armor for their officers. The fiscal year 2015 funding request of \$22.5 million is equal to the fiscal year 2014 enacted level and will allow this program's activities to continue at their current level of effort. An additional \$7.5 million would allow jurisdictions to purchase an estimated 8,700 additional vests.

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

FISCAL YEAR 2015 BUDGET CUTS

Question. Why does the budget include undefined reductions to programs instead of providing an accurate funding picture for the Department? More importantly, why must these difficult decisions be made after the appropriations bills have passed?

Lead-in information from original document.—

The 2015 budget includes more than \$500 million in programmatic cuts. I am curious why the Department failed to identify these cuts in advance of the budget submission. Moreover, I question whether law enforcement components can actually deliver the level of cuts required.

Answer. The fiscal year 2015 budget provides an accurate funding picture of the Department by estimating the actual fiscal year 2015 current services need, or the cost to maintain current operations and staffing levels planned through fiscal year 2015. In addition, the fiscal year 2015 budget is fiscally responsible in terms of spending because it meets the caps set by Congress in the Bipartisan Budget Act of 2013. In order to adhere to the congressionally directed caps, the DOJ Federal programs must absorb \$503 million in unspecified program and administrative offsets. These offsets support anticipated inflationary increases, such as the costs for base pay, benefits and rent. These offsets are unspecified because of the limited time available between the enactment of the Bipartisan Budget Act and the conclusion of the fiscal year 2015 budget process. The \$503 million in proposed offsets represents a fraction of the \$1.6 billion in sequester cuts that the Department absorbed

during the last 9 months of fiscal year 2013. DOJ program managers will have this fiscal year to identify opportunities for savings and prepare for the offsets.

Question. Do you really believe that the FBI can cut \$168 million, the U.S. Marshals Service can find \$33 million, or that the U.S. Attorneys can eliminate \$30 million from their budget—without cutting core mission requirements or essential personnel? And if so, why didn't you require them to do so before the budget was released?

Answer. The Department proposed programmatic reductions in order to adhere to the fiscal year 2015 caps set by Congress with the Bipartisan Budget Act of 2013. The fiscal year 2013 sequester cut the salaries and expenses (S&E) appropriations of the Federal Bureau of Investigation (FBI) by \$541.7 million, U.S. Marshals Services (USMS) by \$59.1 million and U.S. Attorneys (USA) by \$98.6 million. These cuts were much deeper than the programmatic offsets the fiscal year 2015 budget proposes and components will have more time to consider how to identify savings. Core mission requirements are not threatened because even with the proposed fiscal year 2015 offsets, S&E funding will essentially remain flat from the fiscal year 2014 appropriated levels for the FBI, USMS and USA.

DOJ CUTS

Question. According to your own statements, sequestration was devastating to the Department and its ability to perform core mission activities—why then will this version of sequestration be less devastating? Is there really that much fat to trim inside the Department of Justice?

Lead-in information from original document.—

In a 2013 Washington Post Op Ed on the impact of sequestration you said, "This shameful state of affairs is unworthy of our great Nation, its proud history and our finest legal traditions. In purely fiscal terms, the cuts imposed by sequestration defy common sense . . ." By eliminating the discretionary sequester for 2014 and 2015 Congress has done its part to ensure that the Department can be properly funded. However, the Department's decision to include its own version of a sequester in the 2015 budget request defies logic.

Answer. The fiscal year 2015 request demonstrates the Department's continued commitment to fiscal prudence and adheres to the spending caps directed by Congress in the Bipartisan Budget Act of 2013. The fiscal year 2014 Appropriations Act restored the fiscal year 2013 sequester funding cuts to the Department and provides sufficient resources to lift the hiring restrictions put in place on January 21, 2011. Even with the proposed program offsets, law enforcement funding essentially remains flat from fiscal year 2014 to fiscal year 2015. However, these levels are significantly higher than the fiscal year 2013 sequestered funding levels that hindered the Department's capacity to perform its mission. For example, funding for the Federal Bureau of Investigation increases by nearly 11 percent from fiscal year 2013 and funding for the U.S. Marshals Service and U.S. Attorneys increases by nearly 7 percent from fiscal year 2013.

SMART CRIME INITIATIVE

Question. First, what authority do you currently have to alter incarceration rates? Can you reduce sentences for incarcerated criminals, can you change the minimum sentence required for a drug crime—what action can you take?

Lead-in information from original document.—

The budget advances the Smart on Crime Initiative which seeks to reform the criminal justice system by improving public safety and saving money. Reducing the number of "low-level" Federal crimes prosecuted and pursuing alternatives to incarceration are listed as two of the initiative's core principals. While reform of our criminal justice system is a laudable goal, I am concerned that the principals of the proposal may be contradictory and in fact, lead to higher crime rates and an increase in the number of serious crimes committed.

Answer. Once a Federal offender is sentenced by a Federal judge, the Department of Justice generally cannot reduce the sentence imposed. But before sentencing, Federal prosecutors have always exercised discretion in the cases they bring and offenses they charge. Most criminal prosecutions are brought at the State level. Within that context, Federal prosecutors maximize the Federal enforcement contribution to improving public safety efforts by prosecuting the right criminal cases consistent with our mission. Our U.S. Attorneys set quality, evidence-based priorities for the types of cases we bring with an eye toward promoting public safety, deterrence, and

fairness. This necessarily means focusing our resources on the most significant cases.

Question. You have stated that the Department will shift to a focus solely on the most serious cases. First, I wonder how such a shift is not negligent. Second, how can you be sure that a focus on only the most serious cases will not result in an increase in crime rates or an escalation in the number of serious crimes committed?

Answer. As stated above, most criminal prosecutions are brought at the State level. Federal prosecutions contribute to public safety efforts by prosecuting cases consistent with our particular mission. Our U.S. Attorneys collaborate with their State and local partners and set quality, evidence-based priorities for the types of cases we bring so that all of the public safety resources—local, State and Federal—working together, will maximize public safety, deterrence, and fairness. This means in most districts focusing our Federal resources on the most significant cases. It does not mean that lower level offenders are not held accountable for their crimes. It does mean that Federal resources will be focused—as they must be given limits on those resources—on the more serious cases.

Question. What happens to the criminals we decline to prosecute?

Answer. Many lower level offenders will be prosecuted at the State level. However, some will be subject to diversion or other alternatives to imprisonment. These alternatives have a long history and allow non-violent, less serious offenders who are in need of drug treatment, for example, to receive such treatment in lieu of imprisonment. If crafted properly, these alternatives can have the twin effects of reducing the burden on the Federal prisons and reducing crime rates.

Question. Is this proposal the best path forward or is it simply a means to reduce the overall prison population in hopes of decreasing Federal spending on incarceration?

Answer. The Smart on Crime Initiative is modeled after many State criminal justice reforms, which have reduced prison spending while improving public safety in States across the country. We continue to monitor and work with the States to determine the best approaches to achieving improved public safety while also achieving cost efficiencies.

Question. Will this initiative simply shift more of the burden to the States?

Answer. No. As stated previously, while many lower level offenders will indeed be prosecuted at the State level, some will be subject to diversion or other alternatives to imprisonment within the Federal criminal justice system.

TEDAC/HDS/NCETR FACILITIES

Question. Could you speak to the importance of the facilities individually and collectively? Would you also explain how these facilities fit into the larger national security framework?

Lead-in information from original document.—

After many years of working with the Department and the FBI, I was pleased to see that the 2015 budget included \$15 million for the FBI's new TEDAC Facility. The budget also includes funding for the FBI's Hazardous Devices School and the ATF's National Center for Explosives Training and Research. These facilities are unique and serve important functions in the overall national security framework.

Answer. The FBI's Terrorist Explosive Device Analytical Center (TEDAC) and Hazardous Devices School (HDS) and ATF's National Center for Explosives Training and Research (NCETR) serve extremely important functions in protecting public safety and national security. While these three facilities are focused on combating explosives and their threat to the Nation, they each perform discrete missions in the phases of the forensic, intelligence and training cycle.

TEDAC: Improvised Explosive Devices (IEDs) are one of the most readily available weapons utilized by terrorists and criminals to damage critical infrastructure and inflict casualties. The U.S. Government relies on TEDAC to conduct forensic and technical exploitation of IEDs and related materials collected around the globe in order to gather and share intelligence with domestic and foreign partners to identify bomb makers, to develop techniques to disarm and disrupt IEDs, and most importantly, to prevent future attacks. TEDAC also shares device design information with HDS to inform the training provided to bomb technicians responsible to render IEDs safe and protect our citizens.

In February 2013, the President updated the national strategy focused on countering the IED threat. The implementation plan resulting from the updated policy statement calls for a "single U.S. Government strategic-level IED exploitation center and repository of IEDs." TEDAC fulfills this mission and is the only U.S. Govern-

ment entity that meets the requirement outlined in the 2013 Counter IED Implementation Plan. TEDAC operations will transition over the next few years from Quantico, Virginia to new facilities in Huntsville, Alabama, as a multi-phased construction effort concludes. These new facilities will enable TEDAC to continue supporting the national security framework through operations, such as nominating individuals to the Terrorist Screening Database and the Department of Defense Biometric Enabled Watchlist (BEWL), which biometrically matches IEDs examined by TEDAC to those included in DOD's Automated Biometrics Identification System (ABIS). In addition to continuing current operations, the facilities will house the TEDAC Improvised Explosives Detection and Synthesis (TIEDS) Center, which is a research and development partnership with the Department of Homeland Security (DHS). The TIEDS Center will conduct research and experimentation focused on improvised explosives synthesis and characterization, improvised explosives detection technologies, and testing and evaluation of Render Safe Procedures and tools in order to deliver real time information on IED threats to the intelligence, law enforcement, and homeland security communities. TEDAC's vast research experience with IEDs and visibility into the threat will allow for the development of appropriate countermeasures for TSA and other members of the homeland security community to stay ahead of the IED threat.

The intelligence gleaned from TEDAC exploitation and analysis also feeds directly into curriculum development for training conducted by HDS. This enables bomb technicians and law enforcement partners to receive training on real threats that are being encountered worldwide and what countermeasures are needed for defeat.

HDS: The HDS operates through a joint partnership between the FBI and the United States Army. The FBI administers HDS and maintains the sole authority to certify and accredit all of the approximately 3,100 public safety bomb technicians assigned to 468 public safety bomb squads in the United States. The success of the public safety bomb technician community in the United States is, in large part, the result of standardized certification and render-safe procedure training. The standardized training at HDS enables bomb technicians assigned to different bomb squads to work effectively together in complex, multi-jurisdiction operations, such as the Boston Marathon bombing response or the dozens of special events held each year, including the Super Bowl.

HDS also provides advanced training in evolving threats such as radio-controlled IEDs, large vehicle-borne IEDs, suicide bombers, and improvised or homemade explosives. HDS develops and provides this training to address the threats posed by devices used by terrorists and criminal enterprises around the world. The intelligence that TEDAC provides through device exploitation is critical to defining and implementing advanced render safe training.

Finally, standard certification and training is critical to national security as public safety bomb technicians trained at HDS are the first line of defense against the full spectrum of IED threats, including weapons of mass destruction (WMD). HDS trains bomb technicians to identify a potential WMD, to notify the FBI, and to integrate seamlessly with FBI Special Agent Bomb Technicians and national assets, should such resources be required. Without the standardized training that HDS provides, there is a real risk that Federal WMD response assets would not be notified about a potential WMD in time to take emergency action.

In addition to TEDAC's identified role in the national Counter-IED strategy, the FBI, on behalf of the Department of Justice, leads the Joint Program Office for Countering IEDs, which coordinates the efforts of the Department and oversees the implementation of the U.S. policy to Counter IEDs.

NCETR: The ATF's NCETR serves an integration function for ATF by bringing together NCETR resources with the United States Bomb Data Center, ATF's international bomb and arson training, ATF criminal investigations, ATF industry operations, TEDAC and HDS. NCETR also consolidates key ATF explosives, fire, canine, and response operations in Huntsville, Alabama. NCETR consists of the Explosives Enforcement and Training Division, the Explosives Research and Development Division, and the Fire Investigation and Arson Enforcement Division, all located at Redstone Arsenal, along with the National Canine Division in Front Royal, Virginia and ATF's partnership in the National Explosives Task Force in Washington, DC. ATF provides training facilities and the expertise of its training staff in the delivery of life-saving advanced explosives and arson training for our Nation's explosives handlers, bomb technicians, criminal investigators, State and local law enforcement personnel, and our military's EOD operators at NCETR.

NCETR provides advanced explosives training and research that leverages lessons learned and best practices to provide focused support to ATF's core mission of inves-

tigating the criminal misuse of explosives and regulation of the industry, and to align this support with the whole-of-Government counter-IED effort.

NCETR employs a layered approach to explosives training in support of the Whole of Government approach to the C-IED effort, and to meet the goals and tasks of the JPO Training and Operations working group. As an example, ATF's Advanced Explosives Disposal Techniques (AEDT) was developed by ATF and its State and local partners in the 1990's to address the high incidence of injuries and deaths to bomb technicians during explosives disposal operations. AEDT provides a "cradle to grave" approach to the identification, handling and disposal of commercial, military and homemade or improvised explosives materials. Everything from production methods, storage, explosives range management, environmental concerns, personal protective equipment and clothing, and the latest disposal tools and techniques are covered in AEDT. This includes a ground-breaking disposal tool and related techniques developed by an ATF agent, for which the U.S. Patent Office issued a patent. The tool and instruction on its application to disposal operations is given to every bomb technician attending the course.

A follow up course entitled HME-Identification, Process and Disposal, furthers the bomb technicians' knowledge and confidence in the identification, processing, handling and disposal of some of the most dangerous explosives materials they will come in contact with, Homemade Explosives (HME). The HME course is attended by public safety bomb technicians as well as military Explosives Ordnance Disposal (EOD) personnel, stressing interoperability of personnel from both groups at scenes such as the Boston Marathon bombings.

These are but two of the courses at NCETR that naturally complement the training delivered at the FBI's Hazardous Devices School, the school house for bomb technician certification and other advanced training.

NCETR also provides training to military partners on a frequent basis. Through a long partnership and a full time liaison position with the Department of Defense (DOD), ATF delivers the HME-IPD course to a mixed class of public safety and military bomb technicians. NCETR program personnel have also developed HME-related and advanced Post-Blast investigation courses in support of requests by U.S. military command staff to support the NATO Centers of Excellence in Spain and Slovakia.

ATF is the only U.S. Government (USG) agency with fire and arson investigation as part of its core mission, and the sole USG agency with Special Agents qualified to testify as expert witnesses as to fire origin and cause, through the Certified Fire Investigator training program managed by NCETR. The programs that support that mission are now located at NCETR, including integrating ATF's fire investigation and arson enforcement operational and training programs, and support to the field through the National Response Teams, Certified Fire Investigators, and bomber and arsonist Profilers.

Operationally, NCETR oversees the National Response Team, which responds to major bombings and explosions, IED incidents, as well as fire and arson incidents that require resources beyond the capabilities of State and local partner agencies. NCETR also oversees the combined Certified Explosives Specialist and Explosive Enforcement Officer program, ATF's subject matter experts for criminal investigations of matters related to explosions, bombings, explosives, IEDs and related activity. Not only does NCETR manage the training of these personnel, but it also coordinates the operational responses of personnel from across the country to large incidents anywhere in the U.S., and to locations outside the U.S. on request from foreign partners through the U.S. State Department. Well over 90 percent of the criminal acts involving explosions, explosives and bombings are non-terrorism related and ATF has responsibility for investigation of these incidents, as well as the origin and cause investigation of accidental explosions.

The Explosives Research and Development Division (ERDD) at NCETR also supports ATF's role in the national security framework through a number of projects and ongoing and developing partnerships. ERDD is near completion in development of a \$2.2 million project to develop a homemade explosive synthesis capability/laboratory on Corkern Range. These range modifications include two portable explosives synthesis buildings, an extensive instrumentation capability, an explosive storage magazine, and hazardous materials storage. The research and testing that will be carried out on ATF's Corkern Range will support a wide range of government projects in support of the Nation's C-IED strategy, as well as ATF's explosives enforcement and regulatory missions.

ATF also has the sole responsibility for the regulation of the explosives industry, which is supported by NCETR training efforts. ATF Industry Operations Investigators (IOIs) attend Advanced Explosives Training for Investigators (AETI) at NCETR, focusing on the procedures required for completing the safe execution of in-

spections of Federal explosives licensee premises, as required by the Safe Explosives Act of 2002.

IG ACCESS TO DOJ DOCUMENTS

Question. Do you believe that the Inspector General should have to seek your approval to access grand jury documents relevant to ongoing investigations?

Lead-in information from original document.—

I am very concerned about the issues that have been raised by the Inspector General. Congress has been clear, as has this Committee, that the Inspector General must have unfettered access to any and all documents necessary to carry out his duties.

Answer. The Department's leadership appreciates the importance of access to information, including information subject to statutory disclosure restrictions, to the Office of the Inspector General's ("OIG") ability to perform its oversight function and complete its investigations and reviews effectively. However, where there are legal restrictions on what the Department can do with certain sensitive information, the Department is obligated to ensure that any distribution of the information is consistent with those congressional directives. The Department takes its obligation to abide by these legal requirements very seriously.

Section 6(a)(1) of the Inspector General Act of 1978 appropriately provides the Inspector General with broad access to the records in the Department. *See* 5 U.S.C. App. 3, § 6(a)(1). However, Congress also has enacted strict limits on the disclosure and dissemination of certain categories of sensitive information. For instance, in Federal Rule of Criminal Procedure 6(e), Congress codified the venerable tradition of grand jury secrecy by barring an "attorney for the Government" and other enumerated persons from disclosing "a matter occurring before the grand jury." Fed. R. Crim. P. 6(e)(2)(B). Similarly, in the Federal Wiretap Act, Congress expressly made it a crime to disclose information intercepted on a wiretap "[e]xcept as otherwise specifically provided in this chapter," and delineated the narrow conditions under which investigative and law enforcement officers might intercept, use, or disclose wiretap information. *See* 18 U.S.C. §§ 2511(1); 2516; 2517 (Title III).

The interaction between the general access provision in the Inspector General Act and Congress's specific statutory directives regarding the handling of sensitive information, such as Rule 6(e) and Title III, presents an unsettled and potentially complex legal question. As such, when questions regarding OIG's access to such materials arose in 2011 in connection with two OIG reviews, the Department sought to identify avenues within the relevant statutes that would permit disclosure of the requested materials to the Inspector General.

First, in connection with the material witness review, the Department concluded that Rule 6(e)(3)(D) authorized an attorney for the Government to disclose responsive grand jury information involving foreign intelligence to the OIG. The Department determined that the Inspector General was a Federal law enforcement official authorized to receive access to grand jury information involving foreign intelligence under this provision, and the disclosure would assist her in connection with the performance of her law enforcement duties, given that the material witness review involved allegations of misconduct by law enforcement agents that potentially reflected a violation of criminal law. Likewise, the Department concluded that section 2517(1) permitted the Federal Bureau of Investigation to disclose Title III wiretap information to the OIG in connection with the material witness review because OIG agents are "investigative officers" entitled to receive wiretap information in connection with their law enforcement duties. Again, since the material witness review involved allegations of misconduct by law enforcement agents that potentially reflected a violation of criminal law, this OIG review fulfilled the statutory requirement that disclosure be in connection with law enforcement duties.

With respect to the review of Operation Fast & Furious and related investigations, the Department concluded that Federal Rule of Criminal Procedure Rule 6(e)(3)(A)(ii) authorized the Attorney General, an "attorney for the Government," to disclose grand jury information to Government personnel in the OIG as necessary to the performance of the Attorney General's duty to enforce Federal criminal law, including his supervisory responsibilities over the Department's programs, policies, and practices related to the enforcement of Federal criminal law.

The Department is unaware of any specific materials that the OIG believed necessary to its reviews, but to which the OIG was not granted access. However, in light of the Inspector General's continued interest of in addressing the legal issues implicated by the competing congressional directives in section 6(a)(1) of the Inspector General Act and other statutes limiting the disclosure and dissemination of par-

ticular categories of sensitive information, the Department has requested formal Office of Legal Counsel (OLC) guidance. As we have informed the Department's OIG, if the outcome of the OLC's legal review does not assure the OIG of the access it needs to carry out its mission, the Department intends to work with that office to develop appropriate legislative remedies.

Question. What law or laws, in your view, prohibit the Inspector General from obtaining access to documents directly relevant to ongoing audits or investigations?

Answer. It is not the case that statutes restricting the disclosure of sensitive information necessarily "prohibit" the OIG from obtaining access to documents. As we explained in response to the previous question, the Department has found ways to disclose the requested information to the OIG pursuant to exceptions to the statutory prohibitions. Examples of statutes that we have had occasion to consider in the context of OIG requests include the restrictions contained in Federal Rule of Criminal Procedure 6(e) (grand jury information); the Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (information obtained by wiretap); and section 1681u(f) of the Fair Credit Reporting Act (financial information obtained from credit agencies by FBI national security letters). The Department has not conducted a comprehensive survey of all statutes that might potentially restrict the disclosure of sensitive information in a manner that would raise a significant legal question about whether those statutory provisions limit the Inspector General's access to the covered information.

Question. If it is your view that there are specific laws that prohibit the Inspector General from having access to documents directly relevant to ongoing audits or investigations, what are the relevant sections within those laws granting you, the Attorney General, the authority to preempt those prohibitions?

Answer. As just described, statutory provisions restricting the disclosure of certain categories of information generally contain exceptions that might allow the OIG access to protected information in connection with investigations and audits. Some of these exceptions are premised on a determination by the Attorney General or another attorney responsible for conducting or supervising the prosecution of violations of Federal criminal law. Where the statute provides an exception to the general bar on disclosure that is premised on a determination by the Attorney General or another attorney for the Government, such a determination would be a prerequisite to the Inspector General gaining access to statutorily protected information under that provision. A determination by the Attorney General or another qualifying attorney authorizing the OIG to access the information, however, does not "preempt" a statutory bar on disclosure; rather, the determination that disclosure to the OIG is appropriate is simply an application of the terms of an exception Congress set out in the relevant statute. The Department is unaware of any specific materials that the OIG believed necessary to its reviews, but to which the OIG was not granted access.

Question. You mentioned that you have never denied the Inspector General's request to access documents. However, if that situation were to arise, what recourse would the Inspector General have, in your view, to appeal or challenge that decision?

Answer. As stated above, the Department is committed to continuing to ensure that, consistent with applicable legal requirements, the OIG has access to all of the information it believes necessary to complete its reviews. Indeed, the Department is unaware of any specific materials that the OIG believed necessary to its reviews, but to which the OIG was not granted access. The Department has requested a formal opinion from OLC to address the legal issues implicated by the competing congressional directives in section 6(a)(1) of the Inspector General Act and other statutes limiting the disclosure and dissemination of particular categories of sensitive information. This request is pending. If the outcome of the OLC's legal review does not assure the OIG of the access it needs to carry out its mission, the Department intends to work with that office to develop legislative remedies. In the meantime, if the Inspector General were dissatisfied with the access to statutorily protected information the Department afforded him, he could ask the Attorney General to reconsider any determination made regarding the application of a statutory exception.

Question. Since there has never been an official ruling by the Office of General Counsel at the Department of Justice regarding access to documents by the Inspector General, would you be willing to see an official ruling from the General Counsel on these matters? If so, when could we expect you to do so?

Answer. As stated above, the Department has requested a formal opinion from OLC to address the legal issues implicated by the competing congressional directives in section 6(a)(1) of the Inspector General Act and other statutes limiting the disclosure and dissemination of particular categories of sensitive information. This request is pending.

QUESTIONS SUBMITTED BY SENATOR LAMAR ALEXANDER

METH IN TENNESSEE

Question. Given that the methamphetamine epidemic is one of the most urgent drug problems facing our Nation, especially in rural communities with limited resources, why isn't the Department doing more to expand the Clandestine Drug Laboratory Cleanup Program?

Answer. Tennessee has been participating in the Drug Enforcement Administration's (DEA's) Authorized Central Storage (ACS or "Container") Program since July 2011. DEA receives funding for the Clandestine Drug Laboratory Cleanup Program from the Community Oriented Policing Services (COPS) program to assist State and local law enforcement with clandestine methamphetamine lab cleanups and training. After a shutdown of the cleanup program in February 2011 due to lack of funding, COPS funding was restored to restart the program in fiscal year 2012. Since that time DEA aggressively worked to expand the Container Program. There are currently 18 States with signed Letters of Agreement (LOA) with DEA for Container Programs with two more expected to be added by fiscal year 2016:

- At the end of fiscal year 2011, there were six States with operational container programs (Illinois, Indiana, Alabama, Kentucky, Oklahoma, and Tennessee).
- In fiscal year 2012, seven additional States (Arkansas, Michigan, Virginia, Ohio, North Carolina, Mississippi, and Florida) were operational.
- In fiscal year 2013, Kansas, New York, and Pennsylvania signed Letters of Agreement, which are expected to become operational in fiscal year 2014.
- In 2014, two States (Georgia and Iowa) were added and became operational.

Because of the expansion of the Container Program, DEA has been able to keep program costs down. This has allowed DEA to fulfill meth lab cleanup and training requests from the States participating in the Container Program, as well as fund on-site cleanups in the lower volume States that do not have high enough demand to sustain a Container Program economically. The Container Program has resulted in significant cost savings in States that have operational Container Programs (a contractor cleanup averages \$2,730, while a container cleanup averages \$306). In fiscal year 2013, DEA funded a total of 7,891 lab cleanups. Included in the total are the pickup and disposal of 7,099 labs through 220 Container Program pickups from the 10 States participating in the program, and 792 State and local cleanups DEA administered during the same time period. In fiscal year 2014, DEA funded a total of 8,213 lab cleanups. Included in the total are the pickup and disposal of 7,880 labs through 248 Container Program pickups from the 16 States participating in the program, and 333 State and local cleanups DEA administered during the same time period. While Kansas, New York and Pennsylvania have signed LOA's, they are not yet operational.

At the clandestine lab training facility, DEA trains Federal, State, local, and foreign law enforcement officials on the latest techniques in clandestine laboratory detection, enforcement, and safety. In fiscal year 2013, DEA provided clan lab training to 1,696 State and local law enforcement officers. In fiscal year 2014, DEA has provided clan lab training to 1,484 State and local law enforcement officers. Overall, DEA trained 39,932 law enforcement officers in fiscal year 2014. In addition to State and Local Clandestine Laboratory Certification Training, DEA also provided Site Safety Training, Tactical Training, and the FBI's National Improvised Explosive Familiarization Training course, which was also attended by the National Guard.

Question. Last year Congress provided \$7.5 million for a competitive grant program for State Anti-Methamphetamine Task Forces. When will the Department allow States to apply for these funds? What criteria will the Department use to evaluate proposals from States?

Answer. The fiscal year 2014 COPS Anti-Methamphetamine Program (CAMP) was designed to advance public safety through providing funds to investigate illicit activities related to the manufacture and distribution of methamphetamine. Funds awarded in this program shall be used for investigative purposes to locate or investigate illicit activities, including precursor diversion, laboratories, or methamphetamine traffickers through State and local collaboration. The COPS Office received 19 eligible applications and made 10 awards totaling approximately \$6 million.

Funding Provisions:

- Fiscal year 2014 CAMP grants provided funding for 24 months to State law enforcement agencies for equipment, overtime and other approved personnel costs for law enforcement officers assigned to the investigation of methamphetamine production and trafficking.

- Funding awarded to State law enforcement agencies may be used to support law enforcement personnel costs for allied agencies' officers participating in a State anti-methamphetamine task force.
- The COPS Office has identified an "up to \$1 million" cap on award amounts.

Eligibility:

- The fiscal year 2014 COPS Anti-Methamphetamine Program was a targeted competitive solicitation which will focus on funding State law enforcement agencies (note: this does not include DC, tribal agencies or the territories) with identified meth problems, as indicated through the following sources:
 - Meth lab seizures data
 - Precursor chemicals seizures data
 - Meth-related arrests data
 - Drug arrests for Meth
- State law enforcement agencies eligible to apply include, but are not limited to the following:
 - State AG's Offices
 - State Bureaus of Investigation
 - State Park Police
 - State Police Agencies

DOJ EFFORTS TO FIGHT COUNTERFEIT DRUGS

Question. What steps have you taken to meet that requirement? What challenges does the Department face prosecuting these cases, and does the Department need increased resources or authorities to improve law enforcement efforts against counterfeit drugs?

Lead-in information from original document.—

Drug counterfeiting is a serious public health threat. Nearly 40 percent of the drugs Americans take are made abroad, and about 80 percent of the active pharmaceutical ingredients used in our drugs are manufactured overseas. The Department and U.S. Attorney offices across the country play a critical role in fighting counterfeit drugs by investigating and prosecuting illegal counterfeiting activity. For example, last year three individuals were indicted in the Middle District of Tennessee for obtaining prescription drugs from "street collectors" in New York and Miami and selling them as if they had been obtained from the wholesale distribution market. Also last year, 11 people were indicted for illegal importation and distribution of counterfeit drugs from Turkey, India, and Switzerland. Law enforcement agencies face substantial challenges investigating and prosecuting these often complex, global crime operations. The operations are often located abroad and scattered in several countries. Law enforcement needs assistance from foreign regulators and foreign law enforcement officials to obtain information and gather evidence, which those countries are often unable or unwilling to provide.

The 2012 Food and Drug Administration Safety and Innovation Act (FDASIA) directed the Attorney General to give a higher priority to the prosecution of cases involving counterfeit drugs.

Answer. The Department has taken a number of steps to meet the requirement of the 2012 Food and Drug Administration Safety and Innovation Act (FDASIA).

In combatting counterfeit drugs, the Department of Justice holds the primary responsibility for the enforcement of intellectual property rights. The enforcement of such rights is vital in ensuring the safety and efficacy of the drugs that Americans take every day. Formed in 2010, the Department of Justice Task Force on Intellectual Property monitors and coordinates overall intellectual property enforcement efforts at the Department and ensures that it continues to remain a priority. It is chaired by the Deputy Attorney General. Under the leadership of the Intellectual Property Task Force, the FBI, and Justice Department components including the Criminal, Civil and Antitrust Divisions and the Bureau of Justice Affairs have worked to improve the protection of intellectual property, both in the U.S. and abroad. Upon the release of the administration's 2013 Joint Strategic Plan on Intellectual Property Enforcement (JSP), the Attorney General, in a posting on the Department of Justice Web site, stated, "the Department and its partners stand poised to take these critical efforts to a new level." The posting is available at, <http://blogs.justice.gov/main/archives/3017>. The Department's core role within the JSP includes forging law enforcement partnerships, dedicating grant funding to these partners, and increased enforcement against counterfeit drug trafficking organizations.

Through the Office of Justice Programs' Intellectual Property Enforcement Program, the Bureau of Justice Assistance (BJA) funds State and local projects that emphasize collaboration and coordination with all relevant enforcement organizations, including prosecutors, multijurisdictional task forces, and appropriate Federal agencies (e.g., local Federal Bureau of Investigation offices and U.S. Attorneys' Offices) in the enforcement of Intellectual Property (IP) laws. Specifically in the area of counterfeit drugs, the Bureau of Justice Assistance administered a grant in fiscal year 2014, for Protecting Public Health, Safety, and the Economy from Counterfeit Goods and Product Piracy. This funding provided national support for and to improve the capacity of State, local, and tribal criminal justice systems to address intellectual property criminal enforcement. BJA also offered funding for National Training and Technical Assistance for the Intellectual Property Enforcement Program. Additionally, the National Crime Prevention Council (NCPC), supported by BJA, developed a research-based public outreach campaign to educate the public on IP crimes in general, particularly about the health and safety risks that result from IP crime.

The Department, through the U.S. Attorneys' Offices (USAOs), the Computer Crime & Intellectual Property Section (CCIPS) in the Criminal Division and the Consumer Protection Branch (CPB) in the Civil Division, has continued to prioritize and pursue investigations and prosecutions in every priority area identified by the Department of Justice Task Force on Intellectual Property ("IP Task Force" or "IPTF"), including cases involving health and safety, trade secret theft and economic espionage, large-scale online piracy and counterfeiting, and links to organized criminal enterprises. The JSP details ongoing enforcement initiatives, including the Federal Bureau of Investigation Intellectual Property Program, and is located at, <http://www.whitehouse.gov/sites/default/files/omb/IPEC/2013-us-ipeec-joint-strategic-plan.pdf>.

The passage of the 2012 Food and Drug Administration Safety and Innovation Act provided the Department with enhanced penalties under Title 18 for trafficking in counterfeit drugs. The cases below illustrate recent action taken by the Department to hold those accountable for distributing misbranded, unapproved, adulterated, or counterfeit drugs.

- On February 20, 2014, Ricky Lee Campbell, of Sacramento, California, pleaded guilty to conspiracy to traffic in counterfeit pharmaceuticals. The U.S. Attorney's Office for the Eastern District of California successfully prosecuted Campbell and his co-defendant, Susan Yvonne Eversoll. The defendants offered Viagra and Cialis for sale using Craigslist, Pennysaver, and via text message blasts. Searches of Campbell and Eversoll's residences produced more than 6,000 counterfeit tablets of Viagra and Cialis. Eversoll pleaded guilty to the conspiracy in December 2013, and was sentenced on March 6, 2014, to 18 months in prison. Campbell was sentenced on May 8, 2014 to a term of 41 months imprisonment, to be followed by 16 months of supervised release.
- The United States Attorney's Office for the Eastern District of Missouri announced on January 16, 2014, that two Turkish nationals were charged with obtaining unapproved, misbranded, adulterated and counterfeit cancer treatment prescription drugs from Turkey and other foreign countries and smuggling the drugs into the United States, including three shipments sent from Turkey to Chesterfield, Missouri. According to court filings, the defendants were employees of a Turkish prescription drug wholesaler. They used shipping labels that concealed the illegal nature of the prescription drug shipments, including customs declarations falsely describing the contents as "gifts" or "documents" or "product sample" with no or low declared monetary values.
- In January, 2014, the Southern District of Texas and the Criminal Division successfully prosecuted a defendant for conspiracy to import counterfeit and misbranded drugs. A total of 3,200 counterfeit Viagra and 4,000 counterfeit Cialis pills were sent from China to the defendant's home. Although the pills looked authentic, when tested, law enforcement determined that the counterfeit Viagra had less active pharmaceutical ingredient than was stated on the packaging, and the counterfeit Cialis did not contain any of the brand's active pharmaceutical ingredients.
- The Criminal Division successfully prosecuted defendant Grisel Azcuy in the Eastern District of New York on December 10, 2013, for conspiracy to traffic in counterfeit goods and distribute misbranded drugs in violation of 18 U.S.C. Section 371 and conspiracy to distribute and possess with intent to distribute pharmaceutical drugs that included oxycodone, hydrocodone, alprazolam and diazepam in violation of 21 U.S.C Sections 846 and 841.
- The U.S. Attorney's Office for the Southern District of California announced on September 12, 2013, that defendant Martin Paul Bean III was sentenced to

serve 24 months in custody for his role in a scheme to sell unapproved foreign oncology drugs to doctors in the United States. Bean had pleaded guilty to conspiracy to commit a number of Federal offenses, including wire fraud, mail fraud, selling unapproved drugs, selling misbranded drugs, and importing merchandise contrary to law. In pleading guilty, Bean admitted that between February 24, 2005 and October 30, 2011, he operated a business (GlobalRx Store) from his residence in Florida and unlawfully sold over \$7 million of prescription oncology drugs to doctors throughout the United States. Bean ordered unapproved drugs from foreign sources, including sources in Turkey, India, and Pakistan, and sold them to doctors within the United States at substantially discounted prices.

—The U.S. Attorney's Office for the Eastern District of Pennsylvania announced, on September 11, 2013, that Naman Bader of Philadelphia received a 12-month prison sentence for smuggling and illegally distributing more than 2 million prescription pills, such as Xanax, Valium, phentermine, Ativan, Klonopin, Ambien, and their generic equivalents, valued at approximately \$10,310,406. Additionally, approximately 25,000 counterfeit Viagra and Cialis pills were seized in international mail parcels during the course of the investigation. Bader's co-conspirator, Rehan Shah, was sentenced on December 5, 2012, to 15 months in prison.

—The U.S. Attorney's Office for the Southern District of Texas and the Criminal Division announced on August 6, 2013 the arrests of two individuals, Jamal Khattab, of Katy, Texas, and Faye Al-Jabri, of Chicago, for allegedly conspiring to traffic in counterfeit and misbranded medicine, specifically Viagra. The indictment charged Khattab with one count of conspiracy, one count of smuggling goods into the United States, two counts of trafficking in counterfeit goods, two counts of trafficking in misbranded drugs and two counts of trafficking in counterfeit drugs. Al-Jabri was charged with one count of trafficking in counterfeit goods, one count of trafficking in misbranded drugs and one count of trafficking in counterfeit drugs. Jamal Khattab was sentenced on August 15, 2014 to a term of 21 months incarceration, 1 year of supervised release, and payment of \$7,000 in restitution, plus a \$300 special assessment. Faye Al-Jabri was sentenced on July 17, 2014 to a term of 41 months incarceration, 3 years of supervised release, and payment of \$15,066.92 in restitution.

—On June 27, 2013, the U.S. Attorney's Office for the District of Colorado obtained, and the U.S. Food and Drug Administration (FDA), executed seizure warrants for 1,677 Web sites that were illegally selling counterfeit or misbranded drugs that purported to be brand name pharmaceuticals. This enforcement action was coordinated as part of as part of International Internet Week of Action, and in conjunction with Interpol's Operation Pangea VI. Many of the sites falsely claimed to be hosted in Canada, while others falsely claimed to be affiliated with major U.S. pharmacy retailers by using the names of those retailers in the domain names. Drugs purchased from the sites provided did not have FDA approval and did not have Canadian origins. The Web sites offered medications to treat, among other things, conditions related to diabetes, schizophrenia, pain and inflammation.

—On April 18, 2013, the U.S. Attorney's Office for the Northern District of Illinois announced the indictment of a pharmacist on 15 counts of violating the FD&C Act and FDASIA for obtaining counterfeit Viagra and Cialis from China and illegally dispensing the bogus medications at his pharmacy.

—The U.S. Attorney's Office for the Central District of California successfully prosecuted Edward Alarcon for a plot in which he possessed, and had the intent to distribute for profit, more than 2,000 Chinese-made counterfeit and misbranded Viagra pills. After a 3-day jury trial in January 2013, Alarcon was convicted on two counts of trafficking in counterfeit OxyContin and Cialis. The evidence presented at trial showed that Alarcon had purchased the bogus OxyContin from Bo Jiang, a Chinese national and the alleged head of a counterfeit drug ring. Alarcon had offered to sell counterfeit Cialis, Viagra and Levitra on Craigslist. The district court judge sentenced the defendant to 15 months in Federal prison on April 4, 2013. In a related case, Francis Ortiz Gonzalez, who worked as a "dropshipper" for Jiang in the United States, was sentenced in January 2014 to 2 years in Federal prison and ordered to pay \$324,530 in restitution for trafficking counterfeit pharmaceuticals.

You have asked about challenges the Department faces in prosecuting these cases involving counterfeit drugs, including resource challenges.

In March 2011, the U.S. Intellectual Property Enforcement Coordinator publicly released a White Paper on Intellectual Property Enforcement Legislative Recommendations and it is accessible at, <http://www.whitehouse.gov/sites/default/files/>

ip_white_paper.pdf. In this White Paper, the administration recommended six legislative changes to improve U.S. enforcement efforts involving pharmaceuticals, including counterfeit drugs:

1. Require importers and manufacturers to notify the FDA and other relevant agencies when they discover counterfeit drugs or medical devices, including the known potential health risks associated with those products;
2. Extend the Ryan Haight Act's definition of "valid prescription" (and its telemedicine exemption) under the Federal Food, Drug, and Cosmetic Act (FFDCA) to drugs that do not contain controlled substances;
3. Adopt a track-and-trace system for pharmaceuticals and related products;
4. Provide for civil and criminal forfeiture under the FFDCA, particularly for counterfeit drug offenses;
5. Increase the statutory maximums for drug offenses under the FFDCA, particularly for counterfeit drug offenses; and
6. Recommend that the U.S. Sentencing Commission increase the U.S. Sentencing Guideline range for intellectual property offenses that risk death and serious bodily injury, and for those offenses involving counterfeit drugs (even when those offenses do not present that risk).

The Department recognizes recent congressional action, but also reiterates the need for implementation of the other recommendations noted in this White Paper. For example, many online pharmacies sell prescription drugs that are not controlled substances under Federal law. Non-controlled prescription drugs are regulated under the FFDCA and require a valid prescription, but the FFDCA does not define what constitutes a valid prescription. Currently, States have different definitions of what constitutes a valid prescription. Internet pharmacies typically operate across State lines. The pharmacy may be in one State (or overseas), the doctor who issues the prescription may be in another State, and the customer may be located in a third State. In such cases, it is not clear which State law applies. Extending the Ryan Haight Act's definition of "valid prescription" to non-controlled prescription drugs would help standardize what constitutes a valid prescription. A Federal definition of what constitutes a "valid prescription" for non-controlled prescription drugs would also provide clarity in Internet pharmacy investigations where there is a question as to whether the drugs are being dispensed pursuant to a valid prescription.

Prosecuting foreign Internet pharmacies for dispensing controlled and non-controlled prescription drugs under FFDCA presents some unique challenges for the Department of Justice. The Government Accountability Office (GAO) noted in a report released in July 2013 the substantial challenges in the criminal investigation of rogue Internet pharmacy operators, include the increasingly complex nature of the criminal organizations and the difficulties in pursuing investigations and prosecutions of conduct that occur mainly overseas and often span several foreign countries. For example, the Department may have difficulties prosecuting an offender because of the lack of an extradition treaty between the foreign country and the United States. The report is available at <http://www.gao.gov/assets/660/655751.pdf> and further details these challenges.

Question. What has the Department and its current intellectual property law enforcement coordinators done to help stop the tide of counterfeit and unsafe pharmaceuticals from hitting our shores? Are there any recent joint operations with our partners in Asia that have been successful? What are the greatest challenges that you see in countries like China and India?

Lead-in information from original document.—

The Department of Justice currently funds 22 positions focusing on intellectual property crime and has requested funding for an additional 11 positions, including two International Computer Hacking and Intellectual Property Coordinators (ICHIPs).

Answer. As detailed in the Department's Prioritizing Resources and Organization for Intellectual Property (PRO IP) Act Annual Report for fiscal year 2013, the Department has prioritized cases involving public health and safety, including prosecuting the importers and distributors of counterfeit and sub-standard medicines. These cases may fall under the prohibition against trafficking in counterfeit goods (18 U.S.C. § 2320) or the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 351, 352).

By working closely with investigative agencies and the National IPR Coordination Center, the Department has successfully prosecuted numerous cases involving counterfeit pharmaceuticals imported from overseas. Some recent examples include:

—In January 2014, two Turkish nationals were charged in the Eastern District of Missouri with obtaining unapproved, misbranded, adulterated, and counter-

- feit cancer treatment and prescription drugs from Turkey and other foreign countries and smuggling the drugs into the United States.
- In January 2014, a Texas resident pleaded guilty to conspiring to import and attempting to traffic counterfeit drugs. The counterfeit pharmaceuticals, which either did not contain any active ingredient or contained an insufficient amount of the active ingredient, were sent to the defendant's home in Texas from China in open foil blister packs without packaging or labels.
 - In December 2013, a Chicago resident pleaded guilty to conspiring to traffic and trafficking in counterfeit and misbranded pharmaceuticals. The defendant smuggled the counterfeit drugs from China into the United States in bulk for later distribution in smaller quantities. As part of the investigation, an undercover agent successfully infiltrated the counterfeit pharmaceutical trafficking organization and received approximately 17,000 counterfeit and misbranded Viagra tablets over a two-and-a-half year period.
 - In April 2013, an Illinois resident was charged with trafficking in counterfeit drugs, violating the Federal Food, Drug, and Cosmetic Act in connection with illegally obtaining drugs from China and dispensing them at his pharmacy.
 - In January 2013, a Puerto Rican man was sentenced to 2 years in prison for being a key member of an organization that distributed large quantities of Chinese-made, counterfeit pharmaceuticals across the United States. The defendant worked as a "dropshipper" for the counterfeit drug ring allegedly headed by a Chinese national whose last known residence was in New Zealand. The purported head of the drug ring was arrested by New Zealand law enforcement pursuant to a provisional arrest warrant, but he fled shortly after being released on bond and remains a fugitive. In a related case, in April 2013, a California resident was sentenced to 15 months in prison for his role in a scheme to distribute the Chinese-made counterfeit pharmaceuticals. He purchased the drugs from the alleged head of the counterfeit drug ring and offered to sell them on craigslist.
 - In October 2012, a New Zealand physician was sentenced to 18 months in prison after pleading guilty to three counts of trafficking in counterfeit pharmaceuticals. The investigation into the defendant's illicit activities began in 2006 after Customs and Border Protection intercepted a parcel shipped from China containing counterfeit drugs, and the defendant was identified as the sender. The defendant was originally indicted in December 2007, but remained at large until March 2012 when he was arrested at San Francisco International Airport flying into the United States from Hong Kong.
 - In September 2012, a Puerto Rican distributor of counterfeit pharmaceuticals was sentenced to 21 months in prison. The pharmaceuticals were exported from China into Puerto Rico, where the defendant re-shipped the drugs into other U.S. locations, including to undercover agents in Houston.
 - In July 2012, a California man was sentenced to 1 year and a day in prison after pleading guilty to trafficking in counterfeit pharmaceuticals. The defendant admitted that he imported these products into the United States from China and India and then sold the pills on craigslist.
- In addition to seizing counterfeit and misbranded drugs and prosecuting the distributors, the Department has seized websites used to facilitate distribution of illegal sales of pharmaceuticals:
- In June 2013, the U.S. Attorney's Office for the District of Colorado and the Food and Drug Administration seized 1,600 domain names associated with Web sites selling counterfeit or misbranded drugs as a part of INTERPOL's Operation Pangea VI, an international week of action targeting the online sale of counterfeit and illicit medicines.
 - In October 2012, in Operation Bitter Pill, Homeland Security Investigations in coordination with the Department of Justice seized 686 Web sites illegally selling counterfeit pharmaceuticals. The operation was part of INTERPOL's Operation Pangea V.
- The Department also works closely with the State Department to provide training in effective law enforcement techniques to reduce the trade in illicit pharmaceuticals into developing countries. The sale of counterfeit medicines in developing countries can simultaneously destroy the market for legitimate products and have devastating health consequences on the local population. As part of a multi-year series of programs to build IP enforcement capacity, the Department, working with the World Customs Organization, was able to support a 23-nation effort to seize counterfeit medicines across the African continent which resulted in the seizure of more than 550 million doses of counterfeit medicine during a 10-day period in April 2013.
- In addition to our efforts to increase awareness and enforcement in consumer countries, we continue to develop cooperative law enforcement mechanisms to pur-

sue a range of IP offenses in source countries, including the ongoing effort to reach the producers of counterfeit and substandard pharmaceuticals.

—The U.S.-China Joint Liaison Group's Intellectual Property Criminal Enforcement (JLG IP) working group provides a forum to discuss ways to improve law enforcement cooperation and coordination on intellectual property matters, including counterfeit pharmaceuticals, and to exchange information and coordinate enforcement activities. The JLG IP working group is co-chaired by China's Ministry of Public Security and DOJ's Criminal Division. The JLG IP working group coordinates with U.S. law enforcement officials in China to facilitate the exchange of evidence.

—In May 2013, the Department of Justice hosted the third Intellectual Property Crime Enforcement Network (IPCEN) conference in Bangkok, Thailand. Sixty intellectual property crime investigators and prosecutors from the 10 members of the Association of South East Asian Nations (ASEAN), as well as South Korea and China, attended. The IPCEN conference is designed to help prosecutors and investigators in the region develop a network of IP enforcement authorities and foster bilateral and regional cooperation in IP cases, including counterfeit pharmaceutical cases.

There are no recent examples of joint operations with our partners in Asia that are public at this time. However, we have seen a substantial increase in the willingness of law enforcement officials in some producer nations to cooperate in the disruption of counterfeit pharmaceutical manufacturing facilities, and we are looking for opportunities to develop joint operations through the IPCEN and JLG.

In India we have been challenged by the lack of a central law enforcement authority with jurisdiction over counterfeit and substandard pharmaceutical investigations, making a coordinated approach to enforcement difficult. Additionally, larger issues relating to patent enforcement and access to medicines in India often limit political will and overshadow efforts at cooperative action against counterfeit pharmaceuticals.

In China, law enforcement officials recognize the growing threat of counterfeit pharmaceuticals to the Chinese population and take well-publicized actions to cut down on domestic IP crime. Chinese officials have shown an increasing willingness to work with U.S. law enforcement and rights holders to ensure the legitimacy of pharmaceuticals in the supply chain, using the Joint Liaison Group as a coordination mechanism. However, the sheer volume of production in China of counterfeit pharmaceuticals and other IP-infringing goods continues to make enforcement a challenge.

QUESTIONS SUBMITTED BY SENATOR LISA MURKOWSKI

FAIRNESS IN DISCLOSURE OF EVIDENCE ACT

Question. Suppose I were to ask the Department to provide a drafting service, get a bit introspective about what might be acceptable bearing in mind the comments in the Judiciary hearing last year and send me a bill that is worth moving forward on. Would you do this for me?

Lead-in information from original document.—

Last year I introduced the Fairness in Disclosure of Evidence Act with the intention of ensuring that the obligation to disclose exculpatory evidence to Federal defendants in accordance with the Brady ruling was uniformly applied across the districts. The bill was endorsed by a wide variety of organizations across the ideological spectrum from the American Civil Liberties Union to the American Bar Association to the U.S. Chamber of Commerce. Suffice it to say, prosecution interests were not as enamored with the bill. When the bill went to hearing in the Judiciary Committee last year there was widespread support within the Department for taking Brady obligations seriously and there was a promising colloquy with Senator Leahy and others about open file discovery. At the end of the day my bill was unacceptable to the department but the department failed to express the parameters of a bill that would be acceptable. This issue is very very important to me and I intend to pursue it. I would like to find common ground with the Justice Department. So rather than me continuing to draft bills that are unacceptable—[continued above as the start of the question]

Answer. The Department of Justice firmly believes that rather than seeking legislative solutions, the American people are better served by the steps the Department already has taken—and will continue to take—since the time of the Stevens pros-

ecution. Through improved policies, increased training, and the appointment of new Department experts on the topic of discovery obligations, the Department's prosecutors have at their disposal an array of resources to assist them in meeting their discovery obligations. In addition to supervisory attorneys, this includes: discovery coordinators in each U.S. Attorney's Office or Department component; the Professional Responsibility Advisory Office; online resources; a full-time National Criminal Discovery Coordinator in the Office of the Deputy Attorney General; and experienced attorneys throughout the Department.

ATTORNEY MISCONDUCT

Question. In advance of the next round of reporting from the GAO, let me ask are you satisfied with the attorney misconduct program within the department? Are there any changes you would like to see implemented? I understand that the Department has long resisted permitting the Inspector General to inquire into issues of attorney misconduct. Senator Lee, I and others think this is shortsighted. The Inspector General is intended to be an independent figure with the power to inquire into all goings on within the Department furthering the public interest of integrity and efficiency. Is there any good reason that the Department should oppose S. 2127 which would remove Inspector General Act impediments pertaining to attorney misconduct?

Lead-in information from original document.—

I would like to speak with you about the issue of attorney misconduct within the department. USA Today did a series on attorney misconduct, the Project on Government Oversight recently issued a report attorney misconduct and I have the GAO working on a study mandated by this subcommittee on the same subject that will be available later this year. We hear that attorney misconduct is seriously addressed but looking back at the discipline meted out on the Stevens prosecutors one might question whether the discipline is severe at all. And the POGO report indicates that rarely if ever are disciplined prosecutors referred to their State bars.

Answer. The Department takes all misconduct allegations with the utmost seriousness. The Department's Office of Professional Responsibility ("OPR") has been recognized consistently as a strong, independent entity within the Department that has a long, distinguished, and strong history of investigating allegations of attorney misconduct and recommending appropriate punishment. OPR has a unique expertise and has well-developed policies, procedures, and an analytical framework to guide its work. Importantly, OPR, unlike the Office of the Inspector General (OIG), has a singular focus on investigating attorney misconduct.

While the Administration does not yet have an official position on S. 2127, similar bills have been introduced a number of times in the past; none have proceeded, and for good reasons. Previous efforts to unnecessarily expand the jurisdiction of the OIG have failed, in part, because expanding their jurisdiction would not create a better attorney discipline system, but instead would create an inconsistent and inefficient system while eroding accountability.

As with S. 2127, previous efforts at expanding the OIG's jurisdiction have sought to effectively cede OPR's current jurisdiction to the OIG on all matters, allowing the OIG to handle certain attorney misconduct investigations of its choosing, while OPR handles the remainder. This concurrent jurisdiction undoubtedly would lead to inconsistent results without addressing any of your concerns.

When Congress created an Inspector General (IG) for the Department of Justice in 1988, the Department strongly insisted upon recognition of the special character of Department attorneys' exercise of authority to investigate, litigate and give legal advice. Since its creation in 1975, OPR has developed unique expertise in applying the complex legal and ethical standards applicable to Department attorneys conducting investigations, litigating cases, and providing legal advice. OPR has developed unique investigative policies and procedures, as well as an analytical framework that together ensure the application of fair and consistent findings with regard to matters of professional misconduct. OPR is staffed with experienced attorneys, including former attorneys from the OIG, as well as attorneys who worked in private practice, have experience with the national Innocence Project, and have experience with attorney ethics investigations.

For these reasons, Congress specifically carved out of the IG's jurisdiction the authority to investigate allegations relating to an attorney's authority to investigate, litigate, and provide legal advice; and required that such allegations continue to be referred to OPR. Since 1988, the OIG has raised periodically its claim that it should be empowered to investigate matters falling within OPR's jurisdiction. Each time

the issue has been raised, Congress has wisely refrained from altering the carefully considered limitation on the IG's authority.

In its nearly 40 years' existence, OPR has been called upon to investigate allegations of misconduct against high-ranking DOJ officials, including the Attorney General and the Deputy Attorney General. OPR in fact acts independently and without interference from senior Department leadership. Since its inception, OPR has been led by a Counsel who is a career Senior Executive Service Department employee, who remains unchanged with successive Attorneys General and presidential administrations. No serious allegation has ever been raised that any Attorney General or Deputy Attorney General has interfered with any OPR investigation.

Although the OIG for many years has claimed a need to increase its own jurisdiction, the OIG points to no instance in which Department senior leadership interfered with an OPR investigation; nor does the OIG point to a single OPR investigation that failed to appropriately hold accountable Department leaders or other Department attorneys. OPR has not hesitated to investigate senior Department leadership at the highest levels in the past where appropriate, and to find misconduct by Department attorneys when the evidence supported such findings. In any event, if the OIG wishes to take over an investigation that falls within the jurisdiction of OPR, the OIG may make such a request to the Deputy Attorney General.

Moreover, your concerns about the Stevens case would not have been addressed had the attorney misconduct investigation been handled by the OIG. As I understand it, your principal objection to the Department's handling of the Stevens attorney misconduct investigation is your belief that the punishment was insufficient. Had the OIG handled the investigation, the perceived problem of insufficient punishment would not have been rectified. OPR conducted a full and thorough investigation and determined in a detailed, 672-page report that two attorneys engaged in professional misconduct and that a third exercised poor judgment. OPR's findings were shared with Judge Sullivan, who presided over the Stevens matter and with Congress.

As a result of OPR's findings, the Department imposed significant periods of suspensions without pay to the attorneys who were found to have engaged in professional misconduct. As is the right of any civil servant under similar circumstances, the attorneys appealed the imposed discipline to the Merit Systems Protection Board (MSPB); an administrative judge for the MSPB vacated the suspensions based on a finding of harmful procedural error when the original disciplinary proposing official was replaced. The Department appealed that decision to the full Board, believing that the replacement of the proposing official was proper. The full Board affirmed the initial decision, finding similar harmful procedural error. Regardless of whether OPR or the OIG investigated this incident of attorney misconduct, there is no reason to believe the MSPB outcome would have been any different. OPR has the authority to investigate allegations of misconduct, but does not have the authority to impose discipline. Likewise, the OIG would have had no such authority. Rather, the OIG would only have authority to report its findings and conclusions to the Attorney General and the Deputy Attorney General; the Department, under longstanding civil service rules, would retain authority to impose discipline. But just as is the case under the present system, any attorney—like all Federal Government workers—would retain the right to appeal a suspension of more than 14 days to the MSPB.

With respect to concerns about referrals of attorney misconduct to State bars, OPR's long-standing policy and practice in all investigations is also to review the State bar rules that govern each individual attorney who is under investigation, and to assess whether there has been a violation of those specific State bar rules. If the Department determines that the conduct violates an applicable State bar rule, OPR refers the matter to the relevant State bar and provides information about its finding. OPR routinely makes such referrals.

Another reason OIG's jurisdiction to include attorney misconduct is neither warranted or appropriate is that having two entities responsible for attorney misconduct investigations would necessarily lead to inconsistent application of the often complex rules and standards governing attorney conduct and would leave Department attorneys uncertain as to the extent of their obligations. This uncertainty, in turn, would reduce accountability because of the lack of clear direction and opaque expectations regarding attorney conduct. This will inevitably create a dysfunctional system in which similarly-situated Department attorneys will be treated differently for essentially similar conduct. It would be grossly unfair to subject attorneys to disparate treatment based on which investigative entity takes jurisdiction; decreased accountability would be the predictable result.

With respect to transparency, the Privacy Act prevents OPR from releasing personal information about Department employees, except in limited circumstances,

and those same limitations would apply to the OIG. Accordingly, whether OPR or some other entity undertakes disciplinary investigations, the same Privacy Act limitations are applicable. Although the Privacy Act prohibits the release of protected information, OPR annually discloses a substantial amount of information about its work and findings. OPR's annual report contains substantive and statistical information setting forth the complaints it receives and the numbers of inquiries and investigations it accepts and resolves. The fiscal year 2012 Annual Report, for example, not only included summaries of representative inquiries handled by OPR during the year but also included summaries of nearly every investigation OPR closed during fiscal year 2012. Future annual reports will do the same. Beyond that, OPR regularly provides complainants, including defense attorneys or judges who complain about the conduct of Department attorneys, information concerning the resolution of their complaint. Contrary to the suggestion in the POGO report otherwise, where bar rules are implicated, OPR also shares its misconduct findings and reports with bar disciplinary authorities.

TED STEVENS INVESTIGATION

Question. During last week's hearing with the FBI Director, Mr. Comey indicated that an FBI Agent whose conduct in the Ted Stevens investigation came under scrutiny was severely disciplined. But he didn't explain what severely disciplined meant. One person's severe discipline might be another's slap on the wrist. Can you shed any light on whether the individual is still working for the FBI, in what capacity, and what the discipline was. [If not, insist once again that the report be filed with the subcommittee so we can determine what went on].

Answer. In light of the privacy interests implicated here, FBI would be prepared to brief the Committee on this matter.

QUESTIONS SUBMITTED BY SENATOR MARK KIRK

GANGS

Question. Would a tool like this be useful on a national scale in a classified or unclassified manner? Do any of our Federal law enforcement agencies gather this type of information on gangs of national significance (gang profiles, membership, signs or symbols, signature crimes, etc.) and share it with their State and local partners? If this is already being done, what is the manner that the information is shared?

Lead-in information from original document.—

The Chicago Crime Commission, a non-partisan, not-for-profit organization, printed *The Gang Book* in 2012 that details the leadership, membership, locations and other unique identifying factors of gangs and their factions in both the city of Chicago and the suburbs. *The Gang Book* also published the number and type of crimes reported as "gang related." This information is useful for suburban police departments that are experiencing gang crime for the first time.

Answer. This type of tool is already being used on a national scale and is very helpful. The National Gang Intelligence Center (NGIC) operates NGIC Online, which is an information system composed of Web based tools for researching gang related intelligence and sharing this information with the largest possible segment of the law enforcement community. NGIC Online can be accessed by all Law Enforcement Online (LEO) users, which are comprised of local, State, Federal, tribal, and correctional law enforcement. NGIC Online has several resources, including the following: Gang Encyclopedia, Gang Dictionary, General Intelligence Library, and Officer Safety Alerts. There is also a mechanism within NGIC Online wherein law enforcement can submit a request for information to NGIC subject matter experts for support on gang investigations. NGIC also produces the bi-annual gang report, which is available to all law enforcement through the NGIC Online database.

In addition, the Department's Office of Justice Programs' (OJP), Bureau of Justice Assistance (BJA), administers the Regional Information Sharing Systems (RISS) Program, which is a federally funded, locally operated program that provides secure intelligence and information sharing to law enforcement, prosecutors, corrections, and probation/parole officers at all levels of government. Although Federal agencies participate, the focus is information sharing between law enforcement no matter the size of the agency. In addition to information sharing services, RISS provides assistance to these agencies in the areas of investigative support, equipment loans for investigation and surveillance, court preparation, training, and field support.

All RISS resources are used by State, local, and tribal agencies on a daily basis to investigate many types of crimes, especially narcotics and gangs (which are connected on many occasions). One specific resource of interest to gang investigators in the RISS program is the RISSGang system. RISSGang provides a place for officers to share and provide gang information on a national level to include gang profiles, tattoos, gang signs and symbols, and types of specific crimes affiliated with each gang. The gang information is made available through the RISSGang Web site, which is available to all law enforcement, and has a bulletin board feature, a searchable database, secure e-mail, and a method for officers to securely view gang Web sites without revealing the officers' IP address or identity as a government official.

Question. Gang activity is increasingly expanding to new forms of illegal activity including sex trafficking. How is DOJ communicating and working with State and local law enforcement to combat sex-trafficking? How is DOJ working with other Federal agencies and our allies to combatting international sex tourism? What are the biggest trends in sex trafficking? What areas are seeing increased activity? Please outline the biggest loopholes within current law that enable sex traffickers to evade the law enforcement and criminal prosecution.

Answer. Through the FBI's Violent Crimes Against Children Section, the FBI has established 69 Child Exploitation Task Forces (CETFs) throughout the country. The FBI partners with nearly 400 local, State, and Federal law enforcement agencies, with approximately 760 law enforcement officers to combat the commercial sexual exploitation of children. This robust effort allows for multi-dimensional investigative strategies to be employed. The national level intelligence and investigative resources are layered with the local level intelligence to develop large enterprise level investigations. In addition to fostering the sharing of information across law enforcement, the CETFs facilitate prosecutions within both State and Federal courts of those who facilitate the commercial sexual exploitation of children. Without question, because of the partnerships through the FBI CETFs, law enforcement is able to more fully impact this crime problem without the limitations of any jurisdictional boundary.

The FBI also operates its Child Sex Tourism Initiative in which FBI agents assigned to our Legal Attaché offices around the globe investigate U.S. citizens who travel overseas and engage in illicit sexual acts with children. These agents work with foreign law enforcement, non-governmental organizations (NGOs), and various victim services organizations in order to investigate and prosecute those engaged in child sex tourism. The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) also have agents stationed overseas that investigate child sex tourism and other crimes. The FBI has regular contact with ICE in order to collaborate on these cases.

Trends related to the domestic child sex trafficking threat are typically reflected in the methodologies used by pimps to run their operations. This is reflected in the trend of using non-escort focused Web sites to post prostitution advertisements. Additionally, pimps are distancing themselves from their operations by assigning greater responsibility to associates and "bottom girls" (frequently the most trusted girl under the direction of a pimp). Some special events, such as the Super Bowl, continue to spur a surge of sex trafficking operations leading up to and during the event. Training and outreach efforts have resulted in an increased awareness of domestic child prostitution. As a result, law enforcement and the public are more conscious of indicators specific to domestic child sex trafficking, leading to an increase in reports of suspected trafficking. Domestic child sex trafficking continues to impact communities across the Nation.

The Office of Justice Program's (OJP's) National Institute of Justice (NIJ) regularly consults with a range of State and local practitioners, including law enforcement, prosecutors, community organizations and victim service providers, to identify the prominent trends in human trafficking. These consultations revealed that the nature of trafficking cases calls into question the assumptions about who traffickers are, how they become traffickers and what might serve as the greatest deterrent to their entry into trafficking. In response, NIJ commissioned a study focused on answering these questions for all those convicted of trafficking at the Federal level, another examining the role of gangs in sex trafficking in San Diego, and a third exploring the role of organized crime in sex trafficking in the United States (all due to be completed in 2015). Combined with our recently completed studies of labor trafficking (published in 2013) and the unlawful commercial sex economy (published in 2014), these studies will provide a more clear picture of trends in sex trafficking in the United States.

The Office for Victims of Crime (OVC) and the Bureau of Justice Assistance (BJA) jointly administer the Enhanced Collaborative Model to Combat Human Trafficking grant funding program to support anti-trafficking law enforcement task forces that

take a comprehensive approach to combating all forms of human trafficking—sex trafficking and labor trafficking of foreign nationals and U.S. citizens (male/female, adults/minors). The task force model supports partnerships between local, tribal, State, and Federal law enforcement and victim service providers to build community capacity to rescue and serve trafficking victims. In addition to funding these task forces, OVC and BJA support practitioner-driven, evidence-based training and technical assistance (TTA) that is responsive to the needs of victim service organizations, law enforcement, allied professionals, and the communities they serve.

Over the past several years, BJA and its partner, the Upper Midwest Community Policing Institute, have developed and delivered nationwide training for law enforcement, State prosecutors, State judges, and tribal law enforcement to promote awareness of human trafficking as well as advanced skills on how to investigate cases of human trafficking. In fiscal year 2014, BJA posted a solicitation seeking to continue the delivery of: (1) human trafficking training for prosecutors—to increase the capacity of State prosecutors to successfully prosecute perpetrators of trafficking; and (2) advanced human trafficking training for law enforcement—to increase the capacity of law enforcement to investigate, identify, and rescue victims of all forms of human trafficking.

CYBER SECURITY

Question. I am greatly concerned about the data breach incident at the end of 2013 that resulted in up to 110 million credit cards numbers stolen from Target. This is just one of many incident that happened last year. How does DOJ coordinate with the Secret Service, which has the lead agency on counterfeit activity, regarding data breaches? Do you have all of the legal authorities you need to effectively coordinate with other agencies? If not, is there further congressional action that will help you better protect the American people?

Answer. Consistent with law, the FBI has a very forward-leaning approach to sharing information and intelligence with our partners, specifically the U.S. Secret Service (USSS). While the USSS is the lead agency for traditional counterfeit activity, an intrusion into computer networks is an altogether separate Federal violation, the investigation of which is a responsibility shared by both the FBI and USSS, and the FBI is the lead agency on national security intrusions. As such, the FBI and the Secret Service have a long history of jointly investigating computer intrusions, including large-scale data breaches, whether committed by financially-motivated criminals or other criminal actors. Over the past 2 years, the FBI has shared national security case details with the USSS, and both agencies are leading members of the National Cyber Investigative Joint Task Force, the founding mandate of which is to serve as the focal point for all government agencies to coordinate, integrate, and share information related to all domestic cyber threat investigations. In addition, both agencies engage in robust, bilateral collaboration at both the headquarters and field levels to ensure maximum resources are brought to bear against these criminal cyber threats in the most effective manner possible. Lastly, both agencies also participate in the International Organized Crime Intelligence and Operations Center (IOC-2), a forum for member agencies to meet and more effectively coordinate international criminal prosecutions—prosecutions which include cyber activities.

The FBI has a variety of means to coordinate with its partner agencies in the U.S. law enforcement and intelligence communities. To successfully identify, pursue, and defeat our cyber adversaries, data collection and sharing among U.S. agencies must continue to evolve. That evolution requires a constant evaluation of the authorities governing such coordination including ensuring agency-specific data sharing restrictions, while often necessary, do not unduly burden that sharing. Another aspect of that evolution is increasing the speed at which intelligence is shared. In that vein, the FBI, working with partners in government and the private sector, will likely turn to machine-to-machine data sharing, but such enhanced coordination may require authorities not currently in place. This is an issue actively being reviewed at the present and will continue to be examined for the foreseeable future.

Finally, cybersecurity legislation that requires companies to report intrusion activity to the Government and provides liability protections for those companies that share with and assist Government would have a positive impact on the FBI's cyber investigations.

QUESTION SUBMITTED BY SENATOR JOHN BOOZMAN

VICTIMS OF CHILD ABUSE ACT

Question. I certainly hope that you will follow up on that commitment given that while this year funds weren't cut, they were significantly reduced from the levels that this subcommittee provided the past 2 years and I would appreciate you reaffirming your support for CAC's.

Lead-in information from original document.—

For the first time in several years, I am happy that the administration's budget request did not zero out funds for the Victims of Child Abuse Act, yet it reduced the funding by \$8 million from the fiscal year 2014 enacted level. As you know, VOCA funds vital programs that ensure that children who have been victims of abuse receive adequate assistance and care.

Specifically VOCA provides funding to the National Children's Alliance, local Children's Advocacy Centers, and Regional Children's Advocacy Centers, among other programs. These centers are an essential part of communities and are deeply supported by community leaders, local law enforcement, health officials and members of the legal establishment.

In a hearing in January of this year, you stated, "I will be advocating on behalf of these Children's Advocacy Centers. I think they are proven to work, and given who they assist, I think that as we're 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."

Answer. The Children's Advocacy Center (CAC) Program, funded under the Victims of Child Abuse Act (VOCA), is considered to be an effective multidisciplinary model. The CACs represent vital public-private partnerships. In 2012, more than 286,000 children were served at such centers, with over 197,000 cases of reported sexual abuse. One of the primary goals of the CAC Program is to ensure that child abuse victims are not further traumatized by the systems designed to protect them. CACs bring together multidisciplinary teams of child abuse professionals from law enforcement, prosecution, medical, mental health, child protective services, and victim advocacy agencies to coordinate the investigation and prosecution of child abuse. This model has been implemented in more than 850 communities throughout the United States and in numerous foreign countries.

Research on the effectiveness of CACs indicates positive results from faster criminal charging decisions, increased prosecution rates, improved access to medical care, child and caregiver satisfaction and lower average per-case costs. Research has demonstrated that the coordinated response efforts also cost \$1,000 less per case based on elimination of duplication of efforts.

QUESTIONS SUBMITTED TO HON. MICHAEL E. HOROWITZ

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

Question. Public trust and confidence are essential to successful Federal law enforcement efforts. However, the Department has faced significant issues in recent years that jeopardize that very trust and confidence. In fact, restoring public confidence, trust and integrity in the Department has been a top management challenge since 2007.

—Seven years is a long time for any department to struggle with such a serious management challenge. Has the Department made any progress and if so, could you share some examples?

—What changes, in your view, would help to restore public trust and confidence? In other words, what does the Department need to do to resolve this management challenge?

Answer. We agree that the public's trust and confidence are essential to successful Federal law enforcement efforts, and that the Department of Justice (Department) has faced numerous significant issues in recent years that have jeopardized that support. For example, our 2007 and 2008 Top Management Challenges report noted the politicized personnel decisions of Department components had identified in three of our reviews. In 2010, the Office of Inspector General (OIG) issued a report concerning allegations that the Federal Bureau of Investigation (FBI) had targeted certain domestic advocacy groups for scrutiny based upon their exercise of rights guaranteed under the First Amendment to the United States Constitution. More recently, our 2012 report on improper hiring practices in the Justice Management Division (JMD) found problems with nepotism in multiple offices in JMD, marking the

third OIG investigation in the last 8 years involving improper hiring practices within JMD. Also in 2012, we described significant issues involving the conduct of both the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the U.S. Attorney's Office for the District of Arizona in connection with their handling of Operation Fast and Furious and Related Matters. And in a 2013 report assessing the enforcement priorities of the Voting Section of the Civil Rights Division, we identified issues in the handling of a small number of cases that the OIG believed risked undermining public confidence in the non-ideological enforcement of the voting rights laws. The review also revealed several incidents in which ideological polarization fueled disputes and mistrust that harmed the functioning of the Voting Section, including numerous examples of harassment and marginalization of employees and managers due, at least in part, to their perceived ideological or political beliefs.

Despite the problems we have identified over the past several years, we also have noted the Department's significant efforts to restore its reputation for impartiality and excellence since we first included this issue in our Top Management Challenges report. For example, following our 2006 report on the FBI's handling of the Brandon Mayfield case, the FBI Laboratory implemented major reforms that have strengthened the objectivity and reliability of its latent fingerprint identifications and have helped restore the FBI Laboratory's reputation as a leader in this discipline; in response to our 2013 review of its purchase of promotional items, the U.S. Marshals Service instituted a new promotional items policy and other internal controls that we believe will help restore the public's confidence that appropriated funds will be used in the manner intended by Congress; and following our 2008 report on politicized hiring, the Civil Rights Division has taken major steps to improve public confidence that its hiring practices are fair, transparent, and merit-based.

Nevertheless, significant challenges remain. One especially important concern that continues to be raised by, among others, Members of Congress, Federal judges, and public interest groups is the Department's ability to discipline its attorneys for misconduct. In December 2013, Chief Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit issued a dissenting opinion stating that there was an "epidemic of Brady violations" by Federal and State prosecutors, and that "[o]nly judges can put a stop to it." In reaching this conclusion, Chief Judge Kozinski cited a plethora of Federal and State court decisions finding Brady violations by prosecutors, and he noted that professional discipline is "rare." In March 2013, the Project on Government Oversight (POGO) raised similar concerns about prosecutorial misconduct and the transparency of the Department's disciplinary decisions, and recommended that the OIG should be authorized to investigate allegations of misconduct by Department attorneys rather than the Department's Office of Professional Responsibility (OPR), which currently has responsibility for these investigations. As we have repeatedly noted in the past, and as POGO stated in its recent report, providing the OIG with this jurisdiction would result in independent oversight of alleged prosecutorial misconduct, greater transparency over the process, and an increase in accountability, with the inevitable result being that the public's trust and confidence in the disciplinary process would improve. This is particularly true in matters where the lack of independence and transparency of an OPR review might reasonably call its conclusions into doubt. For these reasons and others, the OIG supports the bipartisan Inspector General Empowerment Act of 2014 (S. 2127), introduced by Senator Lee and co-sponsored by Senators Tester, Grassley, Murkowski, and Coburn, which would amend the Inspector General Act to allow the OIG to investigate allegations of misconduct involving Department attorneys.

Question. It is my understanding that the Attorney General has granted all of your requests to access documents. If that is true, why are you concerned about the current process for accessing certain documents and records?

Answer. For any OIG to conduct effective oversight, it must have complete and timely access to all records in the agency's possession that the OIG deems relevant to its review. This principle is codified in Section 6(a) of the Inspector General Act, which authorizes Inspectors General "to have access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." Refusing, restricting, or delaying an OIG's access to documents may lead to incomplete, inaccurate, or significantly delayed findings or recommendations, which in turn may prevent the agency from correcting serious problems in a timely manner.

We have had multiple instances recently where one or more Department components have declined to provide the OIG with materials that were relevant to an ongoing OIG review because of a claim that the Inspector General Act did not authorize our access to those materials in light of limitations in other Federal laws. Ultimately, in each instance, the Attorney General or the Deputy Attorney General

issued an order granting the OIG permission to receive the materials because they concluded that our ongoing reviews were of assistance to them in managing the Department. However, there are significant issues with this process. First, requiring an OIG to receive permission from Department leadership in order to obtain documents that the OIG has determined are necessary for its review is inconsistent with an OIG's independence. Second, authorizing access to relevant records only after the Attorney General or Deputy Attorney General concludes that the review would assist them in managing the Department is wholly inconsistent with the Inspector General Act, which expressly authorizes an independent Inspector General to determine what reviews are necessary and should be undertaken. Third, a process that requires the OIG to elevate certain document requests to the highest levels of the Department, including in routine audits, results in significant delays in the timeliness of our work. Indeed, one of our reviews was delayed for almost a full year because of these issues. And just this year, another review was delayed approximately 3 months when a component initially objected to producing certain materials that were highly relevant to an OIG audit; the OIG obtained access only after discussions between the Inspector General and the component head resolved the matter. Moreover, the FBI, which was the component that objected in 2010 and 2011 to producing certain documents to the OIG, thereby triggering the involvement of the Attorney General and Deputy Attorney General, has since put in place a process that requires its Office of General Counsel to review and produce documents to the OIG in connection with an audit or review. We did note the FBI Director's testimony before the Senate Judiciary Committee earlier this week in which he stated that he has directed his General Counsel to approve the production of documents to the OIG much faster than in recent years. This process, which has resulted in delays of our audits and reviews, is in our view a significant waste of the FBI's limited legal resources, not to mention of the OIG's, particularly since the Attorney General has stated that he is going to ensure that we receive all of the materials that we need for our reviews and audits.

Question. Do you agree that certain laws include a specific process whereby the Attorney General is responsible for granting or denying access to specific documents and records? If not, could you detail the differences in your opinion from that of the Attorney General?

Question. We are not aware of any laws that include a specific process whereby the Attorney General is responsible for granting or denying access to specific documents and records. On the contrary, Section 6 of the Inspector General Act provides OIGs with authorization to access relevant documents and materials that are already in the possession of the establishment each oversees. The only exception to that authorization relevant to the Department of Justice OIG is found in Section 8E of the Inspector General Act, which authorizes the Attorney General to prevent the Inspector General from obtaining certain information in certain circumstances, but only after the Attorney General has made the necessary determination under Section 8E. Further, the Attorney General is required to issue a written explanation of the reasons for his decision to the Inspector General, which is then provided to Congress within 30 days. These statutory safeguards serve to underscore the fact that the Inspector General Act is intended to allow the OIG complete and timely access to the Department's documents and materials, while providing the Attorney General carefully circumscribed avenues for withholding information in exceptional circumstances—and only with prompt and specific notification to the Inspector General and Congress. We have attached a memorandum from 2011 that summarizes our views on Sections 6 and 8E of the Inspector General Act as they relate to the OIG's access to certain documents and materials gathered by the FBI.

Question. What, in your view, is the best way to address the limitation that has been placed on your access to certain documents and records? Do we need to pass legislation or can the problem be remedied by the Attorney General? Is it as simple as the Attorney General requiring the entire Department to allow you unfettered access to the documents and records necessary to conduct oversight?

Answer. We believe that the Attorney General or Deputy Attorney General can immediately remedy the problem by finding as a matter of policy and practice that the OIG is entitled to access all documents in the Department's possession that are relevant to an OIG review, and by directing all Department components to comply with such a finding by providing the OIG with timely access to relevant documents. Such a directive would obviate the need for additional legislation so long as it is in place. However, in the absence of such a finding and directive, given the Department's current process of requiring the OIG to obtain permission from Department leadership in order to obtain access to certain records in the Department's possession, we believe that corrective legislation would be necessary.

Question. The Attorney General stated that the Office of General Counsel has never ruled on the issue of access to documents and records by the Inspector General. If the Attorney General does not seek a formal ruling as I have requested of him, would you be willing to seek a formal ruling on these matters?

Answer. The OIG does not believe that a formal ruling is necessary to decide this issue because the Inspector General Act is already clear in authorizing the OIG to access all documents and materials in the possession of the Department that are relevant to our reviews. Moreover, the Department's practice until 2010 had been to provide the OIG with access to all relevant materials in the Department's possession.

Nevertheless, if the Attorney General concludes that a legal opinion is necessary, the OIG does not object to the Department requesting that its Office of Legal Counsel (OLC) rule on the issue of OIG access to grand jury, Title III, and Fair Credit Reporting Act information. However, given the continuing access issues that the OIG is facing and the impact that those issues have on our independence, it is critical that such a process move expeditiously and that OLC issue its opinion promptly. Additionally, we would object if the Department were to ask OLC for a broad opinion that covered OIG access to documents beyond the three categories of materials currently in dispute, or that sought to address access to documents by other Federal Inspectors General, because of the impact such a broad ruling could have on those other Federal OIGs and the lengthy process that would ensue were the OLC to consult those OIGs for their views.

Question. Mr. Horowitz, you have raised concerns about the distinction the Department makes between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by other Department employees. In fact, your office has no authority to investigate misconduct by attorney's acting in their legal capacity. That authority has been granted to the Department's Office of Professional Responsibility.

—Why do you believe that these types of investigations should be the responsibility of your office rather than the Office of Professional Responsibility? Are there specific examples of investigations being called into question because they were handled by the Office of Professional Responsibility?

Answer. As stated in our response to the first question, we believe that all Department employees should be held to the same standards of accountability for misconduct, and we have long questioned the distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by other Department employees, including law enforcement agents. We believe the institutional independence of the OIG, which is codified in the Inspector General Act, and which OPR lacks, is critical to the effectiveness of our misconduct investigations. Moreover, Inspectors General across the Federal Government have the authority to handle misconduct allegations against lawyers acting as such within their agencies, and they have demonstrated that they are fully capable of dealing with such matters.

Additionally, the OIG's strong record of transparency is vital to ensuring the Department's accountability, particularly in cases where the independence or fairness of an internal review might be called into question. As noted in response to the first question, in recent months, others have expressed a similar concern, including the independent, non-partisan Project on Government Oversight (POGO), which issued a report last month that was critical of OPR's longstanding lack of transparency and recommended empowering our office to investigate misconduct by DOJ attorneys. The POGO report identifies specific examples of OPR investigations—including of the prosecution team in the case of former Senator Ted Stevens and of Department attorneys Jay Bybee and John Yoo in the torture memorandum issue—that it believes have fed skepticism about whether the Department is capable of investigating misconduct by its attorneys.

Question. Would such a change require a legislative fix or is this something that can be handled by the Attorney General?

Answer. In 2002, the 21st Century Department of Justice Appropriations Authorization Act amended Section 8E of the IG Act to specifically allocate to OPR exclusive jurisdiction over alleged misconduct by Department attorneys (except OPR attorneys) where the allegations relate to the exercise of the authority to investigate, litigate, or provide legal advice (Section 8E(b)(3)). Thus, notwithstanding a general provision of the IG Act (Section 9(a)(2)) that permits agency heads to transfer functions to the OIG, based on the specific language in the current law relating to jurisdiction over attorney professional misconduct allegations, it would appear that the Attorney General does not have the authority to transfer that function to the OIG. We therefore believe that legislation, such as the bipartisan legislation recently introduced by Senator Lee and co-sponsored by Senators Tester, Grassley, Murkowski, and Coburn, is the best way to address the issue.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

USA PATRIOT ACT REVIEW

Question. On March 17, 2010, I wrote to former Inspector General Glenn Fine and asked him to complete a number of audits of government surveillance authorities, including the use of Section 215 orders, pen register and trap and trace devices, and National Security Letters. On June 15, 2010, Inspector General Fine responded to my letter, indicating that a review to examine these provisions would be initiated by the Office of Inspector General. I understand that these reviews have commenced, yet, nearly 4 years later, I still have not seen final reports.

What is the status of these reviews and when can I expect to receive completed reports from your office?

Answer. We have completed the three reports regarding the above-mentioned matters and we expect to issue our latest report on the FBI's use of National Security Letters in the next few weeks. We provided our report on Section 215 orders and our report on pen register and trap and trace usage to the FBI on February 28 for a classification review of FBI information, but still have not received a completed classification review from the FBI or a date on which it will be completed. Without completed classification reviews from the FBI and the non-Department agencies whose information appears in the reports, we are prohibited from issuing our reports, including to Congress.

SUBCOMMITTEE RECESS

The next hearing will be on Thursday, at 10 a.m., in which we will take testimony from Secretary Pritzker, the Secretary of Commerce.

[Whereupon, at 12:05 p.m., Wednesday, April 3, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 4.]