

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2018**

TUESDAY, JUNE 13, 2017

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

The subcommittee met at 10:02 a.m., in room 192, Dirksen Senate Office Building, Hon. Richard Shelby (chairman) presiding.

Present: Senators Shelby, Alexander, Collins, Murkowski, Graham, Boozman, Capito, Lankford, Kennedy, Shaheen, Leahy, Feinstein, Coons, Schatz, Manchin, and Van Hollen.

DEPARTMENT OF JUSTICE

STATEMENT OF HON. ROD J. ROSENSTEIN, DEPUTY ATTORNEY GENERAL

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. The subcommittee will come to order.

Mr. Deputy Attorney General, welcome to the Commerce, Justice, and Science Appropriations Subcommittee, which will be hearing about and examining the Department of Justice's fiscal year 2018 budget request.

I am pleased to welcome you here to your first hearing before this subcommittee, and I am grateful that you and Attorney General Sessions have brought new, desperately needed leadership to the DOJ.

Your input is helpful and necessary as we review the President's spending priorities for the Justice Department in order to ensure that the country's national security and law enforcement needs are funded appropriately and sufficiently.

This is a challenging budget climate, as you know. As violent crime has risen and terrorism has escalated, fiscal constraints have tightened. The President proposes to decrease funding at the Department of Justice by \$637 million in 2018, for a new total of \$28.3 billion.

Since the start of the new administration and during the early days of your tenure as the Deputy Attorney General, I am pleased that the Department is refocusing on its core mission of enforcing our Nation's Constitution and duly enacted laws.

I believe it is critical that we target our finite law enforcement resources towards the worst criminals in our society, and I agree

with the Attorney General's directive to Federal prosecutors to go after the most violent offenders that we have in our country.

Additionally, the importance of prosecuting violent crime is reflected in the President's budget request for 230 new assistant U.S. Attorneys to help address this growing problem.

This re-ordering of priorities was further underscored by the Attorney General's reversal of the Obama administration's lenient charging and sentencing policies, requiring Federal prosecutors now to pursue the most serious charges and sentences possible.

The stronger Federal law enforcement approach toward drug crimes I believe is critical, and this is a key area where we hope to, and I hope you will, see results from more stringent prosecution and sentencing.

The heroin and other drugs crises that we have are fueled by drug traffickers who must be brought to justice, I believe, under the law.

The Department has also refocused on the critical problem of illegal immigration, making it a priority for prosecutors and empowering them to bring felony charges whenever possible under the law. Illegal immigration has become one of the most critical problems facing our Nation, so it is encouraging to learn that President Trump's tough approach is already resulting in reduced illegal border crossings.

To back up the newfound emphasis on tackling illegal immigration, the budget request seeks 40 deputy U.S. marshals to address the criminal alien problem, 70 additional border enforcement prosecutors, 20 attorneys and support staff to handle civil condemnation work for the Southwest border wall, and 20 attorneys and support staff for immigration litigation assistance.

I also appreciate the Department's related efforts to place immigration judges in jurisdictions where they are most needed and to quickly hire the immigration judges which this subcommittee has previously funded.

Over the last 8 years, dozens of these benches have gone unfilled due to the former administration's failure to act. In the meantime, the backlog of immigration cases has grown to a staggering number of 600,000.

The proposed budget seeks an increase of \$65 million for the Executive Office for Immigration Review to hire another 65 immigration judge teams on top of the 10 that were just provided in the 2017 omnibus. We will closely review the details of this request to balance the tremendous need with the restrictive budget environment that we are facing.

I trust that the recent establishment of the Department's Task Force on Crime Reduction and Public Safety will continue to provide new ideas and recommendations on how our Nation can best combat violent crime, illegal immigration, and other law enforcement challenges.

Cybersecurity and counterterrorism remain two of my top national security concerns, and I will want to know more about how this budget supports the Department's efforts in these critical fields.

I thank you for your testimony today, and we look forward to hearing from you during the question period.

Your entire written statement, Mr. Deputy Attorney General, will be made part of the hearing record in its entirety. You may proceed.

Wait a minute. I am moving too fast.
Senator Shaheen.

STATEMENT OF SENATOR JEANNE SHAHEEN

Senator SHAHEEN. Thank you, Mr. Chairman. I appreciate having the opportunity to make a statement this morning, and I appreciate your being here, Deputy Attorney General Rosenstein.

The Appropriations Committee not only holds the purse strings for the Federal Government, as you are aware, but it also plays a key role in performing oversight for all agencies under its jurisdiction, including the Department of Justice.

I am troubled because, for this subcommittee, it is incredibly unusual to hold a hearing with the Deputy Attorney General when there is a sitting Attorney General. This is the second time that Attorney General Sessions has declined to appear before this subcommittee, canceling just days before he was scheduled to appear in an open public setting. As the Nation's chief law enforcement officer, the Attorney General is the most appropriate person to come before the subcommittee and testify as to the important work of the Department of Justice.

DOJ is on the frontlines, fighting the deadly, uncontrolled opioid epidemic, which is still gaining strength. The DOJ hiring freeze risks the safety of correctional officers in our Federal prisons, and, curiously, the request for the Federal Bureau of Investigation is less than what Congress provided for fiscal year 2017, even while the FBI conducts the crucial counterintelligence investigation into Russian influence during our 2016 election process.

While providing testimony before a newly scheduled Senate Intelligence Committee hearing is important, the Attorney General is still responsible for answering critical questions from this subcommittee. He needs to provide his explanation of DOJ's budget, as well as a defense of his policies in an open public hearing not only for us, but for the American public.

Mr. Rosenstein, I applaud your appointment of Robert Mueller as the Special Counsel to oversee the ongoing investigation into Russian interference during the 2016 election. I believe this will help to depoliticize that investigation. However, many questions remain about both your and Attorney General Sessions' roles in this matter, your knowledge of resource requests made by former Director Comey, your involvement in former Director Comey's firing, and your prior meetings with Russian officials, among many other concerns. I will return to these subjects during my question period later and know that many of my colleagues will express their concerns in questions as well.

So, Deputy Attorney General, I look forward to your testimony, to our discussion today, and to, at some future date, having the Attorney General appear before us in open session.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Leahy, do you have an opening statement?

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. I do, Mr. Chairman. Thank you, and Ranking Member Shaheen, for the opportunity to make these remarks.

Deputy Attorney General Rosenstein, I will not mince words: You are not the witness we were supposed to hear from today. You are not the witness who should be sitting behind that table. That responsibility lies with the Attorney General of the United States.

Attorneys General of the past did not shy away from this Committee's questions, regardless of the topic, regardless of the party. Attorneys General of the past did not cower at the request of Congress to fulfill its constitutional oversight responsibility. And they did not agree to come and then cancel at the last minute, and then send their second-in-command in their stead because the Members of this Committee may have questions they may not want to answer. Until now, that is.

And so, with respect, Mr. Rosenstein—and I voted for you, as you know—you are not who I am interested in speaking with or hearing from today.

I do have questions for the Attorney General. I want to know why he provided false testimony to me and to Senator Franken. I want to know why, if he was recused from the Russia investigation, he played any role in the dismissal of FBI Director Comey. I want to know how he believes he can credibly lead the Justice Department, for which he has requested \$28.3 billion, amid such distressing questions about his actions and his integrity.

Importantly, I believe the Attorney General of the United States, the Nation's chief law enforcement officer, owes it to the more than 116,000 Justice Department agents, intelligence analysts, attorneys, and support personnel; the roughly 1 million State, local, and Tribal police officers; and staff supporting more than 4,500 local victims assistance programs in every State to justify the budget request of the Department of Justice.

He owes them that courtesy because the President's budget request for the Justice Department is abysmal. It cuts the Department's budget by \$643 million from the fiscal year 2017 enacted appropriations level. The Department's request is built on unrealistic assumptions.

But worse than that, it is also built on the backs of crime victims, with a permanent rescission of \$1.3 billion from the Crime Victims Fund.

Let me repeat that. The President and the administration have talked about how they support the victims of crime, but they are asking for a \$1.3 billion rescission from the Crime Victims Fund.

I do not know you try to combine the rhetoric with the reality, how you can say you are for the victims of crime but—oh, by the way—we are going to close the door on you.

Ironically, in a budget touted as tough on crime, the President cuts funding for FBI operations and investigations by \$44 million. We know we have to move ahead with a new FBI headquarters. There are no funds for that.

I have my own suspicions about why the President may seek cuts to FBI operations and personnel, but I wanted the Attorney General to come here and talk about it.

Just this week, the Attorney General crowed about how he has law enforcement's back, but the Justice Department budget slashes \$326 million in assistance to State and local law enforcement assistance grants—many States, represented on both sides of this dais, will feel these cuts.

The budget slashes funding for anti-opioid and -heroin initiatives by more than \$27 million from fiscal year 2017 enacted levels. That includes eliminating \$10 million from the COPS Anti-Heroin Task Forces, which State and local law enforcement teams in areas worst hit by the opioid epidemic use for investigations going after street traffickers and networks.

You know, everybody calls the opioid situation a public health crisis. I do not know how the Justice Department justifies cutting resources that help our communities with prevention, education, and treatment.

I am not surprised that while they cut out the money for opioids, they propose millions of dollars to hire lawyers to focus on seizing private land from hardworking Americans along the Southwest border so the President can build his misguided wall. We will not protect our people but, by golly, we will seize their land.

The unbalanced and misplaced “priorities” of this budget makes one thing clear: Rather than a “foundation for American greatness”, President Trump and Attorney General Sessions are intent on making our communities less safe, abandoning victims of crime, and victimizing and villainizing immigrants who contribute to our communities.

Finally, Mr. Rosenstein, regardless of the circumstance for your appearance today, I will raise this one point with you. On May 1, the Office of Legal Counsel issued an opinion arguing that the executive branch is not obligated to meet the legitimate oversight requests of individual Members of Congress. It opined that only requests from the chairs of committees must be met.

This is an affront to the Congress, a *co-equal* branch of government. I have been here with Republican and Democratic administrations. I have been here a number of times when Republicans controlled the Senate, a number of times when Democrats did. I have never, ever heard anybody, Republican or Democrat, make this claim. In fact, we have roundly rejected it on both sides of the aisle.

Judiciary Committee Chairman Grassley, with whom I have worked both when I was chair and when I was ranking member, called your opinion “nonsense”.

Now, the Attorney General has the authority—I actually believe he has an obligation—to withdraw that opinion.

The administration may seek to hide many things from the American people, but they should know this: Today's committee chairs are tomorrow's ranking members. Obstructing congressional oversight will do nothing to advance the interests of the American people. This opinion should be withdrawn.

Mr. Chairman, I will put my whole statement in the Record.

Senator SHELBY. Thank you. Without objection.

[The statement follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

Thank you, Chairman Shelby and Ranking Member Shaheen, for the opportunity to make these remarks.

Deputy Attorney General Rosenstein, I won't mince words: You are not the witness we were supposed to hear from today, and you are not the witness who should be sitting behind that table. That responsibility lies with the Attorney General of the United States. Attorneys General of the past did not shy away from this Committee's questions, regardless of the topic. Attorneys General of the past did not cower at the request of Congress to fulfill its constitutional oversight responsibilities. And Attorneys General of the past did not send their second-in-command in their stead because the Members of this Committee have questions they may not want to answer. Until now, that is.

And so, with respect Mr. Rosenstein, you are not who I am interested in speaking with or hearing from today. I do have questions for your superior. I want to know why he provided false testimony to me and Senator Franken. I want to know why, if he was recused from the Russia investigation, he played any role in the dismissal of FBI Director Comey. I want to know how he believes he can credibly lead the Justice Department, for which he has requested \$28.3 billion, amid such distressing questions about his actions and his integrity. Importantly, I believe the Attorney General of the United States—the Nation's chief law enforcement officer—owes it to the more than 116,000 Justice Department agents, intelligence analysts, attorneys, and support personnel; the roughly one million State, local, and Tribal police officers; and staff supporting more than 4,500 local victim assistance programs in every State to justify the budget request of the Department of Justice.

He owes them that courtesy because the President's budget request for the Justice Department is abysmal. It cuts the Department's budget by \$643 million from the fiscal year 2017 enacted appropriations level. The Department's request is built on unrealistic assumptions and on the backs of crime victims, with a permanent rescission of \$1.3 billion from the Crime Victims Fund. Let me repeat that: An administration that claims to support crime victims is asking for a permanent rescission of \$1.3 billion from the Crime Victims Fund. How in heaven's name can you justify that assault on the rights and needs of crime victims?

Ironically, in a budget touted as "tough on crime," the President cuts funding for FBI operations and investigations by \$44 million, and fails to provide the needed funding to move ahead with a new FBI headquarters. I find these cuts curious, as they come on top of media reports that, prior to the President firing him, former FBI Director James Comey asked the Department for additional resources for the investigation into Russian interference in the 2016 election. I know I have my own suspicions about why the President may seek cuts to FBI operations and personnel, but the Attorney General should be here to justify them.

Just this week, the Attorney General crowed about how he has law enforcement's back. But the Justice Department's budget slashes \$326 million in assistance to State and local law enforcement assistance grants, on which our communities rely to keep our neighborhoods, children and schools safe, ensure crime victims have the tools they need to bring their attackers to justice, and make sure that our tax dollars spent on corrections do not simply fuel a revolving door in and out of prison. Instead this budget's lowlights include:

- More than \$70 million cut from Byrne-Justice Assistance Grants, the bread and butter of our local law enforcement agencies;
- \$20 million cut from rape kit backlog reduction grants;
- \$22 million cut from youth mentoring grants that support groups like the Boys and Girls Clubs of America, and ensure that our children have safe havens to go after school and during summer months while their parents are at work;
- \$30 million cut from school safety grants, which Congress funded in the aftermath of the tragic shootings at the Sandy Hook Elementary School; and
- \$20 million cut from Second Chance Act grants, which reduce prison recidivism rates.

This budget slashes funding for anti-opioid and heroin initiatives by more than \$27 million from fiscal year 2017 levels. This includes eliminating \$10 million for the COPS Anti-Heroin Task Forces, which State and local law enforcement teams in areas worst hit by the opioid epidemic use for investigations and going after street traffickers and networks. Just this weekend, *The Washington Post* reported that the opioid epidemic is now pushing up death rates for nearly every group of Americans. How—when everyone calls this a public health crisis—does the Justice Department justify cutting resources that will help our communities with prevention, education, and treatment?

I am not surprised that the budget before us proposes millions of dollars to hire lawyers to focus on taking private land from hardworking Americans along the southwest border so that the President can build his misguided wall. I am also not surprised that the Justice Department budget seeks to punish local law enforcement and victims of domestic and sexual violence and other violent crimes by pushing a misguided and misdirected expansion of conditions placed on so-called “sanctuary cities.” The unbalanced and misplaced “priorities” of this budget makes one thing clear: rather than a “foundation for American greatness,” President Trump and Attorney General Sessions are intent on making our communities less safe, abandoning victims of crime, and villainizing immigrants who contribute to our communities.

Finally Mr. Rosenstein, regardless of the circumstances for your appearance today, I will raise this one point with you. On May 1, the Office of Legal Counsel issued an opinion arguing that the executive branch is not obligated to meet the legitimate oversight requests of individual members of Congress. It opined that only requests from the chairs of Committees must be met. This is an affront to the Congress—a *co-equal* branch of government—and the argument the OLC makes has been roundly rejected on both sides of the aisle. Judiciary Committee Chairman Grassley—with whom I worked as both chair and ranking member on a number of oversight matters—called this opinion “nonsense.” The Attorney General has the authority, and I believe an obligation, to withdraw that opinion. This administration may seek to hide many things from the American people. But this administration should know this: Today’s committee chairs are tomorrow’s ranking members. Obstructing congressional oversight will do nothing to advance the interests of the American people. This opinion should be withdrawn.

Senator SHELBY. Mr. Rosenstein, you may proceed.

SUMMARY STATEMENT OF HON. ROD J. ROSENSTEIN

Mr. ROSENSTEIN. Thank you. Good morning, Chairman Shelby, Ranking Member Shaheen, Members of the subcommittee. I am honored to present the President’s fiscal year 2018 budget for the Department of Justice.

Our proposed budget advances the interests of the American people by allowing the dedicated men and women of the Department of Justice to continue their outstanding work. We are grateful for your strong support, and we look forward to building on our successes as we work to protect the Nation, promote the rule of law, and to ensure equal justice for all.

Our 2018 budget request shows a strong commitment to the Justice Department’s top priorities. It provides more funding to fight terrorism and cybercrime, to reduce violent crime, to tackle the opioid epidemic, and to combat illegal immigration. It also gives us the resources we need to support our State, local, and Tribal partners in their essential law enforcement work.

This budget reflects three important themes: number one, truth in budgeting; number two, increases in efficiency; and number three, focusing on priorities.

These changes are critical and they support the executive order of the President to reorganize government agencies for the goal of increasing efficiency and effectiveness.

A first, the budget is an honest one, eliminating from the books thousands of previously unfunded and vacant positions that give a misleading impression of the personnel we have on duty in the Department. Those ghost positions, in most cases, have been vacant for years or have never been filled at all.

Secondly, this budget seeks to identify areas where we can afford to cut back without harming our mission.

And, finally, the budget improves the allocation of our precious resources so that we can do the most effective work with every taxpayer dollar that we spend.

National security remains our highest priority. We face a wide array of evolving threats from terrorism to espionage and cybercrime.

We also need to come to terms, Senators, with the “Going Dark” challenge, which I know you are all familiar with. “Going Dark” refers to law enforcement’s increasing inability to lawfully access, collect, and intercept real-time communications and stored data. Even with a warrant, as a result of changes in technologies, this phenomenon severely impairs our ability to conduct investigations and bring criminals to justice.

Our law enforcement officers operate within the Constitution, and they respect legitimate privacy interests. When there is a legitimate law enforcement need to access electronic information, and we have a court order or other legal authority, public safety is jeopardized when we are unable to retain that relevant information. Our Department must keep adapting to evolving challenges.

To that end, the budget provides an extra \$98.5 million to combat terrorism, espionage, and cybersecurity threats.

The Justice Department also is committed to protecting the American people from violent crime and from the adverse effects of illegal drug distribution, both of which are spiking at alarming rates. Violent crime is rising in many areas of our Nation, and drug-related injuries and deaths are increasing across the country.

Senators, the evidence of this is indisputable. Rising violent crime and increasing drug abuse are devastating many American families, and the Justice Department is confronting these crises head-on, and we need your help.

The proposed budget provides the Department’s law enforcement agencies with extra support, so they can target the worst violent criminals, transnational crime organizations, gangs, and drug-trafficking rings. It also provides, as the chairman mentioned, for 230 additional assistant U.S. Attorneys to focus specifically on our efforts to fight violent crime. Those additional resources will enhance the ability of Federal law enforcement to fight crime and to keep our communities safe.

We are focusing also on getting illicit drugs off the streets through strong enforcement efforts and through our drug takeback programs. In addition to that, we call on doctors, pharmacists, and pharmaceutical companies to take a hard look at their practices and help us develop ways that we can reduce the harmful overprescription of pharmaceutical drugs.

The American people also expect our government to secure our borders and to restore a lawful system of immigration. The Department of Justice will do our part in conjunction with the Department of Homeland Security. Our proposed budget provides much-needed funding to hire 75 additional immigration judges and support personnel to reduce the unacceptable backlog in our immigration courts. It will also allow us to hire more deputy U.S. marshals and 30 more border enforcement prosecutors so that we can effectively apprehend and prosecute criminal aliens who threaten our communities.

The Federal Government, of course, does not maintain public safety alone. Eighty-five percent of the law enforcement officers in our country are not Federal. They work for our State, local, and Tribal partners, and we rely on them heavily. The men and women serving on the frontlines are our first line of defense, and they help to keep our communities safe. They deserve our support.

Our budget maintains our commitments to these valued partners, and it prioritizes grant funding to the high-performing programs that have proven to be effective.

This budget funds important priorities while helping us achieve a more efficient and cost-effective Department. We will do all we can to be good stewards of the Department's resources. We have a duty to avoid waste and to safeguard taxpayer money so it will be available to fight crime and protect people.

The Department of Justice is home to 115,000 honorable men and women who work every day to serve, protect, and defend the American people and respect the Constitution of the United States. This budget makes it possible for us to do our jobs with the investments set forth in the budget. And with your support, we will continue to fairly enforce our Nation's laws and ensure safety and equal justice for all Americans.

So I look forward to working with this subcommittee and the Congress in the months and years ahead.

If I may, Senators, with my few remaining moments, I learned this morning about an incident in Georgia in which we understand that two correctional officers were murdered in the course of transporting prisoners in Georgia. I talked with the Marshals Service Director David Harlow this morning, and we have committed all Federal resources to help catch those fugitives and hold the perpetrators accountable.

Our thoughts are with the victims and their families and in support of law enforcement personnel who are working on the case as we sit here today. An attack on any American law enforcement officer is an attack on every American law enforcement officer and on the principles that we all believe in.

Senators, I will be happy to take any questions about our proposed budget, and I look forward to that.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. ROD J. ROSENSTEIN

Good morning, Chairman Shelby, Ranking Member Shaheen, and other Members of the subcommittee. I am honored to appear before you today to present the President's fiscal year 2018 budget for the Department of Justice. The Department looks forward to building on our successes and continuing progress on the most pressing issues affecting our communities and our citizens.

Let me start by thanking you for your strong support for the Department in the recently completed fiscal year 2017 bill. The President's fiscal year 2018 budget requests \$27.7 billion in discretionary authority for the Department of Justice, including \$25.8 billion for Federal programs and \$1.9 billion for State, local, and Tribal assistance programs. The Department's fiscal year 2018 budget proposal aims to support Federal law enforcement priorities and the criminal justice needs of our State, local and Tribal law enforcement partners. The request advances the safety and security of the American people, because without safety there can be no prosperity. In this regard, this budget includes increases in funding to confront terrorism, pursue cybercriminals, reduce violent crime, tackle the Nation's opioid epidemic, and combat illegal immigration.

The key Department funding priorities include:

- Ensuring the security of the country and safety of the American people.*—The budget allocates an additional \$98.5 million to enhance our abilities to combat terrorism, espionage, and cybersecurity threats through the investigation, apprehension, and prosecution of foreign and domestic perpetrators.
- Combatting violent crime and the opioid epidemic.*—The budget will support efforts at the Department's law enforcement agencies by providing an increase of \$198.5 million to target the worst of the worst criminal organizations and drug traffickers by addressing the violent crime and opioid epidemics that are ravaging our Nation. Of particular note, this budget will provide for 230 new Assistant United States Attorneys to address violent crime across the country.
- Combatting illegal entry and unlawful presence in the United States.*—The budget provides a much-needed increase of nearly \$75 million for the hiring of 75 additional immigration judges and associated support staff at the Executive Office for Immigration Review (EOIR) to bolster its efforts to more efficiently adjudicate removal proceedings. Further, it enhances border security and immigration enforcement by providing 70 additional border enforcement prosecutors and 40 deputy U.S. Marshals for the apprehension, transportation, and prosecution of criminal aliens.
- Promoting partnerships with State, local, and tribal entities.*—The budget provides \$5.1 billion in discretionary and mandatory funding for State, local, and tribal law enforcement assistance to maintain our commitments to our partners without reducing our Federal operational role. These programs focus on ensuring the implementation of critical training that protects the lives of State and local law enforcement personnel. In addition, the Crime Victims Fund mandatory appropriations provide \$3.0 billion in funding.
- Reprioritizing and reshaping resources for a smaller, more efficient Department.*—In line with the President's Executive Order on a "Comprehensive Plan for Reorganizing the Executive Branch," this budget request focuses on funding increases in priority initiatives that secure the safety and prosperity of the American people.

ENSURING THE SECURITY OF THE COUNTRY AND SAFETY OF THE AMERICAN PEOPLE

National security remains the Department's highest priority. The Department will always maintain its commitment and responsibility to safeguard American citizens and defend the homeland while maintaining our Constitutional principles. Threats are constantly evolving, requiring additional investments to mitigate those threats in innovative ways. Terrorists seek to sabotage critical infrastructure; organized crime syndicates seek to defraud individuals, governments, banks and corporations; and spies seek to steal defense and intelligence secrets and intellectual property. All endanger our Nation's economy and security.

The fiscal year 2018 budget will support the Department's ability to respond to these evolving threats by reprioritizing \$98.5 million that will provide program increases for the areas of (1) combatting domestic and foreign terrorism; (2) intelligence collection and analysis; (3) cybercrime; and (4) investigative and law enforcement technology.

Today's domestic and foreign terrorist threats are complex, and require the Federal Bureau of Investigation (FBI) to make adjustments in methods and capabilities while maintaining and improving procedures that are working well. Accordingly, the budget request will provide \$8.2 million to conduct physical surveillance on high priority targets.

The Department has developed a proactive, intelligence-based strategy to predict, detect, and deter those who wish to harm the American people and the national interest. The FBI will devote \$19.7 million to address the threats posed by foreign and insider operations.

Cybercrimes are becoming more common, more sophisticated, and more dangerous. Our adversaries increasingly use computers and the Internet to advance their illicit activities. The Department has a unique and critical role in cyber security that emphasizes countering and mitigating cyber threats by investigating, prosecuting, and providing legal and policy support for intrusion and cybercrime cases. The Department's fiscal year 2018 budget provides \$41.5 million to enhance the technical capabilities of FBI investigative personnel, increase the number of cyber investigations, and improve cyber collection. Intrusions of private sector and government networks over recent years have highlighted the increasing capabilities of these cyber actors. Safeguarding information networks that hold personal and private data is a top priority. The Department is using every tool at its disposal to work proactively, respond swiftly, and adapt constantly to this threat.

The Department of Justice must continue to take a leading role in enhancing the capabilities of the law enforcement and national security communities. This budget request will provide \$21.6 million in funding to counter the “Going Dark” threat. The seriousness of this threat cannot be overstated. “Going Dark” refers to law enforcement’s increasing inability to lawfully access, collect, and intercept real-time communications and stored data, even with a warrant, due to fundamental shifts in communications services and technologies. This phenomenon is severely impairing our ability to conduct investigations and bring criminals to justice. The FBI will use this funding to develop and acquire tools for electronic device analysis, cryptanalytic capability, and forensic tools. The Department’s role has been to collect, house, analyze, and share critical data among our Federal, State, local, and Tribal partners. The fiscal year 2018 budget supports the operations and maintenance of the Biometrics Technology Center, operated collaboratively between the FBI and Department of Defense, with a \$7.4 million investment.

COMBATTING VIOLENT CRIME AND THE OPIOID EPIDEMIC

Violent crime and drug abuse are increasingly commonplace throughout our country. While today’s overall crime rates are near historic lows, recent trends indicate that those levels are at risk. Updated FBI statistics show that from 2014 to 2015, violent crime has increased more than 3 percent, which is the largest 1 year increase in the last 24 years. The murder rate has increased 10 percent, the largest increase since 1968. Compounding this issue is the opioid and illegal drug epidemic. Heroin overdose deaths have more than tripled from 2010 to 2014, while illegal drugs flood across our borders into cities and towns, bringing violence and tragedy with them. Protecting the people of this country from violent crime is a high calling of the men and women of the Department of Justice. Today, it has become more important than ever.

Consistent with the President’s Executive Orders, the fiscal year 2018 budget requests \$198.5 million to (1) reduce violent crime; (2) combat the prescription drug and opioid epidemic; and (3) target Transnational Criminal Organizations. These resources will enable the Department to target and dismantle the worst criminal organizations and drug traffickers that are bringing violence, death, and destruction to our communities. The Department of Justice utilizes a comprehensive set of programs that leverage law enforcement operations, prosecutorial action, and support for State and local governments to combat the violent offenders in our communities.

The Department’s approach to combatting violent crime includes a request for \$50 million that will go to support ballistics tracing, expedite National Firearms Act applications, address the high volume of criminal background checks, and replace body armor and radios for deputy U.S. Marshals. The National Integrated Ballistic Information Network (NIBIN) will be supported with \$6.5 million that will provide additional office space, crime gun intelligence, training for State and local partners, and equipment needed for operations. We request \$19 million to support a multi-agency Violent and Gun-Related Crime Reduction Task Force. This will enhance investigative capabilities and prosecutorial capacity. The task force will strategically focus on the hardest hit urban areas by using innovative methods to track and apprehend individuals, organizations, and gangs and is composed of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), FBI, United States Marshal Service (USMS), and the United States Attorneys. Funding will bolster investigative capacity, apprehension efforts, and grants to State and local partners.

The budget request includes an increase of \$40.4 million, for a total of \$625.2 million, in Departmental resources directed to combatting the prescription drug and heroin epidemic. The Department will take a two-pronged approach to tackling this scourge. First, this funding will support the investigation and prosecution of criminals that are bringing the illicit drugs into our communities. Second, we will leverage our relationships with medical providers, educators, and community leaders to increase awareness, education, and treatment. This request also funds the DEA’s Diversion Control Program. These resources will increase regulatory and investigative capacity under the Controlled Substances Act.

The Department will target the most notorious violent criminals, gangs, and drug trafficking rings. The fiscal year 2018 request includes \$5.8 million for OCEDET, \$6.8 million for FBI, and \$6.5 million for DEA—all to confront, disrupt, and dismantle transnational organized crime. Also included is \$18.8 million not financed by adding money to the Department budget, but by redirecting current resources and reprioritizing Department missions to support the hiring of 230 new Assistant United States Attorneys to combat all types of violent crime through comprehensive prosecution and prevention efforts.

COMBATTING ILLEGAL ENTRY AND UNLAWFUL PRESENCE IN THE UNITED STATES

The President's fiscal year 2018 budget places a priority on enhancing border security and improving enforcement of immigration laws. The backlog of immigration cases, as well as the upward trend in transnational crime, present crucial threats that must be addressed. The budget request of \$144.9 million will allow the Department to secure our borders with the full weight of both the immigration courts and Federal law enforcement to preserve America's national security.

The efforts of the Department of Homeland Security (DHS) to increase immigration enforcement have resulted in an 87 percent increase in the number of cases brought before our immigration courts. The requested resources will allow the Department's Executive Office for Immigration Review (EOIR) to respond by providing 75 new immigration judges and associated support staff to efficiently and effectively adjudicate these cases. To support the efforts of DHS and EOIR, the U.S. Attorneys' offices will add 70 additional border enforcement prosecutors and the Civil Division's Office of Immigration Litigation (OIL) will add 20 additional positions to defend the Federal Government's immigration enforcement efforts.

Transnational gangs and international cartels flood our country with drugs and leave death and violence in their wake. Criminal aliens and document forgers undermine our system of lawful immigration. The President's Executive Orders on Border Security, on Transnational Criminal Organizations, and on Public Safety are our guideposts. We will execute a strategy that secures the border; apprehends and prosecutes criminal aliens who threaten our public safety; combats gangs; and dismantles and destroys the cartels.

PROMOTING PARTNERSHIPS WITH STATE, LOCAL, AND TRIBAL ENTITIES

The fiscal year 2018 budget maintains the Department's commitments to State, local, and Tribal law enforcement partners without reducing the Department's Federal operational role. This funding will ensure greater safety for law enforcement personnel and the citizens they serve. The fiscal year 2018 discretionary and mandatory request for State, local, and Tribal law enforcement assistance is \$5.1 billion.

The fiscal year 2018 request for the Office of Justice Programs (OJP) is \$4.4 billion, including \$1.3 billion for discretionary grant programs and \$3.1 billion for mandatory programs. The budget includes \$70 million for a new, Project Safe Neighborhood (PSN) Block Grant program, which will build on the work of the Department's ongoing PSN initiative to create safer neighborhoods through sustained reductions in gang violence and gun crime.

The fiscal year 2018 request for the Office of Community Oriented Policing Services (COPS) totals \$218 million, which includes \$207 million for the COPS Hiring Program of which \$30 million is dedicated for Tribal law enforcement. The Office on Violence Against Women (OVW) fiscal year 2018 request totals \$480 million, and includes \$215 million for the STOP program, which provides critical funds to States to support their responses to violence against women. Another \$35 million of the request will support the Sexual Assault Services Program, dedicated to direct intervention and related assistance for victims of sexual assault.

REPRIORITIZING AND RESHAPING RESOURCES FOR A SMALLER, MORE EFFICIENT DEPARTMENT

In executing the President's Executive Order on a "Comprehensive Plan for Reorganizing the Executive Branch," the Department of Justice is dedicated to good stewardship of taxpayer dollars. As an example, the Department's fiscal year 2018 request dedicates \$274.7 million, an increase of \$24.9 million, to support our work against civil and criminal healthcare fraud. The most recent projections show that the 3-year average return on investment on healthcare fraud funding for the Department and HHS is \$5 to every \$1 invested. This is the type of stewardship that protects the vulnerable and provides significant returns to the American people.

I am honored to submit the President's fiscal year 2018 budget request. This request funds the Department's priorities and will result in a more cost-effective Department. As Deputy Attorney General, I am committed to making the Department of Justice run as efficiently as possible, without adding to the burden on the American taxpayer.

CONCLUSION

Chairman Shelby, Ranking Member Shaheen, and Members of the subcommittee, it is my pleasure to highlight our efforts to be good stewards of the resources and authorities bestowed on us as we strengthen the Department's ability to ensure public safety and equal justice for all Americans. I thank you for your past support of

the Department's financial needs, and for the opportunity to present our fiscal year 2018 budget request. I look forward to working with you through the upcoming fiscal year to ensure that the Department of Justice remains on solid financial footing and can accomplish its multiple and varied missions effectively.

Senator SHELBY. Thank you for your testimony. I am sure you are going to have a lot of questions. I will try to stay within the budget area that I am interested in this morning.

Mr. Rosenstein, what specifically is the Department of Justice doing to accelerate the hiring of new immigration judges?

IMMIGRATION

Mr. ROSENSTEIN. Thank you, Senator. This has been one of my top priorities. As you know, I have been in the job for 6 weeks. And I learned when I took the position——

Senator SHELBY. Can you take the mike up to you a little bit.

Mr. ROSENSTEIN. I learned very early in my tenure about this extraordinary backlog in immigration cases, and that has been one of my top priorities, to address that. Our fiscal year 2018 budget includes \$145 million to enhance border security and immigration enforcement. And that includes, as I mentioned in my opening statement, 75 new immigration judge teams. I believe it is approximately 450 people, the judges and their support staff, and \$75 million to address that backlog, which exceeds 500,000 and is approaching, as the chairman mentioned, 600,000.

It also includes additional assistant U.S. Attorneys and \$7 million to prosecute violations of immigration laws, additional deputy U.S. marshals, and additional attorneys in the Civil Division.

But with regard specifically to your question about the backlog, Senator, we are very focused on that. One of the challenges that we had was some bureaucratic delays in hiring and filling vacancies. So in addition to creating 75 new judges and filling those positions and their support personnel, we are also expediting the hiring of immigration judges to fill the existing vacancies.

So it is a big challenge. I have talked with the leadership of that office, and we are going to make it a top priority to first put an end to the increase in the backlog and then to work on ways that we can more efficiently and more quickly reduce that backlog. Because my view, Senator, is that everybody who has a case pending in our immigration court deserves an expeditious resolution of that case.

Senator SHELBY. Can you move and are you moving some judges around to where they are most in need? There has to be a surge somewhere.

Mr. ROSENSTEIN. Yes, in fact, we have moved some immigration judges to the border districts, I believe, and we are going to continue looking at that. Obviously, we have the 75 who are proposed in this budget. We have, I believe, approximately 56 vacancies that already exist, and we are certainly going to put those judges where we think they are most needed and where we think they can do the most good.

COUNTERTERRORISM

Senator SHELBY. Getting into counterterrorism, you know that is a top priority for this subcommittee, and I believe it is for the Jus-

tice Department, too. Of course, the FBI's Terrorist Explosive Device Analytical Center, we call it TEDAC, is very critical, given that IEDs are still prevalent and dangerous tools, as you know, used by terrorists at home and abroad, and could and probably will visit us in a big way in this country.

The forensics investigations conducted by TEDAC personnel led to the convictions of the shoe bomber, the Boston marathon bomber, and other terrorists. So you probably can understand some of our disappointment when the Department's budget request included a \$76 million reduction proposal for the FBI's construction account, which includes facilities for TEDAC. That is hard for us to swallow.

Mr. ROSENSTEIN. Yes, Senator. My understanding of that—as you mentioned, the TEDAC was formally designated to serve as our single strategic center to investigate IEDs, explosive devices, in January 2015. And I think it has been extraordinarily valuable, as you mentioned, in investigations and in training for the government.

My understanding, Senator, with regard to that \$76 million, and this is based upon our career experts, some of whom are sitting behind us, is this was a one-time, nonrecurring request, and we simply did not have the need for additional construction funds this year. It does not reflect any lack of support for the operations of the TEDAC. We believe it is a very efficient and effective operation, and we intend to continue supporting it. We simply do not need that additional construction funding this year.

Senator SHELBY. Okay. We are going to have to work on that. We will try to work with you.

SANCTUARY CITIES

Sanctuary cities, this is an ongoing problem in our country, and you know this very well. My question, grants awarded to State and local jurisdictions are tied to compliance with Federal laws, as I understand. And the Bureau of Prisons must give Immigration and Customs Enforcement officials priority regarding Federal detainees.

Is that correct? Do you want me to state that again?

Mr. ROSENSTEIN. I am sorry? Priority?

Senator SHELBY. I understand that grant awards to State and local jurisdictions are tied to compliance with all Federal laws.

Mr. ROSENSTEIN. Yes, that is correct.

Senator SHELBY. And that the Bureau of Prisons must give or should give Immigration and Customs Enforcement officials priority regarding Federal detainees.

Mr. ROSENSTEIN. I do not believe we have an issue with cooperation from the Federal Bureau of Prisons. That is correct, Senator.

Senator SHELBY. This is a problem, though, in the country, is it not?

Mr. ROSENSTEIN. It is a challenge with regard to some State and local facilities that do not honor our immigration detainees.

Senator SHELBY. I have a few other questions for the record, but there are a lot of people wanting to question you.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

SPECIAL COUNSEL

Mr. Rosenstein, many news outlets both last night and this morning have reported that President Trump is considering firing Special Counsel Robert Mueller. Under the regulations governing the appointment of a Special Counsel, 28 C.F.R. 600, and I quote, "The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including a violation of departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal."

Now, Mr. Rosenstein, in this matter, you are actually the one exercising hiring and firing authority, because Attorney General Sessions is recused.

Is that correct?

Mr. ROSENSTEIN. Yes, that is correct.

Senator SHAHEEN. At this point, have you seen any evidence of good cause for firing Special Counsel Mueller?

Mr. ROSENSTEIN. No, I have not.

Senator SHAHEEN. Have you given the Special Counsel full independence from the Justice Department to conduct this investigation?

Mr. ROSENSTEIN. Yes, Senator. I appreciate that question. At the last hearing I attended, I explained it would require a long time to explain exactly why I am confident that he has full independence.

The short answer is, though, that that regulation, as you may know, was written and implemented during the Clinton administration under the authority of Attorney General Reno. I know the folks who wrote that. They wrote it to deal with these sorts of situations. And I am confident that he will have sufficient independence.

And it is certainly theoretically possible that the Attorney General could fire him, but that is the only person who has the authority to fire him. And in fact, the chain of command for the Special Counsel is only directly to the Attorney General or, in this case, the Acting Attorney General. So nobody else in the Department would have authority to do that.

And you have my assurance that we are going to faithfully follow that regulation and Director Mueller is going to have the full degree of independence that he needs to conduct that investigation appropriately.

Senator SHAHEEN. Is there a record that gives him that full independence? Is that done in a letter or an order from you as the Deputy Attorney General?

Mr. ROSENSTEIN. Yes, Senator. It is done in the order, which I believe was issued on May 17. The order references the regulation from which you have read. And so that is the source of his authority.

Senator SHAHEEN. Thank you.

You mentioned in your opening statement the importance of the budget request for 230 assistant U.S. Attorneys. I certainly agree

that is important. I am concerned, however, that we had an en masse firing of U.S. Attorneys throughout the country. And, as far as I know, at least in New Hampshire, the Administration has not made any nominations to replace the person who was fired.

Can you tell me how many U.S. Attorneys have been nominated throughout the country?

Mr. ROSENSTEIN. I believe, Senator that the President announced his first set of nominations yesterday, and I believe there were seven or eight in that first round.

U.S. ATTORNEY APPOINTMENTS

What I can assure you is that we are moving very expeditiously. I think there has been some press that I think may be somewhat misleading about that. I believe that we are actually going to be ahead of most recent administrations in the speed by which we are appointing U.S. Attorneys. It is obviously very important to me, because I spent 12 years serving as U.S. Attorney, and I know how important good U.S. Attorneys are to the operation of the Department of Justice. In fact, the last two Saturdays I have spent in the Department interviewing candidates for about 10 districts each weekend. So we anticipate that, by the end of the summer, we will see a large number of U.S. Attorneys nominated throughout the country.

Senator SHAHEEN. Well, I am certainly glad to hear that. It is my understanding that, at least in New Hampshire, we have not seen wholesale firing of U.S. Attorneys in the way that we did in this administration. Was there a reason why every U.S. Attorney in the country was fired on the same day?

Mr. ROSENSTEIN. So, Senator, I am pleased to tell you not everyone was fired because I was one of the U.S. Attorneys that day.

Senator SHAHEEN. Good.

Mr. ROSENSTEIN. There were four who were not fired, but I was not in the Department at that time. I learned about the firings after the decision had been made, so I have no insight into why that decision was made.

Senator SHAHEEN. You mentioned in your opening statement the tragedy in Georgia and the officers who were murdered. It is a reminder that those who work in our prisons have a very difficult job that is very dangerous.

I am troubled by the fact that, while the administration's hiring freeze was lifted in April, the Department of Justice has been under a self-imposed hiring freeze since mid-February. And while there was a blanket exemption for positions relating to public safety and national security, that provision does not include the Bureau of Prisons, which is still under a hiring freeze.

DEPARTMENT GUIDANCE ON HIRING

In fact, in New Hampshire, FCI Berlin had extended conditional offers to seven potential employees, five of whom were correctional officers, but due to the imposition of the hiring freeze, those positions were canceled by DOJ, so they were not able to go forward with those hirings.

As you point out, this is a difficult job. Can you explain why we continue to have a hiring freeze for correctional officers at the Bureau of Prisons?

Mr. ROSENSTEIN. Senator, I appreciate that question. I think there may be some misunderstanding about this. The Department froze BOP hiring at the headquarters in Washington and at the regional administrative offices. But my understanding is that the Department allowed BOP institutions to continue hiring up to their staffing levels as of January 22, which means that, if people left, they would be able to fill those vacancies.

So within that overall level of staffing, I believe we have left the discretion with BOP to hire for whichever positions it believes are most critical to its operations. Now, obviously, there has been a continuing decline in the number of Federal prisoners and, commensurately, probably less of a need for personnel.

But I am going to go back and talk with the Director Kane about that and make sure that we do have proper staffing for that prison. As far as I know, he, indeed, does have discretion to fill those positions, if he thinks it is appropriate.

Senator SHAHEEN. I appreciate your willingness to do that and would urge you to follow through. It is my understanding that, because the positions were not officially filled by the time of the February guidance, that they were canceled by DOJ.

Mr. ROSENSTEIN. I will look into that.

[The information follows:]

The hiring freeze as interpreted by the Department, applied to BOP positions that were vacant as of January 22, 2017; this guidance covered the positions you highlighted. Subsequently, the BOP has been permitted to hire staff and fill positions at its institutions, so long as BOP do not exceed the staffing level that existed on January 22, 2017. The BOP is presently reviewing vacancies at all of its institutions.

Senator SHAHEEN. Thank you.

Senator SHELBY. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

SPECIAL COUNSEL

Deputy Attorney General Mr. Rosenstein, I just want to follow up quickly on the two questions that Senator Shaheen asked you about the Special Counsel.

Has the President ever discussed with you the appointment of the Special Counsel or discussed the Special Counsel in any way?

Mr. ROSENSTEIN. No, he has not.

Senator COLLINS. And second, if President Trump ordered you to fire the Special Counsel, what would you do?

Mr. ROSENSTEIN. Senator, I am not going to follow any orders unless I believe those are lawful and appropriate orders.

Under the regulation, Special Counsel Mueller may be fired only for good cause, and I am required to put that cause in writing. And so that is what I would do. If there were good cause, I would consider it. If there were not good cause, it would not matter to me what anybody says.

Senator COLLINS. Thank you.

HEROIN AND OPIOID EPIDEMIC

I want to turn to the opioid crisis, which plagues my State and so many others. Last year, drug overdoses were responsible for more than 59,000 deaths in this country, including a record 376 such deaths in Maine.

That is 104 more overdose deaths than the year before in my State, so we are not making progress. The situation is actually getting worse, despite considerable efforts on the part of so many.

Last year, I was briefed in Maine by Federal law enforcement officers who told me that they had seen a major influx of drug dealers coming from out of State with the direct ties to gangs in major cities. As well as the Mexican drug cartels. For example, in one case, gang members trafficked heroin between New Haven, Connecticut, and Bangor, Maine, where I live. They traded drugs for firearms and then distributed those firearms to other gang members upon their return to Connecticut.

We obviously need a multipronged approach to the heroin and opioid crisis. That includes treatment, education, prevention, and law enforcement. And key to that law enforcement leg of the stool is cooperation among Federal, State, and local officials. The Department's budget requests \$3 million less than Congress appropriated for the Comprehensive Addiction and Recovery Act programs for the current fiscal year. And even more troubling to me there is no funding proposed for the COPS Anti-Heroin Task Force. In my State, this program has helped law enforcement officers seize heroin and prescription opioids, and arrest drug dealers.

Why is the administration proposing this cut in the CARA funding and eliminating the funding for the COPS Anti-Heroin Task Force?

Mr. ROSENSTEIN. Senator, I appreciate that question.

I think there are a lot of issues. For me, this is actually one of the most important issues that I hope to talk about today. I do not know if I can give a complete answer in 1 minute, 35 seconds, but let me tell you, I actually brought with me a chart that I think would be of interest to you.

This is a chart of drug overdose deaths in the United States of America. This issue first came to my attention as U.S. Attorney in Maryland about 3 or 4 years ago when it was brought to my attention that there had been a significant spike in deaths attributable to opioid drugs in our State, and it has only accelerated since then.

These are frightening numbers, Senator. The final statistics from 2015 reflect about 52,000 Americans lost their lives to drug overdoses that year, and we believe the 2016 projections may be over 60,000. It will be sometime before we have final numbers.

More than half, a substantial proportion of those, are attributable to opioid drugs. When I first learned about this, we were talking about the heroin crisis, and people thought about heroin and oxycodone, which is a lawful prescription drug that often can be abused. Increasingly, the challenge we face is about fentanyl, which is an even more hazardous drug that poses a danger even to our first responders, our police, our firefighters, and paramedics who are responding to scenes of overdoses, because of how deadly and dangerous that drug can be.

So this is a very significant challenge to us. There are a lot of issues, a lot of ways we can go about addressing it, one of which you talked about, the gangs that bring drugs into your home State. I know from my experience as U.S. Attorney, that is an area where our Federal prosecutors and our DEA agents can do a lot of good.

And law enforcement is not the only solution to the heroin and opioid crisis. But from our perspective, it is an important part. It is one of the key tools the Department of Justice has to target these organizations that try to identify the sources of supply and put those drug dealers out of business.

So one of the most important things I think that we are going to do this year under this budget is that we are going to be able to fund about 900 additional employees for DEA. These are not new positions. My understanding from our budget experts is that these are positions that are existing, but, for the most part, were not filled because of budgetary constraints.

So we anticipate we will have up to 900 more personnel on the frontlines of DEA. We will have additional Federal prosecutors. And that, from the Department's perspective, will help us combat that.

But, if I may continue, it is not just about law enforcement. There are many other areas in which—many other ways that we can combat drug abuse. The Justice Department, obviously, focuses primarily on law enforcement, but we do have these grant programs that allow us to do other things.

The COPS program, as you mentioned, is proposed to be eliminated in this budget. But we request—there is \$7 million funding that I think is not in this year's budget. But we do request \$40.4 million in additional Federal funding for DEA prescription, opioid, and heroin enforcement programs. So this is the matter not of reducing our emphasis on that issue but of reprioritizing the money to places we think it will be more effective.

This will allow DEA to expand funding for its 360 Strategy, which is intended to illustrate that it is not just about law enforcement. It is a 360 program to try to reduce drug abuse. It will allow us to enhance operations against domestic cartels that are responsible for drug distribution, and to enhance and establish regulatory enforcement groups in the diversion control program and increase funding for our prescription drug disposal programs, because often drugs that are legally prescribed and not used then may be diverted to illegal uses.

So through all of those ways, Senator, I can commit to you that we are very much attuned. I am going to be watching those. I will be watching those overdose numbers. And I will not be satisfied until I see that trend turn around and start going the other direction.

Senator SHELBY. Thank you.

Thank you, Senator Collins.

Senator Schatz.

Senator SCHATZ. Thank you, Mr. Chairman.

ATTORNEY GENERAL RECUSAL

Mr. Deputy Attorney General, thank you for being here.

Could you describe in as clear and quick of a fashion as possible the scope of Attorney General Sessions' recusal?

Mr. ROSENSTEIN. Senator, Attorney General Sessions' recusal is in the public record, and I understand I have been asked this question several times. From my perspective, as you know, I have been—in the matters in which he is recused, I am the Acting Attorney General, and, therefore, I know what we are investigating. He does not. And I think that is what is important for you to recognize. He actually does not know what we are investigating, and I am not going to be talking about it publicly.

Senator SCHATZ. But I guess the question is, so in what appears to be the only statement that Jeff Sessions made on this, I may be incorrect, but the main statement was March 2, 2017, "I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States."

So are we to understand that to the extent there may be a counterintelligence investigation not related to campaigns for the President of the United States or even a criminal investigation that could be obstruction of justice or a violation of another statute—so who decides where the line is? Because that seems to be about a particular thing, and now we have a Special Counsel and we have multiple investigatory processes going on. We also have public policy questions related to how we interact with the country that was engaged in active measures against us.

So the question, again, is who decides what he is recused from? And why is there no clarity on what he is recused from?

Mr. ROSENSTEIN. Senator, I think within the Department, we do have clarity, and the reason for that is there is a career ethics official who made that determination in conjunction with the Attorney General before I arrived. I arrived, I believe, around April 27 or 28. And that career official works in the Deputy's office. So I am able to consult with him if any questions arise about what matters the Attorney General is recused from. That is why—

Senator SCHATZ. Can you tell the public what matters the Attorney General is recused from?

Mr. ROSENSTEIN. What I am trying to explain, Senator, is it would be inappropriate for me to do that because he is recused from Department of Justice investigations, and we do not talk about the subject matter of investigations while they are ongoing. That would interfere with what our investigators and prosecutors are doing.

Senator SCHATZ. So normally, I think, in a law firm or even in a public agency where there is a recusal, there is a memorialization of the recusal. There is a delineation of what is in and what is out of that recusal. And there is also a process by which we can determine whether or not there is compliance with that recusal. Is there such a document?

Mr. ROSENSTEIN. The way the Department operates is very different from a law firm.

Senator SCHATZ. I know that, but is there such a document?

Mr. ROSENSTEIN. Well, no, because it is not necessary, because the Department is a hierarchy, and so nothing gets to the Attorney

General about the matters he is recused from unless they come through my office.

Senator SCHATZ. What if they come through the Oval Office?

Mr. ROSENSTEIN. If they come through the Oval Office? Well, we are not briefing the Oval Office about our investigations either, so I do not know how they would get there.

Senator SCHATZ. It could be my lack of a law degree, maybe there are a couple lawyers on this panel or in the public who can help me to understand the most basic question here, which is that the Attorney General had a press conference and said, given all these challenges, given all this controversy, I am out, I am recused from these matters. Now the question becomes, which matters?

So I am just going to ask one final time if you can just try to describe for the public, for the layperson, for the person who is following this but may not possess a law degree: What is the Attorney General allowed to be involved in, and what is he not allowed to be involved in? And who makes that determination? And how do we know whether he is complying or not?

Mr. ROSENSTEIN. I appreciate that sincere question, Senator. I want to try to explain. And you are right. I have spent 27 years in the Department of Justice. I think about these things differently than people who are not in the Department who are not lawyers.

What is important for me to explain—in this matter, I am acting as Attorney General of the United States, and that means a lot to me. And one of the things it means is that I have a responsibility not to talk publicly about what we are investigating or who we are investigating because that could adversely affect the investigation and because it would be unfair to people who may be under investigation.

Senator SCHATZ. Is it possible that the Attorney General is a witness in this investigation?

Mr. ROSENSTEIN. If he were, Senator, I would not talk about it.

Senator SCHATZ. What about you?

Mr. ROSENSTEIN. Senator, I am not going to be talking about the investigation. The purpose of my appointment of Special Counsel Mueller was to ensure that there be public confidence in the outcome of that investigation, and he now has responsibility for that. And I think that if there are any questions, they should be directed to him. And I know he is going to do the right thing, as I would, and defend the integrity of that investigation.

Senator SCHATZ. Just one final question, because I am over time. If you become a witness in this investigation, do you think there is a conflict of interest there?

Mr. ROSENSTEIN. I am not going to answer hypotheticals questions, and the reason, Senator, is, I am working with career professionals who know these rules and are responsible for enforcing these rules. And I can assure you that we are going to do the right thing, and we are going to defend the integrity of that investigation.

Senator SCHATZ. Can you just consider this a question for the record, if you could please put in black-and-white for the subcommittee the scope of the recusal and how this all works? I think then you can be a little more careful.

I mean, I understand you have to be careful about not referring to an investigatory process. I get that. But still, I think the public deserves to know exactly how this all plays out. I cannot imagine that you cannot describe it even in the abstract so that we are assured that there is a fair and thorough investigatory process.

Thank you.

Mr. ROSENSTEIN. I appreciate the question, and we will make an effort to do that in writing in a way that may be, hopefully, better than my efforts.

[The information follows:]

On March 2, 2017, the Attorney General announced his recusal from “any existing or future investigations of any matters related in any way to the campaigns for President of the United States.” This statement was broadly worded in order to avoid suggesting the existence of any particular investigation. Longstanding Department policy prohibits discussing ongoing investigations. Consistent with practice, the Attorney General’s Chief of Staff effected the recusal by notifying the Department components that may have relevant information about the subject matter of the Attorney General’s recusal and instructing those components not to provide information to the Attorney General or his staff regarding any such matters. The Chief of Staff’s email further noted, “The Attorney General’s recusal is not only with respect to such investigations, if any, but also extends to Department responses to Congressional and media inquiries related to any such investigations.” The Attorney General’s staff was also notified about the recusal. The instruction to the relevant Department components and the Attorney General’s staff about the recusal effectively screened the Attorney General from any information about such matters. Although the language of the publicly announced recusal was necessarily vague, it provided sufficient information to the components to insulate the Attorney General from any matters that may have been covered by the recusal. The regulation on which the Attorney General based his recusal, 28 C.F.R. § 45.2, applies only to investigations or prosecutions.

Shortly after the Attorney General’s recusal, he received a letter from Senators Grassley and Feinstein regarding the recusal, among other things. In a March 6, 2017 letter to Senators Grassley and Feinstein, the Attorney General stated, “[Your] March 3, 2017, letter also asked why I had not recused myself from ‘Russian contacts with the Trump transition team and administration.’ I understand the scope of the recusal as described in the Department’s press release would include any such matters. This should not be taken as any evidence of the existence of any such investigation or its scope.” On March 20, 2017, former FBI Director James B. Comey testified before the House Permanent Select Committee on Intelligence and confirmed that the FBI, as part of its counterintelligence mission, was investigating the Russian Government’s efforts to interfere in the 2016 presidential election, including any links between individuals associated with the Trump campaign and the Russian Government and whether there was any coordination between the campaign and Russia’s efforts. He noted that as with any counterintelligence investigation, the FBI’s investigation would also include an assessment of whether any crimes were committed. This description provided further detail about the matters from which the Attorney General recused himself.

On May 17, 2017, the Deputy Attorney General, acting as Attorney General by virtue of the Attorney General’s recusal, appointed former FBI Director Robert S. Mueller III to serve as Special Counsel for the investigation Mr. Comey confirmed.

But as I said, I just want to assure you and assure everybody that is what I am about here, is making sure that the rule of law is followed and that we reach a fair result in which people can have confidence. And I am working with career professionals in the Department who are going to help me to do that.

Senator SHELBY. Senator Lankford.

Senator LANKFORD. Thank you, Mr. Chairman.

Mr. Rosenstein, thanks for being here. You have testified in front of every Senator in closed sessions. You have testified in front of the Intelligence Committee in open sessions. You have had lots of

conversations on this. So I appreciate you being here again today to go through some budget areas.

SPECIAL COUNSEL

I do want to help clarify one thing. I read with some interest in the paper that there was some secret plan to be able to privately remove the Special Counsel who you just put in place. To be able to see that, all I could think about was Jim Comey's statements publicly saying how many times he read newspaper stories with unnamed sources that, as he read them, he thought these were completely false.

Is there anything to some secret plan that is out there from you or anyone in the administration to try to go in and remove the Special Counsel?

Mr. ROSENSTEIN. No, there is no secret plan that involves me. No, Senator.

Senator LANKFORD. I would just say, no one in America is above the law, and no one in America is not faced with accountability and checks and balances. Every one of us has checks and balances. The President, every Member of the Cabinet, the Vice President, every judge has checks and balances in the system.

I cannot seem to understand the fascination to say we need to create some Special Counsel. That would be the only person in America that has no accountability structure anywhere for anything. I would assume everyone has a check and balance somewhere. That does not mean it is under consideration in the process. So I appreciate you trying to clarify that for us.

I do also want to thank you and the Department of Justice. Senator Warren and I do not agree on everything, but last year, we started working on a process for the Department of Justice to stop these slush funds in the background where the Department of Justice was forcing businesses to be able to spend money on third-party groups or not revealing the nature of those settlements. The Department of Justice just last week announced that you are stopping that process.

And I just want to say thank you. That is something that we have worked on for a couple years, tried to get accomplished legislatively, the previous administration would not work with us on. You just implemented that. So I just want to say I appreciate that.

CRIME VICTIMS FUND

Let me also say that I have a question about the Crime Victims Fund and the rescission. Help me understand the rescission back to the Treasury of a part of the Crime Victims Fund.

Mr. ROSENSTEIN. Yes, Senator. Thank you.

The Department's budget requests \$3 billion from the Crime Victims Fund for fiscal year 2018. This will build on almost \$8 billion provided for crime victims over the last 3 years. It includes \$2.2 billion in formula grants for Victims Compensation and Assistance Grants, \$25 million to improve the treatment of crime victims, and 5 percent or \$150 million set aside for Tribal governments.

The \$1.3 billion rescission is a cut from excess balances because of record high collections in the past.

And I have to tell you, Senator, I am a business school graduate. This is government budgeting. I know it can be complex. I have talked with the career professionals in the Department, and they have explained to me that that is what that number represents. It represents a cut of excess balances because there have been record high collections in the past. But we are recommending the spending of \$3 billion in the next fiscal year.

Senator LANKFORD. So let me tell you why this is so important, and this subcommittee will know this well. For the last 2 years in our subcommittee and in the full committee, I have raised the issue of the Crime Victims Fund. The Crime Victims Fund was set aside as dollars that have come into it specifically for use to be able to help, by definition, crime victims. It has been used in that in multiple areas in multiple places completely appropriately.

What has happened, though, is that because it has an excess balance, this year around \$9 billion, Congress says we are planning to spend that and then does not spend that and takes that \$9 billion and actually spends it somewhere else on paper, and then the next year spends the same \$9 billion again on paper.

It is \$9 billion of excess spending above our budget caps that are done. You may know it as the Changes in Mandatory Programs, what is affectionately called around here CHIMPS.

I have raised for the last 2 years in this subcommittee and in the full committee the possibility that those dollars would be spent one time and then could not be spent again the same dollars the next year, year after year. I have so far been unsuccessful to be able to do that. Now you are bringing in another element of this, of a rescission to be able to move it.

I am trying to figure out how to get transparency in budgeting, that the Crime Victims Fund is used for victims of crime that it is not used as an offset for our budget here, and it is not used as a rescission somewhere else, back to Treasury. It is actually used for victims of crime.

And any way that we can get transparency and be able to actually use that fund for what it was originally intended for rather than a budget gimmick here or rescission there, I am in favor of.

How can we work together to be able to solve this?

Mr. ROSENSTEIN. Senator, I appreciate that question, and I have reviewed this issue of the Changes in Mandatory Programs, or CHIMPS. As I know you recognize, it is a very technical issue of budget and appropriations.

Senator LANKFORD. But it is not technical that we overspend an additional \$9 billion on paper but nowhere else gets to see it.

Mr. ROSENSTEIN. Well, that is not a Justice Department issue. I think that is a broader OMB issue.

Senator LANKFORD. That is us.

Mr. ROSENSTEIN. Yes, I do not think it is a question that I am best positioned to answer. I think OMB would be the right agency for that question.

Senator LANKFORD. Well, I hope to be able to work together on that, not only to be able to solve this rescission issue and to figure out how we actually use those dollars for victims of crime, rather than go back to Treasury, but also as we solve that issue long term for us, that budget gimmick goes away.

I will try to follow up with a question for the record on private prisons that I know you are trying to reengage with in that, and we will follow up in the days ahead.

Thank you, Mr. Chairman.

Senator SHELBY. Thank you.

Senator Coons.

Senator COONS. Thank you, Mr. Chairman.

Deputy Attorney General Rosenstein, thank you for being here today.

Obviously, you are here because Attorney General Sessions abruptly canceled his commitment to appear before this subcommittee. It is Attorney General Sessions' job to be here today. The fact that he has again chosen to skip this hearing is unacceptable.

The Attorney General, I believe, has chosen to skip this hearing today in order to avoid difficult questions about the scope of his recusal, questions which have already been asked of you by several Senators, but I will attempt to explore a little further. I think it is important that we have a full and engaged conversation with the Attorney General about the Department of Justice in the front of both the Judiciary Committee and the Appropriations Subcommittee responsible for the entity he still leads.

Let me start briefly with some good news, if I might. Mr. Rosenstein, you are here in part to talk about the budget of the Department of Justice. In 2014, Congress demonstrated its commitment to the Victims of Child Abuse Act by unanimously reauthorizing it in both chambers. The Children's Advocacy Centers funded by this law conduct important forensic interviews that help serve law enforcement needs and meet the needs of child victims. I am pleased that President's fiscal year 2018 budget request fully funds these programs. So I thought we would start with at least one positive thing we can talk about.

Mr. ROSENSTEIN. Thank you.

FBI DIRECTOR FIRING/SPECIAL COUNSEL

Senator COONS. As has been discussed by several others, it is the scope of recusal that is utterly unclear both to lawyers and nonlawyers on this subcommittee. You are here instead of the Attorney General, and you are here as Acting Attorney General with regard to the Special Counsel, and you exercise the hire and would exercise the fire decision with regard to Special Counsel Bob Mueller. That is because Attorney General Sessions is recused from that matter.

On May 9, you delivered a memo to Attorney General Sessions entitled, "Restoring Public Confidence in the FBI." Your memo exclusively focused on Director Comey's conduct during the Clinton email investigation and concluded, "The way the Director handled the conclusion of that investigation was wrong," and you ultimately stated, "Having refused to admit his errors, the Director cannot be expected to implement the necessary corrective actions."

Is that roughly correct? Am I citing that—

Mr. ROSENSTEIN. I believe it is, yes.

Senator COONS. On that same day, Attorney General Sessions sent a memo to President Trump, relying exclusively on your

memo, where the Attorney General recommends Director Comey be removed. Is that correct?

Mr. ROSENSTEIN. I believe that is correct.

Senator COONS. During his January 10 confirmation hearing, Attorney General Sessions stated he would recuse himself from any matters involving campaigns for President of the United States and specifically investigations into Secretary Clinton's email server. Is that correct?

Mr. ROSENSTEIN. That is my understanding, Senator.

Senator COONS. So why did you write a memo to Attorney General Sessions exclusively discussing a matter that, as I understand it, Attorney General Sessions explicitly told us in Congress he was recused from? And why was that an appropriate basis for him to make a hire/fire recommendation to the President on?

Mr. ROSENSTEIN. Senator, I do not think that is a question for me to answer. I have said in my previous briefings of the Senate and the House that my memo truthfully reflects my views. I am not in a position to comment on anybody else.

So from my perspective, Senator, that memo is about what it is about. I do not know what was in anybody else's mind.

I understand there are serious allegations that have been raised, and I think that it is up to Director Mueller to determine in the first instance whether any of these issues were in the scope of his investigation.

That is why I have not commented on it. I just appointed him several weeks ago. I have not talked to him about the substance of the investigation since then.

But I recognize the importance of these questions, and I think that Director Mueller ought to review that and make a determination of whether or not he believes it is within the scope of his investigation.

Senator COONS. I appreciate that answer. It is distinct from an answer that I got from you previously in another setting, so I want to make sure I understand you. I will proceed carefully. Let's see if we can get to an answer that is appropriate in a public setting.

ATTORNEY GENERAL RECUSAL

Is it not your argument that the Attorney General made a recommendation to hire or fire the FBI Director because that is outside his recusal? The scope of his recusal does not affect his ability to manage the Department?

Mr. ROSENSTEIN. I do have a personal opinion about that, Senator. I just do not think it is appropriate for me to be expressing my personal opinion about that.

I hope I have not said anything inconsistent with what I said elsewhere, and please let me know if I have.

But, yes, I do not want to comment on the recusal. I think the Attorney General made the decision to recuse. I was not there at the time, as you know, and the decisions had already been made before I arrived about what matters would be appropriate for the Attorney General to handle.

When I stepped in, I continued consistent with what had been done by these career professionals in the Department, and I believe

that I have faithfully, within the Department, honored that recusal with regard to matters pending in the Department of Justice.

But I just do not want to comment on what may have been in anybody else's mind or offer any opinion about that, because it is not for me to make those decisions.

Senator COONS. Well, it is exactly why I think Senator Schatz asked a whole series of questions about the scope of recusal, because I am a lawyer—Senator Schatz may not be; he asked better questions than I did—but I also am having real difficulty understanding the scope of the recusal, its contours and definition. I have an unresolved question about whether or not that is why the Attorney General failed to appear before us today, is to avoid having to answer direct questions about the scope of his recusal.

I do appreciate and respect your appointment of a highly talented Special Counsel. There have been questions from both sides that imply strong support for his independence and his conduct.

I appreciate the care with which you are answering my questions, but I am simply going to conclude by saying I have unanswered questions that perhaps can only be answered by the Attorney General himself, and it is my hope that we will have him appear before both the Judiciary Committee and the Appropriations Committee charged with overseeing the funding for the Department he is currently directing.

Thank you.

Senator SHELBY. Senator Graham.

Senator GRAHAM. Thank you, Mr. Rosenstein.

Why isn't Jeff Sessions here today?

Mr. ROSENSTEIN. Senator, my understanding is consistent with what was in the Attorney General's letter. I do not know of any other reasons beyond what he set forth publicly.

SPECIAL COUNSEL

Senator GRAHAM. Okay. It is 13 June. Do you know of any reason for cause to fire Mr. Mueller, as of this date?

Mr. ROSENSTEIN. No, I do not, Senator.

Senator GRAHAM. And that would be your decision, if that ever happened, right?

Mr. ROSENSTEIN. That is correct.

Senator GRAHAM. And you are going to make it. Nobody else.

Mr. ROSENSTEIN. As long as I am in this position, Senator, it will be my responsibility to make that decision.

Senator GRAHAM. I am glad you are in this position.

Is giving political donations a reason to disqualify somebody for serving in the Special Counsel's office?

Mr. ROSENSTEIN. No, Senator, it is not a disqualification. It is not.

Senator GRAHAM. As a matter of fact, in many States, their judges and prosecutors are actually elected. Donations are a part of that system. Is that correct?

Mr. ROSENSTEIN. Yes, that is true.

Senator GRAHAM. Would it be a disqualification for somebody in the Special Counsel's office who had represented Ms. Clinton in the past to serve?

Mr. ROSENSTEIN. Senator, it would depend on the facts and circumstances. As a general matter, I think the answer is no.

Senator GRAHAM. Isn't that much closer to a conflict of interest?

Mr. ROSENSTEIN. I do not answer hypotheticals, Senator. Everybody needs to make a determination based upon the facts and circumstances of a particular case.

Senator GRAHAM. How would you get it before the Special Counsel? What process could a Member of the Senate use to inform the Special Counsel that you have a concern about hiring somebody that represented Clinton?

Mr. ROSENSTEIN. We have a process within the Department of Justice, Senator, so I would encourage you, if you have those concerns, to raise them with Director Mueller or to raise them with me, and I will make sure——

Senator GRAHAM. Should I do it to you or him?

Mr. ROSENSTEIN. Well, you could do it to both.

Senator GRAHAM. Okay, that is fair enough.

Mr. ROSENSTEIN. And we have career——

Senator GRAHAM. And I do not know if I will do that, but I have read some things that were—I do not think donations are disqualifying at all, but if you represented the Clinton Foundation are Clinton herself, that would be a bit disturbing to me. But I will take care that.

As to Russia, do you have any doubt that the 17 intelligence agencies' report that was submitted last year or early this year, that Russia interfered in our election is accurate?

RUSSIAN INTERFERENCE WITH 2016 ELECTIONS

Mr. ROSENSTEIN. Senator, this was an issue that was discussed in my confirmation hearing, and several of you attended that. At that point, I had access only to the public——

Senator GRAHAM. Right.

Mr. ROSENSTEIN [continuing]. Information, from which classified information——

Senator GRAHAM. So what can you tell us now?

Mr. ROSENSTEIN. I now have access to classified information, and I think that assessment made by the intelligence community is justified, based upon the investigation and evidence they had.

Senator GRAHAM. Thank you very much.

DOJ BUDGET

What role did you play in crafting this budget? Where did this budget come from for the Department of Justice?

Mr. ROSENSTEIN. I appreciate that question, Senator.

The budget actually is a product primarily of career professionals in the Department. It is \$27.7 billion. It is very complicated. Some of them are actually seated behind me, but they have a whole team behind them. And I suspect there are dozens of folks who have been involved.

Senator GRAHAM. Is it their desire to cut the budget by 2 percent or did that come from OMB?

Mr. ROSENSTEIN. You know, Senator, I do not know the answer to that but let me just make clear——

Senator GRAHAM. Could you find that answer?

Mr. ROSENSTEIN. We are accountable for that. That is the political leadership of the Department. We are accountable for that. I am not in any way suggesting those were their decisions. They faithfully implement the priorities that are given to them. So I did not mean to shed responsibility for the bottom line.

But the assistance that we have in preparing the budget—

Senator GRAHAM. Well, it is a simple question. Were you directed to cut the budget by 2 percent or did you agreed to cut the budget by—did that come from within the Department of Justice or a mandate outside the Department of Justice?

Mr. ROSENSTEIN. I honestly do not know the answer to that. I will try to find out for you.

Senator GRAHAM. That is all right. You can get back to me.

[The information follows:]

The preparation of this budget reflects a collaborative process between the Department and OMB. The fiscal year 2018 President's budget request reflects the administration and Department's priorities on national security and public safety.

NATIONAL SECURITY THREATS

In terms of threats to the country, are they going up or down?

Mr. ROSENSTEIN. I would not want—I have not done a study, so I would not want to characterize it.

Senator GRAHAM. Terrorism.

Mr. ROSENSTEIN. Well, I think everybody recognizes the terrorist threat is extremely serious.

Senator GRAHAM. Will we have more FBI agents under this budget or less than we did last year?

Mr. ROSENSTEIN. I believe we will have—I apologize, Senator. I am consulting.

Senator GRAHAM. I am actually asking budget questions, so I do not want to throw you off here. [Laughter.]

Mr. ROSENSTEIN. I appreciate the budget questions.

According to the numbers that I have, the FBI will have an increase of 150, for a total of 12,484.

Senator GRAHAM. So there will be more agents by 150. Is that correct?

Mr. ROSENSTEIN. That is my understanding, Senator. Let me check that and get back to you.

[The information follows:]

As of June 13, 2017, and in accordance with the Department's fiscal year 2018 budget request, the FBI's budget proposal requested funding for 12,484 Special Agents. This number may vary moving forward based on congressional appropriations and input in fiscal year 2017 and fiscal year 2018.

Senator GRAHAM. Thank you.

Do you agree that the FBI, the Department of Justice, is national security in another form, in many ways?

Mr. ROSENSTEIN. I am sorry?

Senator GRAHAM. It is national security is another form, that the role of the Department of Justice is a national security role as well as a domestic role?

Mr. ROSENSTEIN. Well, actually, my answer, Senator, is it is national security in reality and in another form. We actually—

NATIONAL SECURITY—DOJ BUDGET

Senator GRAHAM. So here is my final question. We are dramatically increasing the Defense Department because it has suffered mightily over sequestration. Can you make an argument that, if you are a national security component of our overall defense strategy, why we would cut you now given the threats we face?

Mr. ROSENSTEIN. Senator, I believe that, if you look at the budget, we are not cutting the critical areas. Violent crime, terrorism, the areas that you have raised are areas where there will be no cuts, cybercrime, all of those areas. So the effort in this budget, as I understand it, is to reduce only in areas that are not critical to those operations. It is an effort to be more efficient to achieve the goals of the American people.

But I can assure you that our goal is to use these resources more effectively, to reduce crime, to reduce drug abuse, and to fight terrorism. So we are not going to relent in our commitment to those goals.

Senator SHELBY. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Mr. Deputy Attorney General, good to see you.

I will say, as many of my colleagues have, that it is the height of arrogance for the Attorney General not to come before the subcommittee that oversees the Justice Department budget. That being said, I am glad to have you here.

CONSENT DECREES

As you know, during the confirmation process, you and I had a conversation about the consent decree between the Justice Department and the Baltimore City Police Department and Baltimore City. Since our conversation, the courts have approved that consent decree. I just want your continued assurance that you will work in your capacity as Deputy Attorney General to make sure that we further that agreement and make sure that we can get the parties together and move it along.

Mr. ROSENSTEIN. Senator, our goal is to reduce violent crime, protect constitutional rights. In Baltimore, that consent decree, as you know, is in effect. And I know you are aware, and it is very painful to me, we have a crisis in violent crime in Baltimore. And the murder rate this year is on track at the moment, actually, to reach a record high. In 2017, we may have a record high murder rate in Baltimore City.

So we need to do everything we can to support our local partners, and we are working in many ways to support that local police department. Last year, we had 318 murders. The year before, about 342. And we are on track now, potentially, to have more in Baltimore this year.

So that is a very high priority for me. Although I am no longer there physically every day, I am very engaged with that. And I am going to continue to work with our authorities, with the Federal agencies, and with our U.S. Attorney's office, to do anything we can to help support our partners in Baltimore and turn around that trend in violence in that city.

Senator VAN HOLLEN. I appreciate that. Thank you. I look forward to continuing to work with you on what is an unacceptable increase in the murders. Any crime increase or any crime is unacceptable, but seeing the spike is something we have to tackle with urgency.

SPECIAL COUNSEL

I do want to follow up on some of my colleagues' questions regarding the Special Counsel. It is especially pressing in light of these reports that did come out yesterday that folks at the White House, maybe the President, were looking at ways to fire Special Counsel Mueller.

As you already testified today, given the current situation, you are the only person today in a position to actually do that firing. Isn't that correct?

Mr. ROSENSTEIN. That is correct.

Senator VAN HOLLEN. And as I understand your testimony, you said that this is a matter within your jurisdiction. So based on that, I would assume it would be a violation of the Attorney General's recusal if he were to try to fire the Special Counsel. Isn't that right?

Mr. ROSENSTEIN. I do not expect that to happen, Senator.

Senator VAN HOLLEN. Okay. But it would be a violation of his—this is now a matter that is under your jurisdiction, so it would be a violation of his recusal, were he to attempt to do so.

Mr. ROSENSTEIN. I think that is probably fair, but that is not going to happen.

Senator VAN HOLLEN. Okay. Well, I am glad to hear that. And I am actually more worried about the scenario, at this point, where, if you were to receive an order from the White House to fire the Special Counsel, I am less worried about you doing it because you have just testified today that you would only do it based on good cause. I am worried about, in those circumstances, the President trying to keep going until he found someone willing to take that action.

So my question relates to the definition of "good cause," because you were fairly clear in your testimony that the authority to remove the Special Counsel is based on the finding of good cause. Is that correct?

Mr. ROSENSTEIN. Yes, that is right.

Senator VAN HOLLEN. And is an order from the President to fire the Special Counsel good cause?

Mr. ROSENSTEIN. It does not matter who the order comes from. Good cause would be based on the reasons for the proposed removal.

Senator VAN HOLLEN. Right. And removing the Special Counsel in order to prevent the Special Counsel from pursuing the investigation, that would not constitute good cause, correct?

Mr. ROSENSTEIN. Correct.

Senator VAN HOLLEN. So if somebody else were to fire the Special Counsel—in other words, if the President were to find someone to do it—my question is, what is the protection in that "good cause" definition? In your view, could the Special Counsel contest his firing, if the Special Counsel did not believe it was good cause?

Mr. ROSENSTEIN. Senator, I hope I will not have to answer that hypothetical. The purpose of that regulation, the folks who wrote it put a lot of thought into it, and they anticipated that people would follow the rules.

Your question is, "Well, what if somebody does not follow the rules? What happens next?" We have a lot of very well informed folks and great lawyers in the Department who would deal with that, if it were to arise, but I do not anticipate that it is going to arise.

Senator VAN HOLLEN. So I am just wondering, in your opinion—I am hoping it does not arise either, but we all know that there are scenarios even that have some historical precedent where this kind of question could arise. So my question is, would the Department or, in this case, would the Special Counsel have recourse in the courts arguing that there was not good cause for the firing?

Mr. ROSENSTEIN. I just do not know the answer to that, Senator. I hope we never reach that point. I can tell you, as long as I am in this position; he is not going to be fired without good cause. And if he were, it would not be my responsibility.

But that is like a law school hypothetical. I would be reluctant to answer it without doing some research first.

Senator VAN HOLLEN. Thank you.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Welcome, Deputy Attorney General.

TRIBAL AFFAIRS

I had a conversation in my office with the Attorney General prior to his confirmation, and we spoke about the Department of Justice's government-to-government work with the Tribes. He admitted to me at the time that his familiarity with the some 229 Tribes in Alaska was limited. It was important for him to hear the depth of some of the issues that we are facing as we deal with any level of law enforcement. So many of our communities have none whatsoever. As a consequence, we are dealing with some very troubling statistics within our State.

So, I was pleased to note that the Department is making grants for the implementation of VAWA's Special Domestic Violence Criminal Jurisdiction in fiscal year 2017, and then also requesting funds to continue that work in fiscal year 2018. So that is good.

I think that we have some things that we would like to discuss with you and your folks with regard to fiscal year 2017 funding levels that are a bit problematic. The Tribal court funding is again the one that I have a great deal of interest with.

But I do want to find a path forward with DOJ as it relates to some of the more immediate and very unique issues that we have as we deal with our Tribal Villages and the issues that they face. You would think that we are remote enough that the opioid epidemic would not be hitting us in Alaska, but it is. The level of domestic violence and sexual assault that we face in terms of the statistics, the uptick of violent crimes that we are seeing in urban Alaska, these are areas that we believe deserve a more specific approach, and we would like to work with you. We have invited and

welcomed the Attorney General as well as you, and others within the Department of Justice, to come up to the State to sit down with some of our Native leadership to discuss these issues. I again would reiterate that, and essentially ask for your continued willingness to work with us in perhaps some innovative ways to address the issue of justice and law enforcement in rural Alaska.

Mr. ROSENSTEIN. Yes, Senator. Thank you. I welcome that opportunity. We did not have this issue in my home State of Maryland, but many of my colleagues in the past two administrations, U.S. Attorneys, have talked with me about the challenges that we have on those Native American issues. And I have met early in my tenure as Deputy Attorney General with the director of our Tribal Justice Office, Tracy Toulou, and talked about some of these issues.

So I would certainly welcome the opportunity to work with you on that.

Senator MURKOWSKI. Good. We need to do that.

MARIJUANA

Let me switch gears a little bit. We have been talking about opioids and addiction, but let's talk about another issue. Alaska is one of those States that has not only enacted medical marijuana statutes but we, through ballot initiative, have allowed for a broader sale and use of marijuana that is regulated as we would regulate alcohol.

In this State, we think that our regulatory regime is a fairly strong one and is consistent with the Cole memorandum.

Now, that memorandum suggests that the Federal Government will not get in the way of States which maintain strong regulatory regimes. I had some correspondence with former Attorney General Lynch, relating to this. But the fact is that the banking sector is still closed to those in the marijuana business, making it difficult for States to access a paper trail to ensure that those in the business are compliant. We recently heard that postal inspectors believe that they can seize State tax payments sent by mail from people in the marijuana business.

Now, I understand that DOJ wants to eliminate the appropriations rider prohibiting Federal interference with State medical marijuana laws.

So I am concerned, and I am speaking for a lot of people in my State who are worried about the inconsistency between the State marijuana laws and the Federal policy. The Department of Justice has not taken the position thus far that the State marijuana laws are completely preempted by the Controlled Substance Act. I do not know if you are headed in that direction. The Cole memorandum suggests strong deference to State laws, but we are not seeing the Federal Government doing much to ensure that those strong State laws are enforceable.

So the bigger question is: where are we headed with marijuana?

Mr. ROSENSTEIN. I appreciate your concern about this, Senator. It is a very difficult issue. Obviously, it is a situation where we do have a conflict between Federal law and the law in some States. It is a difficult issue for parents of teenagers like me who have to provide guidance to our kids about how they should treat—

Senator MURKOWSKI. Believe me, I agree with that, yes.

Mr. ROSENSTEIN. But I can tell you I have talked to Chuck Rosenberg, the Director of DEA, about this, the Administrator of DEA. And we follow the law and the science. And from a legal and scientific perspective, marijuana is an unlawful drug. It is properly scheduled under Schedule I, and, therefore, we have this conflict.

Jim Cole tried to deal with it in that memorandum. And, at the moment, that memorandum is still in effect. Maybe there will be changes to it in the future, but we are still operating under that policy, which is an effort to balance the conflicting interests with regard to marijuana.

So I can assure you that is going to be a high priority for me as the new U.S. Attorneys come on board, to talk with them about how to deal with that challenge in the States that have legalized or decriminalized marijuana, whether it be for recreational or medical use. But we are still, in the Department of Justice—Attorney General Lynch actually mentioned this at her hearing, her confirmation hearing in January 2015, and she explained that we are responsible for enforcing the law. It is illegal, and that is the Federal policy with regard to marijuana.

Senator MURKOWSKI. Confusing.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I would just like to say that I associate myself with the remarks of Senator Shaheen and Senator Collins.

SPECIAL COUNSEL

Yesterday, Mr. Rosenstein, I was in New York, and a distinguished lawyer came up to me after I finished speaking and said, beware, this President is going to act to terminate the Special Counsel. And I said, he could not possibly do that. It would be catastrophic. And he said, just wait.

I came home and turned on the television this morning, and that is what I heard. So it is very hard to know what to believe.

I do believe it would be catastrophic, and I do believe it would destroy any shred of trust in the President's judgment that remains over here. I do not know with specifics what the procedure is if that were to happen.

But as I understand what you said, that could not be done without your assent. Is that correct?

Mr. ROSENSTEIN. Yes, that is correct, Senator.

Senator FEINSTEIN. And what you have said is you would not assent under the present situation—

Mr. ROSENSTEIN. Correct.

Senator FEINSTEIN [continuing]. Because there is no cause.

Mr. ROSENSTEIN. Yes, that is correct.

Senator FEINSTEIN. So is it fair to put that to rest?

Mr. ROSENSTEIN. As far as I am concerned, yes, Senator. I appointed him. I stand by that decision. I think it was the right thing to do under those circumstances, and I am going to defend the integrity of that investigation.

Senator FEINSTEIN. Thank you.

DOJ GRANTS

Let me go on to the COPS anti-methamphetamine grants. That is a program that I helped establish in 2014.

If I understand what you said, very quickly, the cut is \$7 million in meth and \$10 million in heroin. But the addition is \$40.4 million for DEA. Is that correct?

Mr. ROSENSTEIN. That is my understanding, Senator. I have been briefed by our career officials. Actually, they are whispering in my ear that, yes that is correct.

Senator FEINSTEIN. Good.

Mr. ROSENSTEIN. We are going to commit more resources to combating heroin and opioid drugs over the next year.

Senator FEINSTEIN. Good. So the COPS Anti-Methamphetamine Program will remain intact?

Mr. ROSENSTEIN. I think, Senator, the answer to that is that what we intend to do is to fund task forces in a different way. I think that funding went directly to State and local law enforcement.

Senator FEINSTEIN. That is correct.

Mr. ROSENSTEIN. Our proposal is to fund it through DEA. So there will be task forces, but they will be DEA task forces as opposed to State and local task forces.

Senator FEINSTEIN. So you are canceling the funding that goes to local police organizations.

Mr. ROSENSTEIN. The direct funding to establish those, the grants to establish those local task forces are proposed to be eliminated, but there is additional funding to DEA, which will be used to fund State and local officers who work with DEA.

Senator FEINSTEIN. So the answer is, yes, you are defunding community police departments that participate.

Mr. ROSENSTEIN. I believe the answer is that we are proposing to defund that \$7 million that went directly to local task forces.

Senator FEINSTEIN. Okay. I just want you to know that, in California alone, in the past few months, there have been 61 arrests, 428 kilograms of meth seized, 242 kilograms of heroin, 1,728 kilograms of marijuana, and 11 firearms. So it is a very busy task force, and it, no doubt, if the money is not there, could likely be eliminated.

INVESTIGATION INTO RUSSIAN INTERFERENCE

Secondly, there is a growing concern that the Russia investigation is taking too long. I heard a Congressman this morning expressing that point of view.

Mr. Comey briefed Senator Grassley and myself, as the chairman and ranking of Judiciary, 3 months ago, and it was a very full and good brief. Do you have any estimate as to the time this investigation will take or when we might be expected to have some conclusion?

Mr. ROSENSTEIN. Senator, I regret that I do not. The way our investigations are conducted, it depends upon a lot of factors. So it is generally very difficult for us to predict in advance how long an investigation is going to take. I can assure you it is important to me that it be done expeditiously. And I communicated that to Di-

rector Mueller. And I am sure he also appreciates the importance of moving as quickly as we can.

How we move it expeditiously, well, it requires having appropriate resources, which I believe we do have and always have had to conduct the investigation, and making good decisions about how to go about conducting the investigation. And I believe we can rely on Director Mueller to do that.

Senator FEINSTEIN. So there is no estimate as to when we might expect some resolution.

Mr. ROSENSTEIN. Correct.

Senator FEINSTEIN. Okay.

SOUTHWEST U.S. BORDER WALL—DOJ ENRD

Let's go to the wall. It is my understanding that, for the 600 miles of wall, there are 400 lawsuits pending. Is that correct?

Mr. ROSENSTEIN. Senator, I do not believe that I have a number for you. I regret we do not—I can try to get back to you on that. I do not have a number.

[The information follows:]

Currently, there are approximately 90 cases pending, out of the over 400 cases filed, related to the most recent border security projects from 2007 to the present.

Senator FEINSTEIN. Now, my understanding is you have put additional attorneys in the budget to handle these. Is that correct?

Mr. ROSENSTEIN. That is correct.

Senator FEINSTEIN. And how many are there?

Mr. ROSENSTEIN. Senator, we have proposed a total of 27 additional attorneys in the Civil and Environmental Divisions, and \$4 million will be available to defend the government and meet litigation requirements associated with increased immigration enforcement. That is not just about the wall. It is about immigration enforcement, but it would include any litigation that arose.

Senator FEINSTEIN. And that would be the 400 cases that are now pending. What is your estimate of lawsuits on the remainder of the wall?

Mr. ROSENSTEIN. Senator, I am not familiar with that. I can look into it and try to get back to you. But I do not—

Senator FEINSTEIN. Well, I really would like you to, because I think it is going to be extraordinary. I think as you get into the Rio Grande Valley, you are going to find the property owners, as I hear, are not very pleased. And I think we ought to know about it—

Mr. ROSENSTEIN. Right.

Senator FEINSTEIN [continuing]. As we budget. So could I ask that you get back to me prior to the time we mark this bill up?

Mr. ROSENSTEIN. I can try to give you the information we have. I can give you whatever information we have. It is important to keep in mind, though, that we are the lawyers on these issues, but it is actually Homeland Security that would have the primary responsibility for operational decisions. So I will give you whatever we can, but I think Homeland Security might be in a better position to comment on that.

[The information follows:]

The Department cannot estimate accurately the number of prospective lawsuits to construct the remainder of the wall along the entire Southern border because much work needs to be done on survey, title, valuation and negotiations for direct purchase—by the Department of Homeland Security, Customs and Border Patrol and the Army Corps of Engineers—before an acquisition would ever be referred to the Department of Justice.

Senator FEINSTEIN. We will approach that. Thank you very much.

Thanks, Mr. Chairman.

Senator SHELBY. Senator Alexander.

Senator ALEXANDER. Thank you, Mr. Chairman.

I want to thank Senator Boozman for his courtesy.

Mr. Rosenstein, welcome. Mr. Rosenstein.

Mr. ROSENSTEIN. Just like Feinstein.

Senator ALEXANDER. That is easy for me to remember. We work together all the time.

FEDERAL CONSENT DECREES—MUSIC INDUSTRY

I am going to ask you about something a little different. It may be refreshing for you. Probably not the top of your agenda, but I hope it will be on your agenda as time goes on: Outdated Federal consent decrees and, specifically, how such things affect songwriters in Nashville.

Outdated Federal consent decrees. In 2006, I introduced legislation based upon a book called, "Democracy by Decree: What Happens When Courts Run Government." It was by Professors Sandler and Schoenbrod, who were attorneys for the National Resources Defense Council. It was about the growing number of Federal consent decrees that seem to manage everything. A lot of it had to do with education, some with the environment, some with clean air litigation, a variety of other things. It took these issues out of the hands of legislators, and courts were running the government.

So, in general, the legislation would have allowed newly elected Governors, mayors, and legislators to file motions to vacate the consent decrees and put those issues back out in the democratic process.

Let me talk about one example of that, it has to do with songwriters. It might not seem very important in Washington, DC, but we have thousands of them in Nashville. It is the center of songwriting. Most of them are waiters and bus drivers and teachers in the meantime, hoping to make a big hit.

Seventy-six years ago, the Justice Department noted some anti-trust implications on the two organizations that ensure songwriters are paid for their work.

Let me give you an example. A few years ago, I was with some songwriters, and I had gone outside a pharmacy, and I saw an old couple there. I said, how are you all doing? And the lady said, we are just falling apart together. So I mentioned that to the songwriters Lee Brice, Billy Montana, and another songwriter. He said, I think we can do something with that. And they wrote a song called "Falling Apart Together."

Lee Brice put it on one of his albums, and I get a fourth of the royalties for that, because that is the way Nashville works. If the four of us write a song, we each split it up. Last year, I got \$110

for my royalty, even though it is on Lee Brice's album, and he is a pretty well known singer.

That is the first problem. Under the consent decree that is 76 years old, you have a rate court that sets what the songwriters are paid that does not reflect the market value.

The second is more immediate. Your Department issues regulations and interpretations of regulations based upon the consent decrees. One recent interpretation said that if Lee Brice and I and Billy Montana and another writer are sitting around writing, that we have to check to see who represents us, and that any one of us can go out and find that person and make a deal with a bar or a restaurant that affects all the others of us. And it would turn the common, ordinary, everyday practice of songwriting in Nashville upside down.

And I am not surprised that someone in the Department of Justice would not know that you cowrite songs. You just sit down informally. You might spend a weekend and write six songs. But what this would do is just tear that all apart, because these songwriters, not wealthy people, would have to consult lawyers, make agreements, do all this kind of thing.

The songwriters have appealed the Justice Department interpretation. The Federal district court agreed with that. Now you are appealing it further to a higher court.

So my request of you is not for you to answer me today on how to solve that problem. But, one, would you put on your agenda somewhere the general issue of democracy by decree, outdated Federal consent decrees, and consider whether it is not time to give Governors and mayors and legislators an opportunity to file motions to vacate those consent decrees and get them back in the hands of the democratic process?

And second, will you consider the Department of Justice interpretation that is now on appeal to a Federal district court that, if you are successful, will turn the everyday business of songwriting in Nashville upside down? I am sure it is not what is intended by the Department of Justice, but that would be the practical effect.

Mr. ROSENSTEIN. Senator, I happen to be a country music fan. It is something I passed on to my daughter, so I am tempted to comment.

Senator ALEXANDER. It is all right with me if you do.

Mr. ROSENSTEIN. As you recognize, there is pending litigation. I am not at liberty to comment on the pending litigation. But I do want to comment on the general issue with regard to consent decrees.

I think there are some questions that we should ask with regard to proposed consent decrees. Will it help solve a problem? How do we evaluate success? How do we know if it is working? How much is it going to cost? And when will it end?

I think those are appropriate questions, to the extent that we are considering imposing consent decrees. And as I see you recognize, a consent decree is consent between the parties, so there are always opportunities to revisit if there is agreement between—among the parties. If there is not, then there may be litigation, as you mentioned.

But I regret I do not have an opinion to offer on the proposed legislation. But I can assure you that we will, when there are consent decree issues in the Department, we will think very seriously about all those and other issues.

Senator ALEXANDER. I thank you for your answer. And the consent decree under which the lawsuit and the rate court are established was put in place in 1941. That seems to me to be too long to keep something out of the hands of the democracy.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Manchin.

Senator MANCHIN. Mr. Rosenstein, it is good to have you here. One of the pressing questions I have right now is did the couple who was falling apart together get anything?

Senator ALEXANDER. There wasn't anything left after each of the four songwriters got \$110 for the year.

Senator MANCHIN. I understand.

First of all, it is reassuring, sir, to hear the system that you put in place, as far as special prosecutor and Mr. Mueller, the confidence that you have in him to do his job. It is quite assuring and comforting to all of us.

SPECIAL COUNSEL—RESOURCES

Did you talk with Robert Mueller about his investigation and the resources he might need to do his job the proper way? And do you feel he has sufficiently been supported in that effort?

Mr. ROSENSTEIN. I have not. Under the regulation, it actually tasks the Assistant Attorney General for the Justice Management Division to consult with Mr. Mueller about resources and budget. That gentleman happens to be sitting behind me, and he has talked to Mr. Mueller, but I have not. But I can assure you he is going to get the resources he needs to conduct that investigation.

Senator MANCHIN. So there is not a concern there, where he will be able to do the job the way it is intended to be done?

Mr. ROSENSTEIN. Yes, he will.

Senator MANCHIN. Okay.

Mr. Rosenstein, could you be terminated without cause?

Mr. ROSENSTEIN. Yes.

Senator MANCHIN. And who would appoint your replacement as your position now, Deputy Attorney General?

Mr. ROSENSTEIN. The President.

Senator MANCHIN. So that is a possibility.

Mr. ROSENSTEIN. Anything is possible, Senator.

Senator MANCHIN. I understand. That is what we know.

There is great concern in all this, as you can tell. I am going to get another opportunity to talk to Attorney General Sessions in the Intel meeting. I know a lot of my colleagues here do not have the same opportunity, so they were little bit concerned about him not being here. But I want to thank you for being here.

HEROIN AND OPIOID EPIDEMIC

In West Virginia, we have a devastating epidemic. We have a State that has got hit harder than any other State. We have lost more people per capita than any other State. We are doing everything humanly possible. We cannot do it without the help of the At-

torney General's Office, the Department of Justice, everybody else who is involved.

I guess I would ask, what is your main approach to fighting the war on opioid addiction?

Mr. ROSENSTEIN. Thank you, Senator.

This is an extremely high priority for me, and I am very familiar with the opioid challenges in West Virginia. In fact, U.S. Attorneys in the Obama administration worked very closely with me on these issues and participated with us in meetings that we held in Baltimore and the Capital Region about the opioid challenge, because some of the drugs that are in West Virginia are sourced to Baltimore, so we had cases in common. And I am aware of just how serious a problem this is in West Virginia.

I have talked with the potential candidates for U.S. Attorney in your State and in others, and this is one of the issues that I talk about. This is going to be one of the high priorities of this administration.

I know you are aware that Attorney General Sessions actually traveled to Charleston in May. He gave opening remarks at the DEA 360 Heroin and Opioid Response Summit. As I mentioned earlier, this 360-Degree strategy recognizes the need to work in coordination with State and local officials, and it recognizes it is not just about law enforcement. It is about engaging all the community resources that we need to deter people from becoming drug addicts.

Senator MANCHIN. If I could just, because of our time, but I want you to comment on this. In Kermit, West Virginia, a little town in Mingo County, Kermit, West Virginia, population 392 people, out-of-state drug companies, basically which are supply houses, legitimate businesses, sent 9 million highly addictive hydrocodone over 2 years to a town of 392 people.

I mean, it is just unbelievable what is being sent. Of course, you know we have an awful lot of suits, ongoing suits, going on right now against the drug suppliers.

Are you all involved in those?

Mr. ROSENSTEIN. I am not certain, Senator, whether we are involved in that particular litigation, but DEA does have a diversion strategy. We have a group that focuses on drug diversion, and we are certainly aware that a significant proportion of our opioid drug problem is a prescription drug problem. That is drugs that are diverted from legitimate uses or are overprescribed to addicts. And that is a significant portion of the problem.

So I believe we need to work with the pharmaceutical manufacturers, distributors, pharmacists, and doctors, and identify folks who are overprescribing to make sure we hold them accountable.

DRUG COURTS

Senator MANCHIN. And my final one, because my time is running out, drug courts have had a tremendous impact on us, and we think it has been very positive. We are concerned about the drug courts, the funding for drug courts in our State and all over this country. If you could tell me what your administration is supporting on drug courts or expansion of drug courts, continuing support for drug courts?

Mr. ROSENSTEIN. Yes, Senator. We are proposing funding for State, local, and Tribal drug courts. There is \$40 million proposed in the 2018 budget. That funding will enable them to develop and implement drug courts. That includes substance abuse treatment along with mandatory drug testing, sanctions, and incentives, the goal being to transition people off of drugs.

That is part of a larger \$100 million request for funding programs that support the Comprehensive Addiction and Recovery Act, what some people refer to as CARA, or CARA.

Senator MANCHIN. Yes. Thank you.

Senator SHELBY. Senator Capito.

Senator CAPITO. I think Senator Boozman is in front of me. He is just yielding right and left.

Thank you.

Thank you, Mr. Chairman.

And thank you, Deputy Attorney General, for being here.

SPECIAL COUNSEL

Mr. Rosenstein, I want to follow up on something my colleague from West Virginia began, which are the resources for the Special Counsel. You said, and you said more than once, that you anticipate and that you know that the resources that will be needed to do a full investigation will be there in full measure for the Special Counsel. Correct?

Mr. ROSENSTEIN. Yes.

Senator CAPITO. What kind of oversight do you—because we know, as appropriators and as folks who are looking over budgets, that one way to squeeze or change the direction is to have tighter oversight or to squeeze down on the resources available. Do you have the ability to do that? Or do you tell Director Mueller that he can basically have whatever resources he needs to have? Who has the oversight over his budget? Or is there such a thing?

Mr. ROSENSTEIN. Senator, I think, within limits, he has oversight of his budget. Our administrative officers Justice Management Division, I am sure if they felt there was something inappropriate, they would bring it to my attention. But I do not expect that to happen. I think that the resources will be reasonable and that there will be no dispute as to what he needs.

DEA—FENTANYL

Senator CAPITO. I would anticipate that as well, but thank you for that answer.

I was going to go to drugs because that is a big issue. We just had Attorney General Sessions in the State of West Virginia to talk about the DEA 360. It seems to be a good program that has gotten off to a great start in our State, which we have, as you are well aware, much needed assistance.

After the addiction, unfortunately, to painkillers, many people are moving to heroin. Much of this heroin is laced with fentanyl. Fentanyl is coming in, and it is believed to be coming in also through the U.S. mail from China.

What is your Department doing on that particular aspect?

Mr. ROSENSTEIN. You are correct, Senator. There are really two challenges read regard to fentanyl, which is many people are not

aware of fentanyl. They are going to become increasingly aware of it, unfortunately, over the coming year because it is an emerging threat.

Small quantities of fentanyl can be very dangerous, and it can be sent in the mail. We are aware that fentanyl is coming into the United States primarily in two ways. It is coming in through the Mexican border, and it is coming in by mail from China.

Senator CAPITO. Right.

Mr. ROSENSTEIN. So we are going to need to work with DEA and the Postal Inspection Service to try to find a way to cut down on that, and I think also with foreign authorities. We are going to need help from authorities in China and Mexico to deal with that challenges well.

So that is at the top of my agenda. As you know, I have been in this job only 6 weeks, but I have already talked with a number of folks, including Chuck Rosenberg, the Administrator of DEA, and we are going to find a way to combat that threat.

Senator CAPITO. Well, as you know, it is a killer, but it also affects our first responders. I read a story of a first responder, I believe they were in Ohio, who had been at a cleanup scene. Everything was sterilized and cleaned, but then at some point, something came off his glove, and he ended up having to be revived from an overdose with just a minuscule exposure to something extremely dangerous.

FBI—CRIMINAL JUSTICE INFORMATION SERVICES (CJIS)

You also, I am sure, are aware that the background check FBI facility is proudly located in West Virginia, and it is processing millions of background checks. I am concerned that in this year's budget a rescission was implemented from the fees collected by CJIS that they have previously used update their IT. We know how important IT infrastructure is to get it right in this very important issue.

What can you say about that, in terms of the support from your Department for CJIS? And do those rescissions that are occurring this year, what kind of impact will that have? I have some concerns over that.

Mr. ROSENSTEIN. Senator, I am not certain that I know about the rescission. I am happy to look into that for you. I know our request includes \$17 million in program increases for CJIS, so I think there is an overall increase. I do not have any information about the rescission.

[The information follows:]

Thanks to your continual support of the CJIS programs, in the fiscal year 2017 Appropriations, the FBI received \$35 million for the National Crime Information Center (NCIC), which provides critical data for law enforcement officers. The previous CJIS rescissions, along with potential rescission of \$195 million in fiscal year 2018, have resulted in some reductions and cuts in certain CJIS activities and programs. While the potential \$195 million rescission does present challenges in planning for future upgrades and enhancements to existing criminal justice information systems, the Department will continue to work with the FBI and its CJIS Division to ensure that no services will be impacted by the rescissions and no critical upgrades and enhancements are forgone.

DNA BACKLOG—SEXUAL ASSAULT/RAPE KITS

Senator CAPITO. Okay. Let me ask you another question. Over the years, we have been hearing about a backlog, sexual assault kit backlog. Will the Department of Justice reverse this trend and mirror the sentiment expressed by this subcommittee report affirming a stronger commitment to increasing the necessary resources for this particular purpose, under your direction?

Mr. ROSENSTEIN. Senator, I know that that is a very important challenge nationwide. I recall the district attorney, I believe, in Manhattan, actually, made a priority of that last year. And we are committed to working with our State, local, and tribal partners to improve DNA and other forensic testing.

This proposed budget includes \$105 million for DNA-related and other forensic programs. And specifically, with regard to your question, it includes \$45 million for a national sexual assault kit initiative. I think that will address your concerns.

Senator CAPITO. I would encourage you to move in that direction. I am glad to see the Department is doing that.

Thank you so much.

Senator SHELBY. Senator Kennedy.

Senator KENNEDY. Mr. Rosenstein, welcome.

Mr. ROSENSTEIN. Thank you.

SANCTUARY CITIES

Senator KENNEDY. The Justice Department sent letters to nine jurisdictions alleged to be so-called sanctuary cities under 18 U.S.C. Section 1373. Where are we on that?

Mr. ROSENSTEIN. Senator, I believe we actually sent letters to 10 jurisdictions, and these were jurisdictions that had been identified by the inspector general last year as jurisdictions that the inspector general believed may have been in violation of Section 1373 and thereby potentially in violation of their obligation under grants to comply with Federal law.

So we notified all 10 localities that they needed to certify to us they were, in fact, complying with Section 1373. I believe we gave them until June 30. As of yesterday, we heard back from three that certified that they were in compliance. So there are seven that have not yet responded. I anticipate—I hope that we will have those responses by the end of the month.

Senator KENNEDY. Which three have you heard back from?

Mr. ROSENSTEIN. I do not know that personally, Senator. I can check into it and get back to you. I do not know which three have already responded.

Senator KENNEDY. Have you heard from New Orleans?

Mr. ROSENSTEIN. I do not know the answer to that.

Senator KENNEDY. Okay.

What if a jurisdiction—what if New Orleans comes back to you and says they are in compliance, take my word for it?

Mr. ROSENSTEIN. Well, as with all of our grants, Senator, particularly when we are dealing with governments, our primary check is the certification is the self-certification they provide that they are in compliance with all the grant requirements. But there is an auditing capacity within the government.

So, in some cases, there may be reviews that are done by the granting authority, the Office of Justice Programs, or, as happened last year, by our inspector general. And if they found violations, we would have to deal with the implications, as we do in ordinary grants.

As U.S. Attorney, I dealt with matters in which grant recipients had violated provisions of the grants and then the question arises of, what is the appropriate remedy? So there is a potential for auditing and oversight of those certifications. But, primarily, we expect people, when they certify they are in compliance with the law, we expect them to be truthful about that.

And I do want to let you know, Senator, that I do have, I just received from my staff, a report that New Orleans is one of the three that has responded and has certified that it is complying. The other two are Clark County, Nevada, and the State of Connecticut.

Senator KENNEDY. May I call you general? I do not want to call you assistant general.

General, I want to be sure I understand. The Department sent letters to 10 jurisdictions that have alleged to be sanctuary cities and said, are you a sanctuary city? And you really expect them to write you back and say, yes?

Mr. ROSENSTEIN. No. Let me clarify for you, Senator.

The request is, are you complying with Section 1373? Whether it is defined as a sanctuary city is really a different issue. Our requirement, as identified by the inspector general, or the question is, are you complying with 1373? It is not whether or not you are a sanctuary city.

Senator KENNEDY. Well, to me, this issue is not—it is, of course, about immigration and legal immigration versus illegal immigration. But it is also about respect for law. And our mayor in New Orleans, who is a friend of mine, on the one hand says, “I am in complete compliance with Section 1373. I am not a sanctuary city.” But on the other hand says publicly to the people in Louisiana, “I refuse to be a part of Trump’s deportation force.”

Now, that is his—and this is America. You can believe what you want to believe. But we are a Nation of laws, and we have laws that have to be followed. And if New Orleans disagrees with the law, it should petition Congress to change it, but it cannot just unilaterally say, “I do not like it. I am the mayor. I do not like the President. I do not agree with this policy, so I am not going to follow it,” and make his comments personal in the process of doing that. That bothered me.

So what is going to be done to follow up? I mean, let me make a prediction. All 10 cities are going to say they are in compliance.

Mr. ROSENSTEIN. Yes, thank you, Senator. I want to make sure I clarify this.

If somebody certifies to the Department of Justice that they are in compliance, we expect them to be in compliance. And so it would be a very serious matter if somebody sends a certification—it has to be signed by a person, and that person needs to be confident that they are right. If somebody signs a certification that they are in compliance, we are going to vigorously review those, particularly those 10 because they have already been identified for us by our inspector general as jurisdictions where there was some concern.

So we are going to vigorously review those submissions, and if they are not in compliance and, therefore, they are in violation of the grant contract, we will pursue appropriate remedies. Those could include suspending an award. It could include terminating a grant contract. And it could include requiring repayment of grant funds.

So this is a very serious matter, Senator. If somebody sends a certification, we expect it to be accurate.

Senator KENNEDY. Well, I have gone over, but over what period of time are you going to check their compliance?

Mr. ROSENSTEIN. Well, in the ordinary grant making process, obviously, there are a lot of conditions on Federal grants, and there is a review process within the Department, the Office of Justice Programs and other grantmaking components of the Department. There is a potential for investigations by the inspector general. And so we do review those in the ordinary course.

And on a prospective basis, Senator, we are going to require these certifications that the jurisdictions are in compliance with 1373. And I am hopeful that people will, if they were not following the law in the first place, that they will truthfully certify and make sure they change their practice so that they are following the law in the future.

Senator KENNEDY. Thank you, Mr. Chairman. And thank you for your indulgence in allowing me to go over.

Thank you, Mr. General.

Senator SHELBY. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman.

Senator SHELBY. Thank you for yielding to Senator Alexander.

Senator BOOZMAN. Thank you.

Senator SHELBY. You lost a little time.

Senator BOOZMAN. No, it is fine. He had a good excuse. He was going to visit with the President.

DRUG COURTS

Thank you so much for being here. I just want to echo, first, what my colleagues have said about drug courts, on both sides of the aisle. That is something that really does reduce recidivism. They are doing a great job in Arkansas, both the regular drug court and then also the veteran drug courts working with the VA, using resources that they have. That is just a great partnership that really is making a big difference.

DOJ VIOLENT CRIME TASK FORCE

I am pleased that the DOJ is reinvesting in a strategy that targets violent crime. I understand that you have created a violent crimes strategy task force.

Can you elaborate on the details, including what agencies are playing what roles? And do you have the necessary resources that you need to carry out the mission, which is so very important?

Mr. ROSENSTEIN. Yes, thank you, Senator.

With regard to violent crime, which I know you are aware, in 2015, violent crime increased by more than 3 percent, which to just put that in context, is the largest 1-year increase we have experienced since 1991 nationwide. The number of murders in 2015 in-

creased by 11 percent, which was the largest 1-year increase since 1971.

So we consider this to be an urgent problem for us. The Attorney General established a task force on violent crime reduction in public safety. That task force is drawing on expertise from throughout the Department to come up with strategies. And we have a number of proposals, some of which are in this budget, that will help us to reinvigorate our fight against violent crime, including, I am hopeful, that we will be able to reinstitute what was referred to as Project Safe Neighborhoods. It was a program that I was involved in back when I first became U.S. Attorney. And we hope to reinvigorate that program where we work together with other State and local partners to identify what are the violent crime problems in their communities and how can Federal resources best be used to solve them.

I think that the issue you opened with Senator is particularly important to me because these drug courts are primarily an issue for our State and local partners. They deal with, on a daily basis, a large volume of offenders, people who have committed crimes who are drug addicts. In the Federal system, typically, when we are prosecuting drug cases, they are distributors, not addicts, so we deal with a different type of defendant. But for State and local partners, if they are able to help those folks overcome their drug addiction, they are going to be able to reduce crime. So I think it is critically important for us to support those efforts.

EOIR—IMMIGRATION CASE BACKLOG

Senator BOOZMAN. Very good. I am chairing the Homeland Security Appropriations Subcommittee. One of our concerns is the number of immigration judges. We have, I believe, about a 500,000 backlog. I think there is \$75 million to put more resources in there, more judges.

Can you talk a little bit about that, the efforts that you are making in that regard, and kind of what the plan is to eliminate the backlog, how you are going to resource those judges?

Mr. ROSENSTEIN. There are really two ways Senator that we are acting immediately to try to deal with that backlog. The first is by filling existing vacancies, because there was a delay in filling immigration judge vacancies as they arose, so we had a lot of judicial slots that were already funded but were vacant, and we are now moving quickly to fill those positions.

In addition to that, our 2018 budget requests \$500 million for the office and the Department. It is called the Executive Office of Immigration Review. That is the office that handles those cases. That will include \$75 million for new judges, 75 new judges and a total of 450 staff, which includes the folks to support those judges.

So once we get all those folks out into the field, we anticipate we are going to make a big impact on that backlog. It will represent a 21 percent increase in our overall staff, and we will be able to adjudicate those immigration cases, I believe, much more fairly and expeditiously.

And in addition to that, we are working to fill those 36 vacancies that already exist. We already hired 38 immigration judges this

year, and we hope to have a full complement, to have all of the 345 additional slots filled by the end of the year.

Senator BOOZMAN. Are you going to realign or are you in the process of realigning where they are at? And teleconferencing and things like that, do we use those kinds of technologies?

Mr. ROSENSTEIN. We are looking at alignment as in where we need the judges, and we are going to put them in the places we think they are the most valuable. I do hope to look at ways that we can operate more efficiently.

You mentioned teleconferencing, to use technology to move these cases quicker. I do not think there is any—it is not good for anybody to have these cases pending for so long. The director of our Executive Office of Immigration Review recently left the Department. We now have an acting director, and I plan to work closely with him and with his successor when we appoint a permanent director. And the challenge I have given to him is let's fill the vacancies, but let's also figure out whether there are efficiencies that we can implement, ways we can move these cases through the system more quickly, because I think that is in everybody's interest.

Senator BOOZMAN. Thank you, Mr. Chairman.

Senator SHELBY. Thank you.

I have several questions, and then I will go to Senator Shaheen.

MADOFF VICTIMS FUND (MVF)

The Justice Department, it is my understanding, currently holds over \$4 billion in forfeited and seized assets in a fund set up to compensate victims of the Bernie Madoff fraud. The Department is now in year 6 of the fund and, to date, to my knowledge, no assets have been disbursed to victims. In addition, news reports indicate that the special master of this fund has collected over \$40 million in fees.

Questions have been raised about the methodology of making distributions and determining the validity of claims—that these methodologies are unorthodox and unworkable. Obviously, they are not working, if there has been no distribution.

Would the Department be inclined to review this matter? In other words, look at this—there is something wrong here—and see if there is a manner in which these distributions can be made more quickly and efficiently, because the fund was set up to compensate the victims.

You have been a prosecutor. You still are. Do you have a comment on that?

Mr. ROSENSTEIN. Yes, sir. I agree with you.

I think, from the perspective of our prosecutors and agents, one of the most important things we can do is to reimburse victims—

Senator SHELBY. That is right.

Mr. ROSENSTEIN [continuing]. Able to do it.

Senator SHELBY. That was the purpose of the fund, wasn't it?

Mr. ROSENSTEIN. Yes, that is correct. And we should do it as quickly as possible.

As I understand—I just learned about this issue this week, Senator, so I need to look into it a bit more. But my understanding is, the problem here was the volume of claims that we received. I understand 65,000 claims, so it is a process of making sure that

each one of those is dealt with individually. And we do not distribute the money until we are confident about the pool of people who ought to receive it.

So I do appreciate your concern, and I can commit to you I am going to look into that and figure out why it is taking so long.

Senator SHELBY. Will you get back to the subcommittee on this?

Mr. ROSENSTEIN. Yes, sir.

Senator SHELBY. It has been raised by a number of people with us. Will you do that?

Mr. ROSENSTEIN. Yes. My understanding is that we have recently begun to notify claimants about decisions, so there are some people who are getting answers from us. But I will report back to you on that.

[The information follows:]

The Madoff Victims Fund (MVF) was created in 2013. The deadline for filing petitions was in April of 2014. Since that time, the Special Master and Department personnel have been hard at work evaluating more than 65,400 petitions claiming approximately \$78 billion in losses on Madoff-related investments. Petitions came from individuals and entities in 136 countries. The Special Master and his team have reviewed more than 403,000 individual Madoff transactions in 13 currencies. Approximately 4.5 million pages of backup documentation also needed to be evaluated. The Special Master identified almost 31,000 petitions (for losses totaling approximately \$27 billion) that were incomplete. In order to capture all eligible victims, each of those petitioners was notified of the deficiencies and given an opportunity to cure the deficiency and file an eligible claim.

This process is necessary to confirm which petitions are eligible and that the amount claimed is accurate. The total amount available to compensate victims is approximately \$4 billion. Ineligible or overstated petitions would dilute the potential recoveries of real victims. If the Department had begun making payments before potential victims had been given an opportunity to cure deficiencies, we would have risked denying the claims of otherwise eligible victims.

The Department has now largely completed its review. The Department has issued rulings on approximately 60,000 petitions. In early June, over 35,000 petitions were approved, and individuals and entities have begun receiving notifications that their claims have been approved or denied. As a result of these decisions, the Department is poised to make initial payments by the end of the year.

Additional information regarding the ongoing MVF review, including an update from June 2017 specifically addressing the recent decisions and anticipated payment timeline, can be found at www.madoffvictimfund.com.

Senator SHELBY. Thank you.

U.S./U.K. BILATERAL AGREEMENT

Regarding counterterrorism, how does the Department's 2018 budget, particularly funding for the FBI, improve its partnership, say with the United Kingdom and other Five Eye Partners in the global war on terror? And what benefits do you feel will come from the new bilateral agreement between the U.S. and the U.K. to expand data-sharing in this area?

Mr. ROSENSTEIN. Thank you, Senator.

National security is our highest priority, and the key to effectively combating terrorism is to work with our partners in foreign countries, so that is critically important to us.

With regard to this issue of the bilateral agreement between the U.S. and the U.K., I think that that is critical to allow us to lawfully and efficiently access electronic data. Data-sharing is critical and, of course, one of the challenges is we share data. We also need to maintain the confidentiality of data.

What we introduced last month was a legislative proposal to enable bilateral agreements. Those key benefits would include helping our allies investigate and fight serious crime, reducing and eliminating conflicts of laws that put our technology companies in a difficult position. This is a challenge for American companies that have information. It may be lawful in one country but not in another country to share it.

So this bilateral agreement process will allow us to bring our laws into harmony. And it will also accomplish other goals, such as reducing the incentive to localize data by companies.

So we look forward to working with the Congress, and we look forward to addressing any of the concerns that you may have about it.

Senator SHELBY. Thank you.

CYBERSECURITY

In the area of cybersecurity, over the past couple of years, we have all witnessed serious data breaches occur in the U.S. Government and also the private sector, including at some of the Nation's largest companies and financial institutions. The Department is requesting additional funding in the fiscal year 2018 budget to combat cybercrime across several agencies, including the FBI, the National Security Division, the Criminal Division, and many U.S. Attorneys offices.

My question is, what is the Department proposing to do differently or additionally in 2018 to combat cybercrime that it is currently unable to accomplish with existing funds?

Mr. ROSENSTEIN. As I mentioned in my opening statement, Senator, cybercrime is an area of emerging challenges. Changes in technology constantly create new challenges for us. Some changes in technology actually are developed in an effort to defeat enforcement efforts.

So our enhancements include \$41.5 million to enhance the FBI cyber efforts. That will include improving technological tools and expanding high-speed networks. It includes \$20 million to address threats posed by foreign intelligence and insiders, and \$22 million to address this "Going Dark" problem, which I think is our most significant law enforcement challenge.

Senator SHELBY. But you have a heck of a challenge here, do you not?

Mr. ROSENSTEIN. Yes, we do. We have extraordinarily talented agents and prosecutors and support personnel, but this technology, Senator, is a tremendous challenge for us because they are always trying to stay a step ahead of us.

Senator SHELBY. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

Mr. Rosenstein, I very much appreciate the statements that you made here this morning about your commitment to addressing the heroin and opioid epidemic.

HEROIN AND OPIOID EPIDEMIC

As you may be aware, in New Hampshire, we are second only to West Virginia in terms of the percentage of overdose deaths. And

this year, sadly, we have seen carfentanil arrive in New Hampshire and have had six people die in the State from that substance.

I understand that the Department is looking at reprioritizing efforts to address drug enforcement, but I just disagree with your decisions in a couple of areas. One is the elimination of the COPS Anti-Heroin Task Force grant program.

Senator Feinstein spoke about her efforts to focus on methamphetamine, which have been successful. It was looking at that successful model that Senator Leahy and I tried to direct some support to local law enforcement. While I think our DEA agents and our Federal law enforcement officials do a great job, we just do not have as many of them in New Hampshire as we do local law enforcement, and we need to provide some resources for local law enforcement because they are the people who, day in and day out, are actually on the frontlines.

So I would urge you to rethink whether eliminating the Anti-Heroin Task Force grant program is really in the interest of what we are all trying to accomplish.

You also spoke about meeting with Chinese officials to discuss mail order drugs that are coming into the United States. There was a story this weekend by the New York Times reporting on the dark web that is being used to sell synthetic drugs and opioids like fentanyl. Can you tell me what you are doing to shut down those sites?

Mr. ROSENSTEIN. Yes, Senator.

First of all, with regard to the task forces, I completely respect your view on that. The point I would simply like to make is we have different ways of addressing the same issue, but we are committed to spending more resources on heroin and opioid drugs.

DRUG COURTS

Senator SHAHEEN. Can I just interrupt you, because the other issue that has been brought up by several of my colleagues has been drug courts, which we have found to be very effective in New Hampshire. Yet you have reduced funding for drug courts in the 2018 budget.

Mr. ROSENSTEIN. I had the number. I am not certain about the reduction.

Senator SHAHEEN. From \$43 million to \$40 million.

Mr. ROSENSTEIN. Okay, right.

Senator SHAHEEN. While it may not seem like a lot of money, in New Hampshire, that is a lot of money.

Mr. ROSENSTEIN. Yes, I understand. It is a lot of money to me, too, Senator.

But I think it does reflect, nonetheless, a commitment. That \$40 million does reflect our confidence that that program can be effective. And I am sure that if that program is funded, I will work with the Office of Justice Programs—I know I will work with the Office of Justice Programs to make sure it is spent effectively.

To address your question about China, I have been in this job for 6 weeks. I have not met with China, but I do hope to talk with DEA and with the Postal Inspection Service and any other Federal agencies that have a stake in this to figure out what we can do.

The problem with the dark web, and I am familiar with the story you are referring to, is that it is a very effective tool for criminals to commit crime——

Senator SHAHEEN. It is.

Mr. ROSENSTEIN [continuing]. With limited ability to be detected. But we do have ways to catch those criminals.

We had a case just a couple years ago involving a dark web site in which the defendant was caught and successfully prosecuted in New York and will no longer be in position to use the Internet as a tool to distribute drugs and to facilitate other crimes. So we do have the ability to catch these offenders, but it is challenging because of the technological burdens.

But I will work with FBI, DEA, Secret Service, and other agencies to do everything that we can to get ahead of that problem.

Senator SHAHEEN. Thank you. And if there are legal changes in policy that need to be made, I hope you will share that with us, so we can try to support your efforts.

U.S. MARSHALS—PROTECTIVE DETAILS

Let me go to another topic very quickly. In April, the Marshals Service estimated that the round-the-clock protective detail for Education Secretary DeVos Cost \$1 million per month. By the end of September, this is going to total \$8 million.

I just wonder if you can tell me why the Marshals Service is playing this role in her protective detail. I understand that there are four to eight deputy marshals at a time on the detail when the Department of Education has their own security team. Can you tell me who made this determination about why this was necessary?

My understanding is the only time that this has ever been done before was for the ONDCP drug czar in the 1990s.

Mr. ROSENSTEIN. Senator, I do not know. That decision was made before I was confirmed. What I would like to do is look into it and get back to you.

[The information follows:

By order of the Attorney General, based on statutory authority, the U.S. Marshals Service started providing a protective detail for U.S. Secretary of Education Elisabeth “Betsy” DeVos on Feb. 13, 2017. USMS conducted a threat assessment on Ms. DeVos and determined that a threat to the secretary’s safety exists. A Memorandum of Understanding between the U.S. Department of Education and the U.S. Marshals Service for protective services for Ms. DeVos was signed March 28, retroactive to Feb. 14.

Senator SHAHEEN. I would appreciate that. I was a Governor. I have had credible threats against me. I have never had four to eight people on my detail 24 hours per day.

Thank you.

Senator SHELBY. Senator Coons.

Senator COONS. Thank you, Chairman Shelby.

DOJ FISCAL YEAR 2018 BUDGET REQUEST

Thank you, Deputy Attorney General Rosenstein. I appreciate the chance to talk with you about some of the budgetary details relating to the Department of Justice.

First, just to follow up on a number of Senators who have talked to you about fentanyl and the heroin crisis, I just commend to you

the STOP Act, a bipartisan bill led by Senators Portman and Klobuchar. Many of us are cosponsors, myself included. It tries to deal with some of the issues around the shipment of fentanyl into the United States and strengthen some of our postal inspection abilities.

On an appropriations subcommittee where I am the ranking, we have responsibility for the Office of National Drug Control Policy. It is not the subject of this hearing today, but I do intend to push back on the elimination of funding, because I think their HIDTA program has been particularly helpful.

The bulletproof vest partnership is a program I have long supported, and it has given roughly 13,000 jurisdictions bulletproof vests that are anatomically appropriate, and represent the current best technology. The Federal role is making sure that they are high-performing bulletproof vests. They have literally saved the lives of law enforcement officials, some of whom I know personally from my home State.

I am pleased the request maintains funding for this important program, but the request makes it a carveout in the Justice Assistance Grants rather than being funded separately, as has been the case in the past. Similarly, the body-worn camera partnership is a carveout of the Justice Assistance Grant programs.

So, effectively, these two programs would cut Justice Assistance Grants by \$45 million by carving them out rather than having them separately funded, on top of the \$71 million cut that is clearly shown in the request. In a budget focused on addressing violent crime and supporting law enforcement, why did the administration slash resources for State and local law enforcement by making the bulletproof vest partnership and the body-worn camera partnership a carveout of the larger JAG program rather than funding them separately?

Mr. ROSENSTEIN. Senator, my understanding is that we have recommended \$22.5 million for that bulletproof vest program, which I agree with you is important and, as you pointed out, is actually consistent with the amount that was allocated over the last 2 fiscal years. My understanding is it is set aside—it is set aside within the Byrne JAG program.

So I do not know the technical reasons for that, but I can tell you that I think it is an important program. And the budget does propose to spend \$22.5 million on those vests. And, if approved, I am sure we will.

Senator COONS. I look forward to working with you to ensure those resources are available in a long-term and predictable way. I was pointing out that the reduction in Byrne JAG, which I think 50 Senators joined a letter opposing a reduction in that, is even greater because these are programs that were previously separately funded.

My hometown of Wilmington is one of a number of cities where we have seen a significant spike in violent crime. The Violence Reduction Network was an effective high-impact partnership between Federal law enforcement and local law enforcement.

Just to give one example, we saw homicide clearance rates jump from below 20 percent to about 50 percent. And I want to specifically thank again OJP's Bureau of Justice Assistance and their

hardworking team for their efforts that made possible John Skinner, who is a Baltimore PD leader, coming to Wilmington and coordinating a whole series of different Federal law enforcement interventions that were cumulatively very powerful.

In your response to my questions for the record in your confirmation hearing, you said reducing violent crime would be a top priority for you and you would review the funding mechanisms and available resources. Will you commit to ensuring Federal resources continue to assist cities like Wilmington who have partnered, who have made progress, have shown themselves to be good partners with Federal law enforcement through programs like VRN in the past?

Mr. ROSENSTEIN. Yes, Senator. In fact, John Skinner, I knew John from Baltimore, and I worked with the Department in the VRN rollout. I am very pleased that the program was effective in Wilmington.

DOJ GRANTS—VIOLENCE REDUCTION NETWORK (VRN)

We are requesting funding of \$5 million for the National Crime Reduction Assistance Network, which is the formal name of VRN, or Violence Reduction Network. I think that is really a very important opportunity for cities to consult directly with the Department and with international and national practitioners and researchers, people with proven track records that can bring best practices to local jurisdictions. Because we have a lot of extraordinarily committed law enforcement officers out there, police chiefs and sheriffs, who welcome the assistance, the insights that can be provided from somebody who comes in and takes a fresh look and brings ideas that may be working in other places.

So I strongly support that program. We have a symposium—I believe it may even be next week—a symposium that is part of our violent crime initiative, and I do intend to make that a priority.

Senator COONS. Thank you. Anything we can do to appropriately partner between Federal law enforcement and some of the municipalities in my home State to continue to see sustained, elevated, stubbornly difficult levels of crime. If anything, they have gotten worse in the past year.

We have new leadership in the city and police department. We have dedicated law enforcement officers, and our previous chief was also quite responsive, as the VRN success shows. We need to continue to engage on this, and I appreciate the investment in learning from and carrying forward what VRN was able to do.

Thank you.

Mr. ROSENSTEIN. Thank you.

Senator SHELBY. Thank you, sir, for appearing here today.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions this afternoon, Senators will have the opportunity to submit additional questions for the record, which will be part of the hearing record. We would request the Department of Justice answer those questions, because some Senators were in other committees today.

[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. ROD J. ROSENSTEIN

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

GUANTANAMO BAY DETENTION FACILITY

Question 1. Mr. Deputy Attorney General, since 2009 Congress has consistently—on a bipartisan basis—prohibited the closure of the terrorist detention facility at Guantanamo Bay. This Subcommittee once again included two prohibitions in the fiscal year 2017 spending bill restricting the transfer and housing of these terrorist detainees on U.S. soil. And yet, in a statement issued by the President upon signing the 2017 Omnibus into law, he raised concerns about these specific provisions and, in doing so, raised questions about his future direction on Guantanamo Bay detainees. The Attorney General has previously supported Federal laws that prohibit the transfer of terrorist detainees from Guantanamo to U.S. soil.

How would you and the Attorney General advise the President if his administration explored closing the Guantanamo prison and transferring terrorist detainees to American soil?

Answer. Congress has barred the transfer of Guantanamo Bay detainees to the United States for any purpose in each National Defense Authorization Act since 2012. Unless those transfer restrictions were lifted, Guantanamo detainees could be not brought to the United States.

INTERNAL CYBERSECURITY AT JUSTICE

Question 2(a). The recent “WannaCry” virus was a challenge for many foreign government agencies. I have heard that there are variants of the “WannaCry” virus that will now infect devices, which means IP-connected devices, or “endpoints,” that are separate from desktops and laptops. I am concerned that the Department may have a great deal of this equipment on its networks, especially those agencies that rely on connected equipment to conduct their operations.

a. Did you find instances of “WannaCry” on Department of Justice computers? If you did not, then what do you think was key to preventing the attack from compromising Department computers?

Answer. The Department did not find any instance of WannaCry, and subsequently did not experience any system compromise related to the WannaCry and follow-on NotPetya malware on any of our more than 225,000 computers. At the onset of the outbreak, the Department took any remaining vulnerable systems offline until they were remediated. The keys to preventing compromise were the Department’s threat intelligence and aggressive patch management program which allowed us to remediate the vulnerabilities exploited by WannaCry and NotPetya malware in advance of the attack. Furthermore, the Department’s modern e-mail/web countermeasure systems blocked the vast majority of the phishing e-mails containing the WannaCry and NotPetya malware.

Question 2(b). Do you have a way to inventory all this connected equipment and to profile it to determine whether it has been compromised? If you do not, then isn’t detecting and profiling connected devices one of the key Continuous Diagnostics and Mitigation requirements? Will DOJ meet those requirements?

Answer. Yes, we do. The Department has had an automated enterprise asset inventory, configuration and vulnerability management solution that gives us near real-time insight to the Department’s cybersecurity posture, ahead of the Department of Homeland Security’s Continuous Diagnostics Migration program.

QUESTIONS SUBMITTED BY SENATOR JEANNE SHAHEEN

COMBATTING HEROIN AND ABUSE OF PRESCRIPTION OPIOIDS

Question 1(a). How can the Prescription Drug Monitoring Program be more effective in the fight against over prescription and unscrupulous doctors? What more can DOJ do to strengthen compliance and ensure pharmacies and doctors submit data?

Answer. OJP’s Harold Rogers Prescription Drug Monitoring Program (PDMP) is designed to promote a number of goals related to improving the Nation’s PDMP systems, including:

1. Preventing prescription drug misuse through interagency collaboration and analysis of PDMP data;
2. Reducing the variations that exist in the type of information collected, who is allowed to access the data, and the requirements for use and reporting;
3. Promoting interstate PDMP information sharing and the development of interoperable PDMP systems; and

4. Assisting states in developing the capacity to work across systems to leverage various data sets (such as PDMP data, naloxone administrations, fatal and non-fatal overdose data, and drug arrests) to develop data-driven interventions.

PDMPs are State-run electronic database systems used by practitioners, pharmacists, medical and pharmacy boards, and law enforcement. However, access varies according to State law. These programs are established through State legislation and are tailored to the specific needs of individual states. DEA strongly supports PDMPs and encourages the use of these programs by medical professionals in detecting and preventing doctor shopping and other diversion. However, because PDMPs are established under State law, DEA has no authority to manage or enhance the programs. At this time, 49 states, the District of Columbia, and the U.S. territory of Guam are operating statewide PDMP systems. In July 2017, Missouri Governor Eric Greitens announced an executive order to create a statewide PDMP system for the state—the last remaining State without a PDMP.

While PDMPs are valuable tools for prescribers, pharmacists, and law enforcement agencies to identify, detect, and prevent nonmedical prescription drug use and diversion, PDMPs do have some limits in detecting retail-level diversion. For example, the use of PDMPs is limited across State lines because interconnectivity remains a challenge. Often, crossing State lines allows subjects to evade detection. Many drug traffickers and drug seekers willingly travel hundreds of miles to gain easy access from unscrupulous clinics and physicians.

The Department of Justice, along with other Federal partners, works to address these problems. Several Federal entities, including the Office of the National Coordinator for Health Information Technology, the Office of National Drug Control Policy (ONDCP), and the Bureau of Justice Assistance support efforts to improve interoperability among PDMPs through grants and other assistance. The Centers for Disease Control and Prevention support work to enhance and maximize PDMPs as public health and clinical tools in its Prevention for States program.¹ Further, the Alliance of States with Prescription Drug Monitoring Programs, Brandeis University's PDMP Center of Excellence, and the Indian Health Service (IHS) are also partnering to improve interoperability between the IHS, its pharmacies, and PDMPs. The National Association of Boards of Pharmacy (NABP) hosts NABP Prescription Monitoring Program (PMP) InterConnect. The program allows authorized users of participating PDMPs to securely exchange prescription data between certain states. As of July 2017, 43 states have executed Memoranda of Understanding to participate in NABP's InterConnect program, and 42 of these states are currently live.²

These programs, however, are only as good as the data inputted into each system and the willingness of practitioners and pharmacists to use such systems on a consistent basis. As of April 2017, a total of 35 states and territories require controlled substance prescribers to use the State's PDMP.³ DEA encourages all practitioners and pharmacists to use their State PDMP program.

Greater adoption of PDMP best practices would improve the usefulness of prescription drug monitoring programs and expand the number of healthcare providers using them. These best practices have been widely documented and are outlined in a recent publication by the Pew Charitable Trusts, *Prescription Drug Monitoring Programs: Evidence-based Practices to Optimize Prescriber Use*. These practices include:

- Requiring a prescriber to view a patient's PDMP data under certain circumstances, such as before writing an initial prescription for a controlled substance.
- Allowing prescribers to designate someone on staff, such as a nurse, to access the PDMP on their behalf to help manage workflow.
- Proactively sending communications from PDMP staff to prescribers, dispensers, law enforcement, and regulators to flag potentially harmful drug use or prescribing activity based on PDMP data.
- Uploading information into the database at set intervals, whether in real time, daily, weekly, or monthly.

¹Centers for Disease Control and Prevention, National Center for Injury Prevention and Control Division of Unintentional Injury Prevention website, available at http://www.cdc.gov/drugoverdose/states/state_prevention.html. Retrieved on September 21, 2016.

²National Association of Boards of Pharmacy website, available at <http://www.nabp.net/programs/pmp-interconnect/nabp-pmp-interconnect>. Retrieved on July 17, 2017.

³Prescription Drug Monitoring Program Training and Technical Assistance Center at Brandeis University website, available at: http://www.pdmpassist.org/pdf/Mandatory_Query_7.pdf. Retrieved on July 17, 2017.

- Simplifying processes, such as instituting automatic PDMP registration triggered by State controlled-substance registration, to more easily enable prescribers to enroll in a PDMP.
- Making efforts to promote the program, including prescriber training (via formats that include online videos and instructional materials) on how to access and use PDMP data.
- Combining PDMP data with other clinical data through technologies that are used to store, communicate, and analyze health information, such as electronic health records.
- Implementing user-friendly technologies, such as dashboards and mobile applications that provide PDMP data in easily understandable formats.

Question 1(b). What is being done at a collaborative level with DOJ's counterparts in China and Mexico in relation to the production and distribution of fentanyl and the even deadlier carfentanyl?

Answer. DEA has maintained an ongoing relationship with officials of the People's Republic of China Government for years, and it has leveraged this relationship to help combat the rising threat from fentanyl and its analogues. Engagement occurs at the leadership level through interagency working groups that operate under the U.S.-China Joint Liaison Group framework, the Counternarcotics Working Group led by the Department of Justice, and the Bilateral Intelligence Working Group led by DEA.

On March 1, 2017, China's National Narcotics Control Commission announced scheduling controls against four fentanyl-class substances: carfentanyl, furanyl fentanyl, valeryl fentanyl, and acryl fentanyl. This announcement was the culmination of ongoing collaboration between DEA and the Chinese Government, and reaffirms the shared commitment to countering illicit fentanyl. On June 19, 2017, China announced that it also placed under control U-47700, a synthetic opioid responsible for many overdose deaths in the United States.

Over the past year, DEA and Chinese officials have met regularly to discuss mutual interests and shared responsibilities in countering the threat from fentanyl class substances. Representatives from the China National Narcotics Laboratory, the Narcotics Control Bureau, and the Ministry of Public Security met with DEA (along with Department of Justice and Department of Homeland Security) officials to exchange information on emerging substances' scientific data, trafficking trends, and sample exchanges. This continued dialogue is anticipated to foster a bilateral information exchange related, but not limited to, the identification of new substances of abuse that may then be considered for national control. The meeting also deepened professional contacts between relevant technical and legal experts.

DEA is working with the Office of National Drug Control Policy (ONDCP) and the Department of State to enhance coordination with Canada and Mexico to combat the opioid crisis through the North American Dialogue on Drug Policy (NADD). Through the inaugural trilateral meeting in October 2016 and March 2017 technical workshops, DEA has shared best practices and methodology on identifying the sources of heroin and fentanyl in North America and combatting criminal distribution networks. DEA will continue to work with Canada and Mexico to convene experts in these fields so that our three countries can better prevent the production and movement of drugs in and through our countries.

Question 1(c). Are all international law enforcement members participating in DEA Sensitive Investigation Units fully vetted? If not, why? What steps does DEA take to ensure international partners do not leak information?

Answer. Membership in a Sensitive Investigative Unit (SIU) is contingent upon successful completion of a background investigation, drug urinalysis, and polygraph examination. Members that have not successfully adjudicated each requirement may not participate in SIU units or investigations nor gain access to the SIU facilities. This also applies to support personnel such as accountants, attorneys, maintenance personnel, translators, and security guards. Additionally, in order to maximize control and safeguard sensitive information, DEA Special Agent Advisors (SAAs) must be assigned at a minimum ratio of one SAA to every 15 SIU members. The SAAs, working side-by-side with the SIU members, reduce the risk of compromise. Furthermore, all SIU facilities are controlled access and monitored 24 hours a day by SIU officers. All guests must be logged in and out of the facility and escorted at all times while on the premises.

After the initial polygraph exam, SIU members and support personnel are subject to random polygraph examinations at any point during their tenure. They must also successfully pass a mandatory polygraph test every 36 months. Failed polygraph exams result in the immediate expulsion of the SIU member from the unit.

DEPARTMENT OF JUSTICE HIRING

Question 2(a). How many positions that had conditional offers of employment by February 21 across the entire Department were ultimately cancelled? What is the breakout by DOJ component? What was the cost to the taxpayer to initiate background investigations and other testing that went towards these cancelled, but ultimately unfilled, positions?

Answer. As of February 21, 596 positions that had conditional offers of employment were cancelled across the entire Department. The breakout of these cancelled offers by the Department component is included in the table below. The approximate cost to initiate background investigations and other testing for the cancelled positions was \$864,000. It should be noted that the Department's hiring freeze did not apply to national security or public safety positions (for the Bureau of Prisons, public safety positions were exempt up to the Bureau's January 23, 2017 hiring level).

DOJ Component	Estimated # of Conditional Offers Cancelled
Antitrust Division	18
Bureau of Prisons	450
Community Relations Service	8
Executive Office for United States Attorneys	45
Justice Management Division	10
National Security Division	2
Office of Justice Programs	52
Tax Division	11
Total	596

Question 2(b). I understand that expansion of the medication assisted treatment program into Bureau of Prisons (BOP) New England Region is on hold as 2 positions needed to manage the program cannot be hired due to the freeze. This program provides drug treatment—an anti-heroin drug called Vivitrol—for Federal inmates entering BOP managed halfway houses. How can we ensure these positions are filled to expand this critical program to New England?

Answer. Medical staff are a priority for BOP and we appreciate your concern for the care of inmates. BOP Health Services Division has been working with the Human Resource Division to finalize crediting plans for the transitional care social worker and the transitional care pharmacist positions. The crediting plan for the social worker position was approved on July 12, 2017, and the Pharmacist position was approved on July 13, 2017.

Question 2(c). Does DOJ consider BOP a component of public safety? Why is the BOP not exempt from the DOJ hiring freeze?

Answer. In accordance with the administration's hiring directive, the Department has limited its hiring exemptions to the positions required to accomplish our national security and public safety responsibilities. In the case of BOP, the Department is permitting hiring at BOP field sites, to the overall staffing level existing on January 22, 2017. Within that limitation, BOP has flexibility to hire the positions it deems most critical and at the field locations it deems most critical. BOP will continue to closely monitor its staffing levels to ensure the continued safety and security of BOP employees, inmates, and the public.

Question 2(d). What is the expected attrition rate for ATF, DEA, FBI, USMS, BOP and USAO for fiscal year 17 and fiscal year 18 broken out by each agency? What is the hiring cost to onboard and outfit new agents, deputy marshals and correctional officers?

Answer. See chart below for estimated attrition for certain Department components.

Component	Staff Category *	Direct Personnel Estimated Attrition	
		Fiscal Year 2017	Fiscal Year 2018
ATF	All ATF Employees *	295 (6%)	237 (5%)
	Special Agents	[165] (6%)	[104] (5%)
BOP	All BOP Employees *	2,500 (6%)	2,900 (8.1%)
	Correctional Officers	[1,000] (5.5%)	[715] (4.0%)
DEA	All DEA Employees *	496 (5.5%)	502 (5.6%)
	Special Agents	[218] (4.8%)	[250] (5.6%)
FBI	All FBI Employees *	1,610 (4.4%)	1,675 (4.5%)
	Special Agents	[635] (4.6%)	[675] (4.9%)
USAO	All USAO Employees *	960 (10%)	950 (10%)
	Attorneys	[445] (9%)	[460] (9%)
USMS	All USMS Employees *	311 (9%)	328 (9%)
	Marshals	[184] (5%)	[196] (5%)

* The lines for all employees, include agents, correctional officers, attorneys, and Marshals.

DOJ New Position Cost
Law Enforcement and Corrections

Component	Classification ¹				Fiscal Year 2018 First Year Initial Costs ²	Fiscal Year 2019 Second Year Annualization (ATB) ³	Fiscal Year 2020 Third Year Annualization (ATB) ⁴	Full Performance Level (FPL) Annual Cost		
	Series	Initial GS Grade/Step	Full GS Grade/Step	Title				Compensation and Benefits	Non-Pay	Total
ATF	1811	9/1	13/5	Special Agent	305,202	7,694	69,514	195,016	187,394	382,410
BOP ⁵	0007	5/1	8/6	Correctional Officer	58,000	42,000				100,000
DEA	1811	9/1	13/5	Special Agent	248,785	4,325	75,986	199,858	129,238	329,096
FBI	1811	10/3	13/10	Special Agent	281,000	— 51,000	88,000	212,907	105,093	318,000
USMS	0082	7/1 (Trainee)	13/5	Deputy U.S. Marshal	218,346	— 22,099	94,313	202,451	88,109	290,560
	1811	9/1 (Deputy)								

Notes

¹ Cost information shown is for domestic positions. New international positions incur additional costs not shown.

² Some first year costs (such as pay and benefits) are calculated at 50% of actual. Assuming that new positions will be filled throughout the year, the average on-board time for all new positions would be six months.

³ During the second year, some costs decrease (such as equipment, vehicles, and recruitment) because they do not recur. Recurring costs (such as pay and benefits) increase from the 50% used in year 1 to full-year cost.

⁴ The third year annualization represents the cost adjustment necessary to fund pay and benefits for the new position at the full performance level.

⁵ BOP does not use the same methodology as law enforcement components to estimate new position costs.

Category Detail: Full Performance Level Annual Cost

Compensation and Benefits: basic salary, overtime, personnel benefits, awards, and Law Enforcement Availability Pay (LEAP).

Non-Pay: total show summarizes several cost categories—

Contract Services and Supplies (operational): fuel, ammunition, safety/protective equipment, uniforms, travel, rent, utilities, cell phone, office supplies.

Contract Services and Supplies (support): payroll services, security investigation/reinvestigation, drug testing, physical exam, medical care.

Equipment: firearms, technical and investigative equipment, vehicles, radios, computer (desktop/laptop), furniture.

Other: training (basic, advanced, miscellaneous), operational expenses, regularly scheduled PCS, IT enterprise costs, and DEA linguists.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Question 3(a). Since February 1, 2017, how many immigration judges (IJs) have been “surged” to handle Southwest Border cases? What courts were these IJs moved from and where were they newly assigned? How long will this surge last? When will these judges return to their home courts?

Answer. Immigration Judges (IJs) were mobilized to commence detail assignments to several DHS immigration detention facilities starting the week of March 6th. These details have included both in-person and video teleconference (VTC) docket assignments.

Detail assignments were made after consultations with the IJ union and included volunteer and non-volunteer judges. Non-volunteer judges were selected on a variety of factors, including prior availability and reverse seniority. Most detail assignments were for two-week periods. For locations in close proximity to an IJ's home duty station, detail assignments have been up to 1 month.

To date, IJs have been detailed from 17 immigration courts: Arlington, Baltimore, Chicago, Harlingen, Houston, Kansas City, Las Vegas, Los Angeles, Memphis, Miami, Newark, New York City, Orlando, Philadelphia, Phoenix, San Diego, and San Francisco.

Question 3(b). What is being done to protect human trafficking victims in immigration court? What additional services, if any, are they provided? What is the average length of time a trafficking victim has to wait before his/her case is heard?

Answer. Pursuant to several statutes, including the Trafficking Victims Protection Act (TVPA) and subsequent Trafficking Victims Protection Reauthorization Acts (TVPRAs), EOIR has provided all current IJs mandatory training, including updates and refreshers, on human trafficking issues. Additionally, all new immigration judges receive in-person training on human trafficking before they begin hearing cases. EOIR has also instituted a protocol that provides immigration court staff information about the indicators of trafficking and how to refer potential trafficking cases to the Department's Trafficking Intake Coordinator. Pursuant to 8 U.S.C. § 1232(c)(4), EOIR also operates the Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC), which addresses an adult caregiver's responsibility to protect an unaccompanied alien child from mistreatment, exploitation, and trafficking. LOPC providers are also provided guidance and training on identifying potential victims of trafficking and abuse and referring such cases to the appropriate social services and law enforcement authorities.

Question 3(c). We heard about a streamlined process for onboarding IJs at the hearing. What is the new policy for expediting the hiring of IJs?

Answer. The Department of Justice is actively implementing a new streamlined hiring plan that was announced by the Attorney General during a speech on April 11, 2017. The new hiring plan aims to reduce the overall hiring timeline, reflecting the need to decrease the pending caseload in our immigration courts, while maintaining the same amount of IJ applicant vetting as the previous plan. The revised plan sets clear deadlines for assessing applicants in the various stages of the process and for making decisions on moving applicants to the next stage. In order to decrease processing times, it eliminates steps that did not aid the selection process. It also permits the Attorney General to temporarily appoint selected candidates while the full background investigation is pending (which can often take up to a year to complete). The Department has estimated that, if implemented as intended, the new hiring process should reduce the amount of time that it takes to recommend applicants for hire to 6 months or less. The Department will utilize this revised process going forward to increase the speed of hiring and to fill new vacancies as soon as possible.

NATIONAL INCIDENT-BASED REPORTING SYSTEM (NIBRS)

Question 4(a). How many law enforcement agencies currently submit NIBRS data?

Answer. As of June 2017, there are 6,910 law enforcement agencies reporting National Incident-Based Reporting System (NIBRS) data.

Question 4(b). Is NIBRS still slated to become the Uniform Crime Reporting data standard by January 1, 2021? If not, why?

Answer. Uniform Crime Reporting (UCR) is in the process of transitioning all law enforcement agencies (LEAs) from a summary reporting system, which provides an aggregate monthly tally of crimes, to the National Incident-Based Reporting System (NIBRS), which provides circumstances and context of each crime incident, by January 1, 2021. Reporting via NIBRS will improve the quality, reliability, and accuracy of the data received from participating LEAs. NIBRS will also make it easier for LEAs to report hate crime data.

In December 2015, the Criminal Justice Information Services Advisory Policy Board recommended that the UCR Program transition to a NIBRS-only data collection by January 1, 2021 and the FBI concurred. The FBI identified 400 strategically targeted agencies through the National Crime Statistics Exchange (NCS-X) Program in need of funding to transition to NIBRS. Over the course of the past few years, the FBI worked with the Office of Justice Programs on a plan to transfer \$135 million (cumulatively) in Criminal Justice Information Service (CJIS) surcharge fee balances in fiscal years 2016, 2017, and 2018 to ensure NIBRS becomes the UCR data standard by January 1, 2021. The cutoff date for solicitation of fund-

ing, through OJP, is December 2018, which ensures recipients will have adequate time to make the necessary technical and programmatic changes prior to January 2021. Recognizing the proposed CJIS rescission could have an impact on the FBI's ability to support the NIBRS transition efforts, the Department will continue to work with the FBI to mitigate any impact the rescission may have towards future projects.

Question 4(c). What is the current status of the NCS-X Initiative? How many State and local law enforcement agencies have been supported through the Initiative to become compliant broken out by fiscal year?

Answer. The Bureau of Justice Statistics (BJS) kicked off the National Crime Statistics Exchange (NCS-X) Initiative in 2013, originally designed as a feasibility study to determine if the Department could expand its collection of incident-based crime data from law enforcement agencies. Since the Initiative started, BJS has made steady progress toward NCS-X implementation. Specific to funding announcements:

- Fiscal Year 2015.*—The first NCS-X solicitation was released; using BJS funds, awards were made to 14 State Uniform Crime Report (UCR) Programs as the first step in NCS-X implementation.
- Fiscal Year 2016.*—Two NCS-X solicitations were released; using both FBI Criminal Justice Information Services (CJIS) automation funds and BJS funds, awards were made to seven additional State UCR Programs and to 17 large local law enforcement agencies.
- Fiscal Year 2017.*—Three NCS-X solicitations were released; using both FBI CJIS automation funds and BJS funds, awards were made to three additional State UCR Programs and to 14 local police departments.

National Crime Statistics Exchange Implementation Milestones

2013	2014	2015	2016	2017
—BJS begins NCS-X project, holds kick-off meeting with NCS-X Implementation Team. —BJS and FBI CJIS sign Joint Statement in Support of NCS-X. —IACP CJIS Committee issues resolution in support of NCS-X.	—Chicago Police Department agrees to participate in NCS-X and partners with BJS to become the first NCS-X pilot agency. —BJS establishes the Crime Indicators Working Group, comprised of law enforcement leaders who provide input to BJS on the types of crime information most useful to the police. —BJS and the NCS-X Implementation Team begin conducting readiness assessments with NCS-X sample agencies.	—Major law enforcement associations sign letter supporting the national transition to NIBRS and NCS-X. —BJS issues first NCS-X funding opportunity and makes NCS-X awards to 14 state UCR Programs for NIBRS expansion. —BJS and FBI CJIS sign Charter establishing the NCS-X Steering Committee and hold inaugural meeting; meetings continue to be held quarterly thereafter.	—FBI Director accepts the recommendation from the CJIS Advisory Policy Board to retire the Summary Reporting System and move to an all-NIBRS data collection; sets transition deadline of January 2012. —FBI CJIS agrees to provide funding to BJS for NCS-X implementation through their automation funds. —BJS and FBI CJIS sign Memorandum of Agreement governing the use of the FBI automation funds for NCS-X. —BJS issues 2 NCS-X funding opportunities and makes NCS-X awards to 7 state UCR Programs and 17 large local law enforcement agencies for NIBRS expansion.	—FBI CJIS and BJS participate in a series of 5 regional NIBRS trainings for NCS-X states and agencies. —Montgomery County, MD Police Department, and NCS-X agency, begins reporting NIBRS data to the FBI. —FBI CJIS indicates that use of automation funding is restricted; cannot fund agency personnel or certain equipment for NCS-X grants. —BJS issues 3 NCS-X funding opportunities and makes NCS-X awards to 3 state UCR Programs, 4 large local law enforcement agencies, and 10 small and medium sized agencies for NIBRS expansion.

As of October 1, 2017, BJS has awarded \$44.4 million to State UCR Programs and to local law enforcement agencies through the NCS-X Initiative for the implementation of NIBRS. This includes \$34.8 million funded through the FBI automa-

tion funds and \$9.6 million funded through BJS. The table below reflects funding provided across the 3 years of implementation from fiscal year 2015 to fiscal year 2017. Funding was available to State UCR Programs in all 3 years, to large law enforcement agencies in fiscal year 2016 and fiscal year 2017, and to small and medium law enforcement agencies in fiscal year 2017. In addition, State UCR Programs were eligible for supplemental funding in years following their initial award, to cover costs associated with additional NIBRS implementation activities.

National Crime Statistics Exchange (NCS-X): Activities to Support State and Local Agency NIBRS Implementation

NCS-X Initiative Implementation Activity	Total Direct Awards	Total Funding Awarded	CJIS Automation Funding *	BJS Funding
NCS-X Pilot Project Funding	5	\$629,217	\$0	\$629,217
Fiscal Year 2015 Phase I Support for State UCR Programs	14	\$7,395,000	\$0	\$7,395,000
Fiscal Year 2016 Phase II Support for State UCR Programs	7	\$5,462,758	\$5,062,758	\$400,000
Fiscal Year 2016 Phase III Support for Large Local Law Enforcement Agencies	16	\$18,766,177	\$18,766,177	\$0
Fiscal Year 2016 State Supplemental Funding to Existing State Grantees	3	\$520,523	\$520,523	\$0
Fiscal Year 2017 Phase IV Support for State UCR Programs	3	\$2,302,825	\$1,950,153	\$352,672
Fiscal Year 2017 Phase V Support for Large Local Law Enforcement Agencies	4	\$2,761,543	\$2,579,474	\$182,069
Fiscal Year 2017 Phase VI Support for Small-Medium Law Enforcement Agencies	10	\$2,480,662	\$2,040,790	\$439,872
Fiscal Year 2017 State Supplemental Funding to Existing State Grantees	3	\$4,103,180	\$3,864,644	\$238,536
Total Funding Awarded		\$44,421,885	\$34,784,519	\$9,637,366

* In 2017, FBI CJIS indicated that use of the automation funds was restricted and generally cannot be used to fund applicant requests for agency personnel or most equipment, including desktop computers or handheld mobile field reporting devices.

Of the 400 sample law enforcement agencies chosen to participate in the NCS-X program, nearly two-thirds have received grant funding, have transitioned to NIBRS, or are actively working with BJS, FBI CJIS, and their respective State UCR Program to receive NCS-X funding through the State.

NCS-X Funding Status	Number of Agencies
Received NCS-X funding	97
Transitioned to NIBRS	36
NCS-X funding to be provided through State UCR Program or State Administering Agency.	116
Not yet supported	151
Total agencies	400

The NCS-X partnership between BJS and FBI CJIS has resulted in funding for 25 State UCR Programs and 97 NCS-X law enforcement agencies. In addition, BJS is establishing partnerships with State agencies in five states to provide funding and technical assistance to another 116 NCS-X agencies in fiscal year 2018. BJS will also issue funding opportunities in fiscal year 2018 for the remaining 151 agencies not yet supported with NCS-X grant awards.

MARSHALS SERVICE PROTECTIVE DETAILS

Question 5(a). Who determined that the protective detail for Education Secretary Betsy DeVos was necessary? Why was it deemed necessary?

Answer. The United States Marshals Service (USMS) received an order from the Attorney General, dated February 14, 2017, that directed the USMS Director to coordinate, assess, and provide appropriate protective measures for the Secretary of

Education. The USMS has conducted risk assessments on Secretary DeVos that have shown a high level of risk.

Question 5(b). Please provide a detailed cost assessment on this assignment to Secretary DeVos. How long will this detail continue?

Answer. The Memorandum of Understanding (MOU) between the Department of Education and the U.S. Marshals Service, signed on March 28, 2017, shall remain in effect for 4 years, subject to the availability of funds. The Department of Education initially agreed to reimburse the USMS up to \$7,784,000 to fund the salaries, benefits, travel, and equipment of 24 positions (22 Deputy U.S. Marshals and 2 intelligence analysts) through September 30, 2017. In mid-August 2017, the agreement was modified (reduced by \$2,000,000) based on actual and projected expenses through the end of the fiscal year.

Question 5(c). What is the average cost to provide a protective detail for a Federal judge? How many details for the Federal judiciary were provided in fiscal year 2016? How many have been provided for fiscal year 2017?

Answer. The U.S. Marshals Service (USMS) does not calculate an average cost for Federal judiciary protection details. Protective requirements such as the number of personnel needed, location, travel, and detail duration can vary greatly from detail to detail.

Set forth in the table below are a few examples of the costs of details. These amounts include regular payroll plus overtime, travel, lodging, and per diem for the Deputy U.S. Marshals who execute our threat-based protective details.

In fiscal year 2016, the USMS provided 14 threat-based protection details and 556 risk-based protection details. As of June 30, 2017, the USMS has provided 10 threat-based protection details and 334 risk-based protection details.

Detail	Fiscal Year 2016	Fiscal Year 2017 YTD (as of June 30)
DAG	\$1,030,430	\$1,557,292
Special Assignments	\$8,764,986	\$5,627,628
Secretary of Education		\$2,809,275
WWA Judicial Security		\$131,280
SC Nominee		\$583,497

Question 5(d). What other Cabinet heads are being provided protective details by the Marshals Service?

Answer. No other Cabinet heads are being provided protective details by the U.S. Marshals Service at this time.

QUESTIONS SUBMITTED BY SENATOR JAMES LANKFORD

Question 1. On May 4, 2017, President Trump issued an Executive Order to direct the Attorney General to issue guidance interpreting religious liberty protections in Federal law. What are some of the religious freedom issues you see that the Federal Government should address? What is the timeframe for when this guidance will be issued?

Answer. In accordance with President Trump's Executive Order, the Attorney General issued guidance interpreting religious liberty protections in Federal law on October 6, 2017. The guidance identifies 20 high-level principles that administrative agencies and executive departments can put to use to protect religious liberty of all Americans, along with an appendix that provides legal support for each principle. While not intended to be exhaustive, the guidance discusses protections that apply across a wide variety of government activity, including in employment, contracting, and programming.

Question 2. In August 2016, the Bureau of Prisons (BOP) announced plans to end its use of private prisons. However, Attorney General Sessions rescinded this policy and directed BOP "to return to its previous approach." Are all private facilities that were previously in use being used again? Do you believe that all such facilities are proper for housing our Federal inmates?

Answer. Eleven of the thirteen privately operated adult facilities under contract with the Bureau of Prisons (BOP) in August 2016 are still used to house sentenced Federal offenders. All eleven privately operated adult contract facilities have received and maintain their American Correctional Association (ACA) accreditation, PREA certification, and accreditation by the Joint Commission, a non-profit organi-

zation that provides accreditation for healthcare programs. In addition, the BOP has oversight staff at each location to ensure that daily operations are in compliance with the contract terms and requirements.

For decades, the BOP has relied on privately-operated prisons to house low-security criminal aliens. The private prison industry helped the BOP manage the unprecedented growth in the inmate population that began in the 1980s. While the Federal prison population has decreased in recent years, the BOP needs the flexibility of private prison contracts to avoid the need for costly, new BOP facility construction.

Question 3. In fiscal year 2018, the Department of Justice is requesting \$19 million in enhancements to target transnational criminal organizations. Please detail for the Subcommittee the role that interdiction will play in this effort and in particular, how the Department will work with the Departments of Defense and Homeland Security to intercept illicit drugs before they enter our borders.

Answer. The Department of Justice works with many interagency partners and develops innovative and flexible approaches to the constantly evolving threats associated with transnational criminal organizations (TCOs), including those involved in drug trafficking. The Department's overall efforts to target TCOs are led and coordinated by the multi-agency Organized Crime Drug Enforcement Task Forces (OCDETF) and its components—the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and U.S. Marshals Service (USMS); the Department of Homeland Security's (DHS) Homeland Security Investigations (HSI), U.S. Coast Guard (USCG), and U.S. Secret Service (USSS); the Treasury Department's Internal Revenue Service Criminal Investigation Division (IRS-CID); the Department of State's Diplomatic Security Service (DSS); the Department of Labor's Office of the Inspector General (DOL-OIG); the U.S. Postal Inspection Service (USPIS); the 93 U.S. Attorney's Offices; and the Department's Criminal Division—in conjunction with the International Organized Crime Intelligence and Operational Center (IOC-2) and the DEA-led Special Operations Division (SOD).

Additionally, DEA and FBI, through their domestic and foreign offices, routinely work with DHS, specifically U.S. Customs and Border Patrol (CBP), HSI, and USCG, as well as the Department of Defense (DoD) to intercept illicit drugs from entering the United States across our land and maritime borders.

The majority of illegal drugs destined for distribution and consumption in the United States are transported to and across the Southwest Border. The Department's OCDETF components work in partnership with the DHS components to stop drugs from crossing the border through interdictions at and between the Ports of Entry, as well as through complex investigations that are often developed from border interdictions to identify and target the TCOs that manufacture, transport, and distribute the drug loads. Many of the most hard-hitting blows against these TCOs have been struck by OCDETF's Co-located Strike Forces, located in key cities along the Southwest Border, where Department of Justice agencies work side-by-side with their DHS partners on a daily basis.

A significant volume of illegal drugs destined for the continental United States is also transported over air and maritime routes from South and Central America to Mexico, Puerto Rico, and the Virgin Islands for staging and forwarding along land and additional maritime routes. OCDETF Strike Forces in Florida and Puerto Rico are also central to this effort. Department of Justice agencies in these and other Strike Forces work in partnership with DHS and DoD entities to identify and target the command structure of the major air and maritime transporters and interdict multi-hundred kilogram loads destined for the United States. The conveyances used to transport the drugs include: go-fast vessels, fishing vessels, merchant vessels, low-profile vessels, self-propelled semi-submersible vessels, fully submersible vessels, various pleasure craft, cargo containers, and personal aircraft.

In fiscal year 2016, Department of Justice components, primarily DEA and FBI, issued thousands of Critical Movement Alerts (CMAs) regarding maritime narcotic transportation events. These CMAs were sent to the Joint Interagency Task Force South in Key West, Florida, for detection and monitoring to assist in targeting the illicit drug movements in international waters for interdiction by USCG vessels and/or allied partner nations with USCG Law Enforcement Detachment Teams on board. Additionally, Department of Justice agencies, DHS, and DoD enjoy a long-standing history of counter-narcotics cooperation with the Bahamas under Operation Bahamas, Turks and Caicos (OPBAT), which has been in existence since 1982. This DEA-led, multi-agency mission thwarts the flow of illegal drugs transiting through the Bahamas, dismantles drug trafficking organizations, and strengthens partner nation law enforcement capabilities to enhance Bahamian law enforcement in combating drug trafficking and drug money laundering. OPBAT has a two-

pronged effect: as an enforcement operation and as a deterrent against TCOs smuggling illicit drugs through the Northern Caribbean.

Moreover, interdiction is an important facet of enforcement operations that requires coordination with interagency partners positioned throughout the source and transit zones. OCDETF's Department of Justice and DHS components conduct investigations to identify all members of an organization, with the goal of disrupting and dismantling entire criminal networks, not just those involved in the smuggling of drugs, both domestically and internationally. Drug enforcement agencies prioritize their resources by targeting the multi-agency Consolidated Priority Organization Targets (CPOTs) and other individual agency priority target organizations, which are the most significant international and domestic drug trafficking and drug money laundering organizations. Department works with its partners in DHS and DoD to use all available resources to combat these threats by identifying, targeting, disrupting, and dismantling organizations responsible for the manufacture and distribution of illicit substances before they enter the United States.

The Department is also engaged in international efforts to reduce the production, trafficking, distribution, sale, and overall availability and impact of illicit drugs. DEA's Sensitive Investigative Units (SIU) are a significant component of DEA's international enforcement program. DEA's SIU program helps build effective and vetted host nation units capable of conducting complex investigations targeting major TCOs. Bilateral Investigations Units (BIUs) are an important tool for targeting, disrupting, and dismantling significant TCOs. The BIUs have used extraterritorial authorities to infiltrate, indict, arrest, and extradite previously untouchable TCO leaders involved in drug trafficking.

Finally, SOD is a DEA-led multi-agency operations coordination center with participation from Federal law enforcement agencies, DoD, the Intelligence Community, and international law enforcement partners. Established in 1994, SOD's mission is to establish strategies and operations to dismantle national and international trafficking organizations by attacking their command and control communications. Special emphasis is placed on major drug trafficking and narco-terrorism organizations that operate across jurisdictional boundaries on a regional, national, and international level.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

COPS ANTI-HEROIN TASK FORCE PROGRAM

Question 1. The Drug Enforcement Administration's 2016 National Drug Threat Assessment findings note that over the last 10 years, the drug landscape in the United States has shifted, with the opioid threat having risen to epidemic levels, impacting significant portions of the Nation. Our Nation's law enforcement is in dire need of additional resources to help fight this epidemic. Local police have increasingly cited lack of resources as their primary shortcoming in the fight against opioid trafficking and the resulting addiction. In my home State of Vermont, opioid overdoses reported to emergency responders rose from 1.2 daily in 2015 to 2.2 in 2016. State and local law enforcement agencies need resources to respond to the opioid crisis. The Vermont Drug Task Force has demonstrated that by investing in heroin task forces we can achieve results. Vermont's heroin investigations increased by 32 percent thanks to this program. Just last month 650 bags of heroin were seized through one search warrant in Montpelier. The Anti-Heroin Task Force program is working. It is making a real difference in Vermont.

What commitments will the Department make to help State and local law enforcement agencies that are in dire need of resources to combat the opioid epidemic?

Answer. The fiscal year 2018 budget request includes \$40.4 million in additional funding for DEA prescription opioid and heroin enforcement programs. This will allow DEA to expand funding for its "360 Strategy," enhance operations against the domestic cartels responsible for drug distribution in our communities, enhance and establish regulatory and enforcement groups in the Diversion Control Program, and increase funding for its prescription drug disposal programs.

To ensure a streamlined effort throughout the Federal Government to combat this epidemic and to avoid duplicative efforts, no funding is requested in fiscal year 2018 by the COPS Office for this program. By redirecting this funding, the Department will be able to increase resources to support other critical initiatives.

OFFICE OF LEGAL COUNSEL MEMO

Question 2. On May 1, the Justice Department's Office of Legal Counsel (OLC) issued an opinion asserting that the Department is under no legal obligation to re-

spond to oversight requests from minority members of Congress. The opinion indicates that responding to requests from individual members of Congress, including Ranking Minority members, is discretionary. This is a flawed opinion and falls grossly short of the Departments responsibilities to Congress. Senator Grassley aptly described the memo as “nonsense.” Will you rescind the May 1, 2017, OLC memo?

Answer. In a July 12 letter to Senator Grassley, the nominee for the position of the Assistant Attorney General for OLC stated that, if confirmed, he will review the May 1 opinion.¹⁶³ Cong. Rec S4079 (daily ed. July 19, 2017). The letter opinion does not purport to state the administration’s policy about responding to requests for information from individual members of Congress. That policy is stated in a July 20 letter to Senator Grassley from the White House Director of Legislative Affairs, which explains: “The administration’s policy is to respect the rights of all individual Members, regardless of party affiliation, to request information about Executive Branch policies and programs. The administration will use its best efforts to be as timely and responsive as possible in answering such requests consistent with the need to prioritize requests from congressional Committees, with applicable resource constraints, and with any legitimate confidentiality or other institutional interest of the Executive Branch.” See http://www.judiciary.senate.gov/download/white-house-to-grassley_-_oversight-requests.

FORENSICS

Question 3. I have long been concerned about the state of forensic science in the United States, and am eager to ensure that our criminal justice system—our courts, law enforcement, forensic laboratories, prosecutors, defendants, and all other stakeholders—have the strongest and most reliable tools to use in the pursuit of justice. This is an area where the Department of Justice has a critical role to play. I hope this issue will be a priority, despite the Attorney General not renewing the charter of the National Commission on Forensic Science. The Attorney General has indicated he will appoint a Senior Forensic Advisor.

- a. Have you determined who will be appointed to lead the Department’s forensic science work?
- b. Is there a timeline?
- c. If no individual has been appointed, will the Department commit to seek meaningful input on the selection from relevant stakeholders in the forensic science community, including scientists, crime lab leaders, law enforcement, judges, prosecutors, and defense lawyers?

Answer. Forensic science is an important issue, and the Department remains committed to ensuring that our criminal justice system has the strongest and most reliable tools to use in the pursuit of justice. The Department recently announced the selection of Ted Hunt as Senior Advisor on Forensics. On forensic issues, the Department continues to seek input from a variety of stakeholders in the forensic science community, including scientists, crime laboratory leaders, law enforcement officers, judges, prosecutors, and defense attorneys. The Department recently published a Federal Register Notice seeking public comment on moving forward to advance forensic science. That notice closed on June 9, and the Department received more than 250 comments from a wide range of individuals and organizations. The Department is currently in the process of reviewing these comments. In addition, in August, the Department will hold the first of several “listening sessions” as part of its effort to assess the needs of the forensic science community.

BUREAU OF PRISONS

Staffing

Question 4(a). The President’s proposed budget calls for eliminating nearly 1,848 prison guards (a 9 percent reduction) and more than 6,000 program and administrative staff (a 14 percent reduction) at the BOP. Yet high-security prisons today are filled to 125 percent of capacity, and medium-security facilities are at 120 percent of capacity. This overcrowding presents dangers to guards and inmates alike and limits BOP’s ability to provide rehabilitative programming to prisoners, increasing the likelihood of recidivism and endangering the public.

- a. How much do you anticipate that the proposed BOP staff cuts would increase the guard to prisoner ratio?

Answer. BOP will reduce staffing levels in fiscal year 2018 and anticipates a modest increase in the inmate population, but BOP does not expect any real impact on the inmate-to-officer ratio. The majority of the FTE reduction (5,156 positions) represent unfunded, hollow FTE and therefore do not have a direct impact on BOP’s workforce.

Question 4(b). How much do you anticipate such cuts would decrease programming and increase recidivism rates?

Answer. BOP is not projecting a decrease in programming and continues to focus on re-entry efforts to combat recidivism rates.

Question 4(c). How do you justify these staffing cuts and their consequences, and what precautions is the Justice Department prepared to put in place to ensure that the safety of staff, prisoners, and the public is preserved?

Answer. The administration's proposed fiscal year 2018 budget for BOP would eliminate 6,241 positions from BOP, of which 5,156 are currently vacant and have been unfunded for many years. The proposal to cut an additional 1,085 positions was made to promote efficiency in light of the declining inmate population and consequent decline in institution overcrowding from 36 percent at the end of fiscal year 2013 to the current level of 14 percent.

Population Increase

Question 5(a). The President's budget projects a 4,000-person growth in population at the BOP in fiscal year 2018. Furthermore, Attorney General Sessions' May 10, 2017, memo that directing Federal prosecutors to pursue the most severe penalties possible, including mandatory minimum sentences, will only serve to drive up the Federal prison population. Yet high-security prisons today are filled to 125 percent of capacity, and medium-security facilities are at 120 percent of capacity. DOJ's Office of the Inspector General consistently lists in its annual report, *Top Management and Performance Challenges Facing the Department of Justice*, the management of an overcrowded Federal Prison System in an era of limited budgets and continuing security concerns in its annual report.

a. How is BOP going to handle the growth in the prison population and the increase in overcrowding that it is likely to produce?

Answer. The Federal prison population has declined since the end of fiscal year 2013, and this decline is projected to continue into fiscal year 2017. At the end of fiscal year 2013, the BOP population was 219,298 inmates and as of July 6, 2017 the population stands at 187,373—a decline of 31,925 inmates, or nearly 15 percent. Also, BOP's institution overcrowding level has decreased from 36 percent system-wide at the end of fiscal year 2013 to the current level of 14 percent. The population is projected to increase by 2.2 percent in fiscal year 2018 to 191,493 inmates; however, BOP will have enough capacity to absorb this population increase.

Question 5(b). What will this prison population growth cost the Justice Department and taxpayers?

Answer. BOP's overall per capita cost to incarcerate an inmate is \$34,704 annually. The Bureau is projecting an increase of 4,171 inmates in fiscal year 2018. This would cost \$144.8 million annually.

Question 5(c). What is the Justice Department doing to cover those increased costs?

Answer. Most of these costs in fiscal year 2018 would be absorbed through attrition and administrative savings.

Second Chance Act

Question 6(a). The administration's proposal reduces Second Chance Act grants that help government agencies and nonprofit groups provide employment assistance, substance abuse treatment, housing, and family counseling for those who have been released from prison by 25 percent. These programs reduce recidivism rates and thus help to lower prison populations.

a. Do you believe reducing the prison population in the United States is a worthy goal for the Department of Justice?

Answer. The Department recognizes the important role of prevention and reentry efforts in curbing crime and reducing recidivism. Many programs within the Bureau of Prisons, Community Oriented Policing Services, Office of Justice Programs, and Office of Violence Against Women are dedicated to those goals. By supporting these efforts, the Department seeks to promote the rule of law, advance public safety, and help keep people from entering the criminal justice system.

Question 6(b). What is the justification for reducing Second Chance Act grants by \$20 million, from \$68 million to \$48 million?

Answer. The President's fiscal year 2018 Budget request needed to balance its support for reentry programs with the need to increase investment in initiatives to reduce violent crime and improve law enforcement officer safety. The Bureau of Justice Assistance (BJA) will work with its Second Chance Act program grantees to focus investment on proven reentry approaches and seek greater cost efficiencies to help them make the most of the grant funding available to them. The Department recognizes the value of reentry programs as a component of successful violent crime

reduction strategies and remains committed to funding proven reentry programs that improve public safety by reducing recidivism.

Question 6(c). Does the Justice Department plan to allocate any other resources to reducing the prison population? If so, through what programs? If not, why?

Answer. The Department supports a number of crime prevention and reentry strategies through its grant funding at the Office of Justice Programs, the Community Oriented Policing Services office, and Office of Violence Against Women and reentry programs at BOP facilities. Whether striving to keep kids from joining gangs or helping support prisoner reentry, these programs aim to keep target populations out of the criminal justice system.

Question 6(d). What resources (both in total and comparisons to fiscal year 2017 enacted levels) does the budget include for the Bureau of Prisons to continue implementing the Second Chance Act?

Answer. The Department of Justice failed to provide the Committee with a response to this question by the time the record was closed, which was 125 days after the Department originally received the question and 95 days after the Committee's requested deadline for a response.

Compassionate Release

Question 7(a). The Bureau of Prisons expanded the grounds for and streamlined the process of considering requests for compassionate release in 2013. The Department of Justice Office of the Inspector General (OIG) recommended additional reforms to the compassionate release program in a review of the program in 2013. In 2016, the U.S. Sentencing Commission (USSC) amended the criteria for compassionate release and encouraged the BOP to file a motion for those prisoners who meet the criteria the USSC identified.

a. What if any steps has BOP taken to implement the OIG and USSC recommendations?

Answer. In response to the Office of the Inspector General's recommendations, BOP implemented Program Statement 5050.49, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), which sets forth the criteria by which inmates would be considered for compassionate release or reduction in sentence (RIS). BOP educates its inmate population on RIS policy and criteria. BOP makes available information about RIS to inmates through the electronic law libraries, electronic bulletin boards and the Admission and Orientation handbook, which they receive upon admission to correctional facilities. In addition, BOP provides regular staff training on RIS to ensure that the policy is being properly applied and staff understand how to assist inmates with their RIS requests. The Bureau reviewed the U.S. Sentencing Commission's amendments to the U.S.S.C. Guideline and is still considering amendments to its RIS policy.

Question 7(b). For those recommendations not met, what is BOP's plan for meeting them and/or reasons why they cannot be implemented?

Answer. BOP has met the Office of the Inspector General's recommendations.

Question 7(c). How many prisoners have applied for compassionate release and how many have been granted and denied during each of the last 5 years?

Answer. Prior to the implementation of an electronic tracking system in August 2013 for compassionate release/reduction in sentence requests, requests that were initiated and denied by the inmate's institution were not tracked. Since January 2014, the electronic tracking system shows that BOP has received 3,454 compassionate release/RIS requests.¹ During this period of time, BOP has denied 2,190 requests and approved 298 requests:

CY 2014	101 approvals
CY 2015	99 approvals
CY 2016	73 approvals
CY 2017	25 approvals

Question 7(d). For each year for the last 5 years, how many prisoners have died while their compassionate release requests were pending, and for each, how much time elapsed between the date the request was received by the warden and the date of the prisoner's death?

¹This number includes duplicate requests, withdrawn requests, and requests that were administratively closed due to inmate deaths or releases.

Answer.

Fiscal Year 2013	Date Received	Date of Death	Days Elapsed
1	10/7/2013	10/9/2013	2
2	11/6/2013	11/15/2013	9
3	11/15/2013	11/29/2013	14
4	10/9/2013	10/25/2013	16
5	9/19/2013	10/12/2013	23
6	9/16/2013	10/11/2013	25

Fiscal Year 2014	Date Received	Date of Death	Days Elapsed
1	12/29/2014	12/30/2014	1
2	2/19/2014	2/20/2014	1
3	4/21/2014	4/24/2014	3
4	6/20/2014	6/24/2014	4
5	2/23/2014	3/1/2014	6
6	3/26/2014	4/2/2014	7
7	8/7/2014	8/14/2014	7
8	11/7/2014	11/17/2014	10
9	2/25/2014	3/9/2014	12
10	8/18/2014	9/2/2014	15
11	2/10/2014	2/25/2014	15
12	3/25/2014	4/16/2014	22
13	2/18/2014	3/15/2014	25
14	11/20/2014	12/18/2014	28
15	4/3/2014	5/5/2014	32
16	3/19/2014	4/22/2014	34
17	7/14/2014	9/8/2014	56
18	7/30/2014	10/1/2014	63
19	8/4/2014	11/24/2014	112
20	4/30/2014	9/29/2014	152

Fiscal Year 2015	Date Received	Date of Death	Days Elapsed
1	12/15/2015	12/16/2015	1
2	12/15/2015	12/18/2015	3
3	6/11/2015	7/21/2015	40
4	9/13/2013	10/16/2015	763
5	1/21/2015	3/25/2015	63
6	1/13/2015	2/7/2015	25
7	3/13/2015	6/28/2015	107
8	5/11/2015	6/8/2015	28
9	9/24/2015	10/9/2015	15
10	2/6/2015	3/3/2015	25
11	7/24/2015	10/22/2015	90
12	9/8/2015	9/25/2015	17
13	9/9/2015	11/19/2015	71
14	7/9/2014	1/2/2015	177
15	7/2/2015	7/29/2015	27
16	1/8/2015	3/18/2015	69
17	5/8/2015	9/20/2015	135
18	8/7/2015	10/16/2015	70
19	11/12/2013	1/15/2015	429
20	8/18/2014	1/9/2015	144
21	12/8/2014	4/2/2015	115
22	12/2/2014	9/27/2015	299
23	8/4/2014	1/18/2015	167

Fiscal Year 2016	Date Received	Date of Death	Days Elapsed
1	12/12/2016	12/14/2016	2
2	11/29/2016	12/2/2016	3
3	3/1/2016	3/7/2016	6
4	7/8/2016	7/17/2016	9
5	6/8/2016	6/18/2016	10
6	3/8/2016	3/29/2016	21
7	7/12/2016	8/2/2016	21
8	3/14/2016	4/7/2016	24
9	1/8/2016	2/5/2016	28
10	3/8/2016	4/7/2016	30
11	11/29/2016	12/31/2016	32
12	9/13/2016	10/17/2016	34
13	8/19/2016	9/25/2016	37
14	2/18/2016	3/30/2016	41
15	11/14/2016	12/31/2016	47
16	6/21/2016	8/7/2016	47
17	9/16/2016	11/18/2016	63
18	9/9/2016	12/3/2016	85
19	7/25/2016	10/20/2016	87
20	3/8/2016	6/24/2016	108
21	1/28/2016	10/17/2016	263

Fiscal Year 2017	Date Received	Date of Death	Days Elapsed
1	1/6/2017	1/7/2017	1
2	6/15/2017	6/18/2017	3
3	4/18/2017	4/24/2017	6
4	3/5/2017	3/12/2017	7
5	4/5/2017	4/15/2017	10
6	1/20/2017	2/1/2017	12
7	2/2/2017	2/17/2017	15
8	5/26/2017	6/14/2017	19
9	5/4/2017	6/1/2017	28
10	11/16/2016	1/23/2017	68
11	10/18/2016	1/5/2017	79
12	4/15/2016	7/7/2017	448

Question 7(e). How many Federal prisoners are currently incarcerated who might be eligible for compassionate release?

Answer. Under BOP policy, Program Statement 5050.49, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), inmates may seek a compassionate release/RIS under one of the following criteria: Terminal Medical Condition, Debilitated Medical Condition, Elderly Inmates with Medical Conditions, “New Law” Elderly Inmates, Other Elderly Inmates, Death or Incapacitation of the Family Member Caregiver, and Incapacitation of a Spouse or Registered Partner. An inmate may be eligible for consideration based on several of the criteria, or may become eligible due to a currently unknown change in personal circumstances. As such, BOP is unable to speculate on the number of inmates who may be eligible for a compassionate release/reduction in sentence.

Question 7(f). How much money could BOP save if it released them all?

Answer. BOP is unable to speculate on the number of inmates who may be eligible for a compassionate release/reduction in sentence; therefore, this calculation cannot be determined.

Private Prisons

Question 8(a). On April 14, 2017, BOP released a pre-solicitation notice for the management and operation of a contractor-owned, contractor-leased correctional facility.

a. How many private facilities does BOP use currently and is there no space available to house additional inmates at these existing facilities?

Answer. BOP currently contracts with four providers to manage and operate eleven secure adult contract facilities. The current capacity utilization in the private prisons is 94.3 percent.

Question 8(b). What is the estimated cost of a project like this?

Answer. The estimated cost of a solicitation will depend on the number of beds contracted. For example, a 1,800-bed contract can average approximately \$445 million for a ten-year period. For a 9,540-bed contract, the cost can average approximately \$2.4 billion for a ten-year period and involve multiple vendors.

Question 8(c). How many more beds does the BOP need?

Answer. BOP is not seeking to increase the number of contract beds in privately managed secure facilities. However, BOP is seeking to replace existing contracts that are expiring. The net number of contract beds, however, will not change.

Question 8(d). Are private prisons that contract with the Federal Government required to operate under the same laws, rules, and regulations as federally-owned and operated prisons? If not, how are they regulated differently and why are they regulated differently?

Answer. Both BOP-owned facilities and private prisons with whom BOP contracts are required to maintain accreditation by the American Correctional Association (ACA), maintain PREA certification, and be certified by an accredited Health Care Organization. In addition, both BOP facilities and private prisons with whom the BOP contracts are required to adhere to all applicable Federal, State, and local laws and regulations governing a correctional environment.

Question 8(e). How does the Department justify its belief that contract prisons offer appropriate health and correctional services and are safe and secure places to house Federal inmates?

Answer. BOP has taken steps to enhance safety, security, and programming at private contract prisons by significantly strengthening its Oversight Checklist and other tools used to monitor, track, and evaluate contractor performance. This includes enhanced reviews in staffing requirements, food service, transfer requests, inmate appeal rights, correctional services, and safety. In addition, BOP has heightened reporting procedures to require that contractors provide greater detail regarding safety and security information in a manner conducive to trend analysis and comparative reviews. BOP has also improved monitoring of healthcare programming by adding an additional subject-matter expert to the monitoring team, which has developed a system for enhanced tracking of routine medical services. Going forward, the BOP will carefully review this enhanced information and its updated inspection tools on a regular basis to ensure the contract prisons' ongoing effectiveness.

FIGHTING VIOLENT CRIME

Question 9(a). The Department of Justice requests \$19 million to implement the recommendations of the Attorney General's Task Force on Crime Reduction and Public Safety. From what I understand, the Task Force has met only once for an introductory meeting.

a. What, if any, recommendations has the Task Force put forward?

Answer. The internal Department of Justice Task Force has been providing initial recommendations to the Attorney General on a rolling basis. The Attorney General has been acting on the Task Force's recommendations to set the policies of the Department, and I expect he will continue to do so and will take additional steps to ensure safer communities for all Americans. Some of the directives issued by the Attorney General with Task Force input include: the March 8th Attorney General memorandum directing all Federal prosecutors to investigate, prosecute, and deter the most violent offenders that wreak havoc in our communities; the series of announcements in April regarding forensic science initiatives—including the appointment of a senior forensic science advisor; and the series of initiatives also announced in April to support law enforcement and maintain public safety in Indian Country, including expansion of a program that gives Tribes access to national crime information databases.

Question 9(b). If the recommendations are not yet finalized, how did the Department or administration arrive at the \$19 million figure?

Answer. The Department's Budget request includes \$19 million for 230 additional Assistant U.S. Attorneys to address violent crime across the country. The Department reviewed historical violent crime data as well as FBI crime report statistics to prepare the budget. The Department of Justice is committed to reducing violent crime and making America safe. Accordingly, the additional Assistant United States Attorneys will prosecute all types of violent crime, including hate crimes. The specific types of cases they will focus on will depend on numerous factors, including the unique public safety issues in the individual districts in which they work. The Department is committed to the investigation and prosecution of hate crimes, which is a very important part of addressing public safety and crime reduction.

Question 9(c). How will the Task Force move forward on these recommendations, and when can we expect those final recommendations?

Answer. The Task Force has provided the Attorney General with initial recommendations on a rolling basis. The Attorney General has been acting on the Task Force's recommendations to set the policy of the Department, and I expect he will continue to do so and take additional steps to ensure safer communities for all Americans.

Question 9(d). The Attorney General has already made decisions that will have a significant impact on our criminal justice system and prison population without input from the Task Force, such as rescinding the Obama administration's Smart on Crime policy. What role will the Task Force play in the Department's decision-making?

Answer. See response to question 9(c).

FBI HEADQUARTERS

Question 10(a). The fiscal year 2017 Consolidated Appropriations Act included \$323 million, which is half of what the FBI requested in fiscal year 2017 to consolidate the FBI headquarters. It also provided \$200 million to GSA for the project. However, the Trump administration's budget proposal neither funds the other half of the FBI's or GSA's request nor rescinds the fiscal year 2017 headquarter funding. With the lack of full funding in fiscal year 2017 and no requested funds in fiscal year 2018, no contract may be awarded for the project and the FBI and GSA cannot announce a location. The project could be stalled until fiscal year 2019 or even cancelled without sufficient resources. Not only could this cost American taxpayers upwards of \$150 million in total, preventable damages if the bidders file protest lawsuits, but would also leave the FBI workforce currently dispersed throughout the National Capital region without the operational work environment necessary for the FBI to be successful in performing its national security, intelligence, and criminal investigative missions.

a. Is the new FBI headquarters project still a priority for the Department of Justice in fiscal year 2018?

Answer. Yes, the need for a facility that meets FBI mission requirements has not abated. While the procurement was canceled by GSA, the project itself has not been canceled.

Question 10(b). If the new FBI headquarters remains a priority for the Department, does the President intend to submit a budget amendment to Congress to request those funds in fiscal year 2018?

Answer. The Department is not aware of whether the President intends to submit a budget amendment to Congress to request additional funds for a new FBI Headquarters in fiscal year 2018.

YOUTH MENTORING

Question 11(a). Creating and maintaining safe and healthy communities cannot be achieved by law enforcement alone. Outreach, engagement, training and technical assistance, and prevention efforts are critical components of the Office of Juvenile Justice Delinquency Prevention's (OJJDP) important work. The Youth Mentoring Grants program, for example, funds quality direct-service mentoring grantees serving at-risk and high-risk youth across the country. Through quality practice, mentoring can transform the trajectory of a young person's life by leading them away from negative behaviors like missing school, drug use or joining gangs and toward positive outcomes like increased academic achievement, leadership and investment in their communities. The President's budget includes \$58 million for youth mentoring.

Effective and well-known nonprofits, like Boys & Girls Clubs of America, National 4-H Council, YMCA of the USA and others have been recent grantees of the OJJDP youth mentoring grant. These organizations are serving at-risk and high-risk young people in their communities, including Tribal communities and other underrepresented youth, supporting and guiding them to lead successful and productive lives. The data around quality mentoring's effectiveness is compelling. At-risk youth with mentors are 55 percent more likely to enroll in college and 46 percent less likely to use drugs.

a. Can you speak to the importance of this work and how the Department of Justice will continue prevention and intervention activities for young people given the reduction in youth mentoring grants?

Answer. Mentoring is one of Office of Juvenile Justice and Delinquency Prevention's (OJJDP) most significant initiatives. Youth mentoring is a process in which consistent, positive relationships between a youth and an adult (or older peer) sup-

port the development of the youth. Research indicates that well-implemented mentoring can be a useful strategy in reducing delinquent behaviors in at-risk youth and promoting positive outcomes across social, emotional, behavioral and academic areas of youth development. Mentoring minimizes the likelihood that youth will participate in criminal activity and helps youth succeed in school, work, and life. OJJDP's Youth Mentoring Program works to improve academic performance, reduce juvenile delinquency and gang participation, and reduce school dropout rates.

In addition to mentoring, OJJDP also supports prevention and early interventions in addition to mentoring, and many of these activities also work directly with at-risk and high risk youth. The focus of these programs is to reduce negative behaviors (such as drug involvement, gang participation, and school truancy), while strengthening and positive behaviors (improvements in school attendance and achievement). The long-term goal is to prevent youth from becoming involved in criminal activity or, for those who may already be involved, to prevent further involvement. The modest decrease in mentoring funding will not hinder OJJDP's ability to continue supporting prevention and early intervention activities in communities nationwide. Examples of OJJDP prevention and early intervention programs that have increases in the budget proposal include the Part B: Formula Grant program (increase of \$3 million over fiscal year 17 enacted levels), Title V: Delinquency Prevention, which includes incentive grants for states (\$2.5 million increase), and the carve-out for the Gang and Youth Violence Prevention and Intervention Program (\$1 million increase). It should be noted that both the Part B: Formula Grant program and Title V State Incentive Grant Program include a purpose area entitled "Mentoring, Counseling, and Training Programs (Purpose Area 13)."

Question 11(b). How is the prevention work through OJJDP supporting the goals of the Department? How will the Department continue its important work in this area if the proposed reduction in resources is implemented?

Answer. OJJDP's prevention activities—including youth mentoring—support the Department's goal of reducing violence and crime. Accordingly, the Department remains committed to providing funding to State, local, community, and national organizations to enhance and expand quality mentoring services for at-risk and high-risk populations.

While the Department remains committed to the goals of its Youth Mentoring program, this commitment must be balanced with the need to fund a variety of other State, local, and Tribal justice assistance priorities. The modest proposed decrease in the Youth Mentoring program will enable the Office of Justice Programs to redirect funding to other important priorities such as addressing violent crime, improving officer safety, and combating illegal immigration. OJJDP will work with its grantees to seek greater cost efficiencies and coordination to ensure that all of its juvenile justice programs operate more cost-effectively.

VOTING RIGHTS

Question 12(a). The President's May 11, 2017, Executive Order created a Presidential Advisory Commission on Election Integrity. Rather than protecting the right to vote in this country this commission seems directed at finding cases of voter fraud and impersonation which are very rare and much less common than voter disenfranchisement through strict voter ID laws.

a. What role did you and other Justice Department employees play in writing the May 11 Executive Order?

Answer. I understand that the proposed Executive Order was prepared by the Office of the Vice President. As with other proposed Executive Orders, it was referred to the Department of Justice's Office of Legal Counsel for review concerning form and legality, which approved it for form and legality on May 9, 2017.

Question 12(b). Were career attorneys in the Civil Rights Division consulted? If not, why?

Answer. Consistent with its usual practice, OLC consulted with other components of the Department of Justice, including the Civil Rights Division, during the course of its form-and-legality review.

Question 12(c). The Executive Order says the commission "shall have staff to provide support for its functions." Has the Justice Department provided any staff to work full- or part-time for the commission?

Answer. The Department has not, to my knowledge, provided staff members to support the commission. Section 7(a) of the Executive Order charges the General Services Administration with providing the commission with staff.

Question 12(d). Will the commission need congressional appropriations and if so how much has the administration sought in funding, whether at DOJ or elsewhere in the executive branch?

Answer. The Department is unaware of whether the Presidential Advisory Commission on Election Integrity will need congressional appropriations.

Question 12(e). How much has been spent so far on the commission and what is its expected budget?

Answer. The Department does not know the answer to this question.

Question 12(f). Do you think the rare incidences of voter fraud and impersonation merit the creation of this commission?

Answer. Fraudulent voter registration and fraudulent voting are only a subset of what the commission was established to study. It is also charged with reporting more broadly about the “laws, rules, policies, activities, strategies, and practices” that either “enhance” or “undermine” the confidence that the American people have in “the integrity of the voting processes used in Federal elections.”

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

WHITE HOUSE CONTACTS

Question 1(a). Former FBI Director Comey testified on June 8, 2017 before the Senate Select Committee on Intelligence that on at least four occasions, President Trump contacted the former FBI Director to ask him about the Russia investigation.

a. Were you aware of President Trump’s calls to Director Comey before Director Comey testified about them? (If so, how and when did you learn about any of these conversations? What did you know about each discussion?)

Answer. On May 17, 2017, I appointed Robert S. Mueller III to serve as Special Counsel to oversee the previously confirmed FBI investigation of Russian Government efforts to influence the 2016 presidential election and related matters. I am not in a position to respond further to your question.

Question 1(b). Has President Trump ever contacted you regarding the Russia investigation? (If so, when and what was discussed?)

Answer. See response to question 1(a).

Question 1(c). Are you aware of any other Justice Department officials whom the President has contacted regarding the Russia investigation? (If so, who did the President contact and when did that occur?)

Answer. See response to question 1(a).

RESPONDING TO CONGRESSIONAL (MINORITY) REQUESTS

Question 2(a). On May 1, 2017, the Justice Department’s Office of Legal Counsel (OLC) issued a letter opinion for the counsel to the president titled “Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch.” In that letter opinion, the OLC took the position that “individual members of Congress, including ranking minority members, do not have the authority to conduct oversight in the absence of a specific delegation by a full house, committee, or subcommittee.”

According to the Office of Legal Counsel, the executive branch is not obligated to answer my requests or those of my Democratic colleagues. This is unacceptable. As elected officials of a co-equal branch of government, we have constitutional authority to conduct oversight of the executive branch.

a. Is it your view that the administration has no legal obligation to respond to requests that do not come from a committee chairman?

Answer. The letter opinion does not purport to state the administration’s policy about responding to requests for information from individual members of Congress. That policy is stated in a July 20, 2017, letter to Senator Grassley from the White House Director of Legislative Affairs, which explains: “The administration’s policy is to respect the rights of all individual Members, regardless of party affiliation, to request information about Executive Branch policies and programs. The administration will use its best efforts to be as timely and responsive as possible in answering such requests consistent with the need to prioritize requests from congressional Committees, with applicable resource constraints, and with any legitimate confidentiality or other institutional interest of the Executive Branch.” See <http://www.judiciary.senate.gov/download/white-house-to-grassley-oversight-requests>. The legal analysis in the OLC letter opinion is consistent with the discussions of these issues by the Congressional Research Service in the Congressional Oversight Manual (at pages 56 and 65 of the December 19, 2014 edition).

Question 2(b). During your confirmation process, you said that you would “make every effort to answer [our] questions fully and quickly.” Do you still intend to do so? If not, why not? What changed?

Answer. Yes, I intend to respond consistently with the policy quoted in the response to question 2(a).

Question 2(c). Will you make sure that all components of the Justice Department are instructed to answer requests from Congress, even those that are not from a committee chairman? (If not, why not?)

Answer. Yes. The Department will follow the policy quoted in the response to question 2(a).

EMOLUMENTS LAWSUITS

Question 3(a). President Trump has been sued for possible violation of the Constitution's emoluments clause, which prohibits Federal officeholders from accepting gifts or payments from foreign and U.S. governments. (*Citizens for Responsibility and Ethics in Washington v. Donald J. Trump*, No. 17 Civ. 458, SDNY (2017).) The Justice Department is defending the President in this suit.

This case raises a number of novel questions, including how to interpret and apply the emoluments clauses of the Constitution and the import of the President's refusal to divest his business holdings prior to taking office. The Department of Justice represents the United States—not any single person or party—and it is important to ensure that the Department is not elevating President Trump's personal interests over those of the country.

- a. Is there an independent team of career lawyers within the Department who have been assigned to determine and present the position of the United States, apart from that of the President? If not, why not? If so, who does this team report to and how is their view being presented to the court?

Answer. The *CREW v. Trump* case, as well as two other cases raising similar challenges under the Foreign Emoluments Clause of the Constitution, are assigned to career attorneys in the Federal Programs Branch of the Civil Division. These attorneys have primary responsibility for presenting the Government's position in court filings. The career attorneys report to and are subject to the supervision of the Deputy Assistant Attorney General for the Federal Programs Branch, the Acting Assistant Attorney General for the Civil Division, and ultimately the Attorney General.

Question 3(b). What has been done to determine whether there are conflicts between the best interests of President Trump and those of the United States? How are any conflicts being resolved?

Answer. Pursuant to its statutory obligation set forth in 28 U.S.C. § 516, the Department of Justice represents the President in his official capacity and defends the Office of the President in the interest of the United States. The Department does not represent the private business interests of President Trump in the lawsuits challenging the President's compliance with the Foreign Emoluments Clause.

Question 3(c). The foreign emoluments clause prohibits the acceptance of presents, emoluments, offices or titles "without the consent of Congress." How is the Justice Department accounting for the interests of Congress in these lawsuits?

Answer. The Congress is not a defendant in this litigation. Nevertheless, in representing the interests of the President of the United States, the Department advances arguments that it believes are consistent with a faithful interpretation of the Constitution, including the Foreign Emoluments Clause at issue in these cases.

Question 3(d). Please explain why this suit is not being handled by President Trump's private lawyers.

Answer. By statute, the Department of Justice is responsible for the conduct of litigation in which an officer of the United States is a party. 28 U.S.C. § 516 provides: "Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General." That is, unless otherwise authorized by law, "only attorneys of the Department of Justice under the supervision of the Attorney General may represent the United States or its agencies or officers in litigation." United States Attorneys' Manual 4-1.100. The various suits filed against the President concerning his alleged violation of the Foreign Emoluments Clause of the Constitution are brought against him in his official capacity as President. Although the suit implicates the President's private business interests, the lawsuit puts at issue whether the President, as a holder of an "Office of Profit or Trust," is in compliance with the Foreign Emoluments Clause. The Department of Justice therefore is properly representing the President in his official capacity in this litigation.

Question 3(e). Have you recused yourself from this lawsuit? (If not, why not—and have you obtained the opinion of Department ethics experts?)

Answer. No. I know of no basis to recuse myself from participation in representing the President in his official capacity, which is the Department's responsibility in every administration.

Question 3(f). Has Attorney General Sessions recused himself from the lawsuit (If not, why not and has he obtained the opinion of Department ethics experts?)

Answer. The Attorney General has not recused himself from the Emoluments Clause litigation.

ROLE IN COMEY FIRING

Question 4(a). You acknowledged when you briefed the Senate on May 18, 2017 (and the House on May 19) that you knew the President was going to fire Director Comey when you wrote your May 9 memo about Director Comey's public mishandling of the Clinton email investigation.

a. Did you tell the President to fire Director Comey?

Answer. It is the prerogative of the President to decide which political appointees to retain and which to remove. The memorandum I wrote speaks for itself.

Question 4(b). Why did you agree to write the memo knowing that the President had already made the decision to fire Director Comey?

Answer. On May 17, 2017, I appointed Robert S. Mueller III to serve as Special Counsel to oversee the previously confirmed FBI investigation of Russian Government efforts to influence the 2016 presidential election and related matters. I am not in a position to respond further to your question.

Question 4(c). Did you ever discuss Director Comey's handling of the Russia investigation, including investigation of Michael Flynn, with the President? With White House Counsel Don McGahn? If so, when did these conversations take place?

Answer. See response to question 4(b).

APPOINTMENT OF SPECIAL COUNSEL MUELLER

Question 5(a). On May 17, 2017, you appointed Robert S. Mueller III to serve as Special Counsel to conduct the investigation into Russian interference in the 2016 election, including any links/and or coordination between the Russian Government and Trump campaign as well as "any matters that arose or may arise directly from the investigation." (Office of the Deputy Attorney General, Order No. 3915-2017, May 17, 2017) The order that you signed appointing Mr. Mueller makes him subject to 28 CFR §§ 600.4 through 600.10.

28 CFR 600.7(b) makes clear that Mr. Mueller "shall not be subject to the day-to-day supervision of any official of the Department." It does not otherwise explain, however, who, when, and under what circumstances Mr. Mueller will report to or discuss the investigation with Department officials.

a. Who does Mr. Mueller report to and under what circumstances?

Answer. Please see the Department's Special Counsel regulations at 28 C.F.R. §§ 600.6 (Powers and Authority) and 600.7 (Conduct and Accountability).

Question 5(b). What is your role with regard to the Special Counsel? For example, Section 600.7(b) authorizes you—because of the Attorney General's recusal—to request an explanation of "any investigative or prosecutorial step." What is the process for requesting these explanations, and how are the requests and explanations documented?

Answer. I have an appropriate level of interaction with the Special Counsel's Office consistent with the regulations and will maintain sufficient documentation to ensure the ability to comply with the reporting requirement in 28 C.F.R. § 600.9(a)(3) if that provision is implicated.

Question 5(c). 28 CFR 600.9(a)(3) requires notification to Congress of "instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Department practices that it should not be pursued." The regulations require this notification at the conclusion of the Special Counsel's investigation.

If Special Counsel Muller does not object on the grounds that earlier disclosure would adversely affect legitimate investigative or privacy concerns, will you commit to notifying Congress within 30 days (rather than only at the close of the overall investigation) of any instances that trigger this reporting requirement?

Answer. It would not be appropriate for me to make such a commitment.

UNSUSTAINABLE PRISON COSTS

Question 6(a). Mr. Rosenstein, your Department's Budget requests \$8.2 billion for Prisons and Detention Operations, which represents 30 percent of the Department's total budget, up from 29 percent in the fiscal year 2017 enacted bill.

The Attorney General recently issued a charging memorandum to all Federal prosecutors, directing them to charge all of their cases with the most punitive chargeable offense. This change in policy takes discretion away from prosecutors, and I worry that it could lead to even higher prison costs in the future.

- a. Do you believe that the continued growth of prison and detention operations is sustainable going forward?

Answer. Maintaining public safety and reducing crime are at the core of the Department's mission and the facilities of the Bureau of Prisons (BOP) are critical to that mission. This budget ensures that BOP will have the resources it needs to safely and securely manage our Federal inmate population while the Department continues its work to reduce violent crime and keep our communities safe.

Question 6(b). How do you expect that this recent policy change will affect future resource requirements for the Bureau of Prisons and Marshals Service?

Answer. BOP has projected an increase in its prison population for fiscal year 2018 and fiscal year 2019 and does not anticipate a significant impact on resources due to increased enforcement efforts at this time. BOP will continue to monitor the inmate population level and work with the Department to ensure adequate resources for the safe and secure operations of its facilities.

The United States Marshals Service (USMS) and the Department will continue to analyze the impact of these policies. At the beginning of May 2017, the overall number of prisoners in USMS custody was 48,213, the lowest population since January 2004. Since May 2017, the USMS has seen a slight increase in offenders. However, it is too early to know for certain how the policy changes will affect future resource requirements.

THE DARK WEB AND DRUG TRAFFICKING

Question 7. Last weekend, the *New York Times* ran a tragic piece about the use of the dark web by drug traffickers and other criminal enterprises to secretly do business with users.

The problem of criminals using the "dark web" to conceal their tracks and traffic their goods is a problem that is only going to grow in the coming years.

How does the Department plan to address the use of the dark web to apprehend and stop those who are engaged in criminal activity?

Answer. The *New York Times* article illustrated one aspect of how criminals across the world have abused the dark web to traffic in dangerous contraband and sell services that threaten public safety. In addition to selling fentanyl and other deadly opioids, criminals are exploiting the dark web to offer illegal goods from child exploitation materials to weapons of mass destruction and to offer illegal services ranging from computer hacking services to murder for hire. Criminal activity on or enabled by the dark web is increasing in sophistication. As part of this maturation, the dark web now offers professionalized hacking services and products that are reliable, tailored to cyber criminals' specific needs, and even supported by demonstration sites and online support.

The widespread availability of easy-to-use anonymizing technologies has allowed less sophisticated criminals to conceal their identity and conduct from law enforcement. Dark markets operating on such networks have made it too easy to commit a crime and too hard to investigate such crime. At the same time, the increasing use of virtual currencies, along with potential benefits, gives criminals sophisticated, and anonymity-protecting, financial tools to buy and sell illicit goods and services, as well as to receive payments extorted from ransomware victims, without the direct attribution that comes with using traditional financial systems.

To combat criminals' use of the dark web, the Department aggressively pursues multiple lines of effort. Investigators with the Federal Bureau of Investigation, Drug Enforcement Administration, and numerous other Federal law enforcement agencies work tirelessly to locate the servers hosting criminal marketplaces that operate on the dark web, the administrators who operate those marketplaces, and the vendors who sell narcotics, other contraband, and illegal services. Likewise, investigators are working with interagency partners to share information about and disrupt dark web-enabled criminal operations. We also collaborate heavily with cybersecurity firms and other private-sector entities to better understand the infrastructure and technology that criminals exploit. This includes gaining a better understanding of how to track their use of virtual currencies and how to counter malicious software used in ransomware schemes. The Department also researches technological solutions that would enable investigators to identify and locate criminals who abuse anonymizing technologies. In addition, we work closely with Congress to identify legislative solutions that would provide investigators with the most up-to-date legal authorities and resources to overcome the substantial technical challenges they face in tracking down and arresting cyber criminals.

A global problem like criminals' exploitation of the dark web requires a global response. Accordingly, the Department partners closely with law enforcement agencies in countries around the world, as well as regional entities including Europol,

Eurojust, and the European Cybercrime Center. We are stationing prosecutors and agents called Cyber Resident Legal Advisors (RLAs) and Cyber Assistant Legal Attaches (ALATs) to foreign countries to collaborate with key partner governments on operations, to provide training to regional law enforcement authorities, and to help facilitate information sharing.

Despite the challenges we face, law enforcement authorities have achieved numerous successes in our efforts to combat dark web criminal activity. These include:

- AlphaBay*: On July 20, 2017, the Department announced the seizure of AlphaBay, the largest criminal marketplace on the Internet. Vendors on AlphaBay sold illegal drugs, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals to buyers throughout the world. At the time of takedown, there were over 250,000 listings for illegal drugs and toxic chemicals on AlphaBay, and over 100,000 listings for stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms and fraudulent services. Authorities also believe the site was used to launder hundreds of millions of dollars deriving from illegal transactions on the website. The United States led the international effort to take down AlphaBay, working in cooperation with law enforcement authorities in Thailand, the Netherlands, Canada, Lithuania, the United Kingdom and Romania. The takedown of AlphaBay, combined with the Dutch National Police's takeover and eventual closure of Hansa Market at the same time was the most recent strike by international law enforcement to the dark market community.
- The recent indictment of BTC-e and its operator, Alexander Vinnik, is an example of the Department's efforts to shut down dark web criminals' ability to monetize their crimes through entities that facilitate money laundering. Payments on the dark web are made through digital currencies, such as Bitcoin. Criminals rely on money-laundering exchanges to convert those digital currencies into U.S. dollars. On July 26, 2017, the Department announced an indictment against BTC-e and Vinnik for operating an unlicensed money-service business, money laundering, and related crimes.
- Operation Torpedo*: This precedent-setting investigation, which began in late 2011, used first-of-their-kind techniques to infiltrate the dark web and identify individuals who secretly congregated to trade unspeakable images of children being sexually abused and to celebrate the sexual abuse of children. Acting on lead information from the National High Tech Crime Unit of the Dutch National Police, FBI investigators were able to identify for the first time members of three websites devoted to child pornography that were operating on the Tor anonymity network, by developing and deploying a Network Investigative Technique with appropriate legal authority. Ultimately, twenty users of those three websites, including the sites' Omaha-based administrator, were charged with child pornography offenses in the U.S. District Court in Omaha, Nebraska, and sentenced to terms of imprisonment ranging from 42 months to 25 years of incarceration.
- Through a sweeping multinational effort under an investigation that began in 2012—in which the Department pooled resources, ran parallel investigations and shared information in real time with numerous foreign partners—the Justice Department and EC3 were able to take more than 200 child sexual exploitation websites offline, derail the activities of tens of thousands of online producers and traffickers of child pornography, and prosecute offenders across the world. It was a criminal investigative effort of unprecedented complexity and technical sophistication, and it is now a model of operational coordination for all cross-border investigations.
- Silk Road*: In October 2013, Federal law enforcement agents arrested Ross Ulbricht, the creator and owner of Silk Road, a sophisticated and sprawling online bazaar, which enabled users to buy and sell illegal drugs and other contraband and services anonymously and supposedly beyond the reach of law enforcement.
- Operation Onymous*: In November 2014, the Department led a coalition of international law enforcement agencies in a coordinated action that seized control of dozens of illicit marketplaces operating on the dark web, including Silk Road 2.0, a successor site to Silk Road. The Administrator of Silk Road 2.0 was arrested and more than 400 web addresses for hidden services operating using the Tor anonymizing software were seized. This action disrupted illicit operations that sold illegal narcotics, stolen credit card data and other personally identifiable information, counterfeit currency, and hacking tools and services.
- In early 2015, the Department launched "Operation Pacifier", which involved seizing a particularly notorious child exploitation site called Playpen, and de-

ploying with lawful authority a Network Investigative Technique to pierce the anonymity provided by the Tor network and obtain the IP addresses of Playpen users. Agents used this information to arrest at least 350 U.S.-based individuals, which has led to the prosecution of 25 alleged producers of child pornography and 51 alleged hands-on abusers of children, as well as the identification or rescue of 55 American children who were subjected to sexual abuse. Information shared with our European partners at EC3 and other foreign partners has led to the identification or rescue of approximately 300 children worldwide and nearly 550 international arrests.

—*Darkode*: In July 2015, an international coalition of 20 nations' law enforcement forces co-led by the Department and the European Cybercrime Center (EC3) took down Darkode—an online underground marketplace where hackers convened to arrange the purchase, sale, and trade of malicious software, botnets and other tools designed to facilitate computer intrusions, as well as stolen personal information obtained through illegal hacking. This concerted, coordinated effort led to the charging, arrest, or search of 70 Darkode members and associates around the world.

—*Operation Hyperion*: In October 2016, an international coalition of law enforcement agencies from the United States, the United Kingdom, Australia, Canada and New Zealand simultaneously took various actions against criminals who use the dark web. Law enforcement around the world contacted and interviewed hundreds of individuals who were identified as sellers or customers during the Silk Road takeover in 2013 and Operation Onymous in 2014, in an attempt to generate awareness that purchasing contraband on the dark web is not as anonymous or consequence-free as some may think.

The successes in combating the dark web are vital. These efforts enable law enforcement to disrupt illicit commerce in dangerous contraband and sexual exploitation of children, work to apprehend those responsible for these sites, and develop information on other websites, criminals, and criminal organizations. The knowledge we gain from these investigations helps us create more sophisticated investigative tools to shine a brighter light into criminal activity on the dark web.

Notwithstanding these successes, it is critical that Congress and the Department work together to ensure that Federal law enforcement agencies have sufficient and modern resources and authorities to combat criminal activity on the dark web.

HATE CRIMES PRIORITIZATION

Question 8(a). Last month, the Judiciary Committee held a hearing regarding religious hate crimes. The hearing highlighted the alarming spike in hate crime incidents since the election last year, including the notable increase in white supremacist hate groups. The Justice Department attorney who testified at that hearing committed to taking Federal action to aggressively prosecute hate crimes. Your Department's Budget requests \$19 million for 230 additional Assistant U.S. Attorneys to address violent crime across the country.

a. Will these additional Assistant U.S. Attorneys be focusing on prosecuting hate crimes, particularly since we are seeing an alarming spike in hate crimes?

Answer. The Department is committed to reducing violent crime and making America safe. Accordingly, the additional Assistant United States Attorneys will prosecute all types of violent crime, including hate crimes. The specific types of cases on which they will focus will depend on a number of factors, including the unique public safety issues in the individual districts in which they work. The Department is committed to the investigation and prosecution of hate crimes, which is an important part of addressing public safety and crime reduction.

Question 8(b). I have heard concerns that witnesses, and victims themselves, are reluctant to come forward to assist in hate crimes investigations because of some of the rhetoric that the President and this administration have used. What is your strategy to make sure that all witnesses and victims feel safe in reporting hate crimes and other crimes that DOJ is in charge of investigating and prosecuting?

Answer. The Department of Justice is committed to ensuring that all victims of hate crime feel safe in reporting their offenses to law enforcement. In April 2017, the Attorney General highlighted the importance of combating hate crimes by creating a Hate Crimes Subcommittee as part of the Department's Task Force on Crime Reduction and Public Safety. The Hate Crimes Subcommittee is composed of subject-matter experts from the Civil Rights Division, United States Attorney's Offices, the Criminal Division, FBI, the Community Relations Service, the Office of Justice Programs, and the Community Oriented Policing Service office. The Subcommittee is developing recommendations for the Attorney General on ways to improve reporting, investigation, and prosecution of hate crimes. As part of this mis-

sion, the Subcommittee held a Hate Crimes Summit on June 29, 2017, where relevant stakeholders from across the community gathered to develop suggestions for the Department about ways that the Department might better investigate, prosecute, and prevent hate crimes before the Subcommittee makes its recommendation to the Attorney General. At the summit, the Attorney General said, “No person should have to fear being violently attacked because of who they are, what they believe, or how they worship. So I pledge to you: As long as I am Attorney General, the Department of Justice will continue to protect the civil rights of all Americans—and we will not tolerate the targeting of any community in our country.” This engagement with community leaders and stakeholders on a national level assures groups that interact with hate crime victims that the Department is committed to investigating and prosecuting hate crime.

The effort to ensure victims feel safe in reporting hate crime also involves Federal, State, and local law enforcement organizations as well as local community groups. To that end, various Department components engage in educational and outreach efforts throughout the year for diverse community groups to promote cooperation and reduce civil rights violations. The United States Attorney’s Offices and the Civil Rights Division regularly engage with community organizations through national, regional, and local conferences, forums, town halls and similar events to ensure that communities are aware of the risks they face, the laws that protect them, and how to report possible hate crimes. For example, in March 2017, the United States Attorney’s Office in South Dakota—in cooperation with the FBI, the U.S. Commission on Civil Rights, and the local sheriff and prosecutor—held a public forum on hate and bias crimes targeting Arab, Muslim, Sikh, and South Asian communities. The forum featured leaders of the diverse community, faith-based, and non-profit organizations who participated in discussions led by a representative from the Department’s Community Relations Service. Further, in May 2017, representatives from the ATF, United States Attorney’s Office, and the Civil Rights Division hosted an interfaith community forum in Pittsburgh for representatives from seven houses of worship and the communities they represent. In addition, currently, approximately one-third of the United States Attorney’s Offices participate in hate crime working groups in their districts, many of which hold similar events. These local events, where Department representatives engage with community members, help strengthen important relationships, encouraging more reporting of a crime.

Further, in order to support relations between police and communities, the Department’s Community Relations Service facilitates Hate Crime Prevention and Know Your Rights Forums around the country to bring community members together with local, State, and Federal law enforcement partners, as well as with human rights commissions and organizations that offer resources and services. The forums are designed to be informative, enable community members to share concerns and perceptions, and strengthen police-community relations, which can aid in the investigation of hate crimes when they occur and lead to more hate crime reporting. In addition, as part of its National Training Initiative, the FBI conducts hundreds of seminars, workshops, and training sessions for local law enforcement, minority and religious organizations, and community groups to promote cooperation, reduce civil rights abuses, and provide education about civil rights statutes. The majority of FBI field offices currently participate in local hate crimes working groups that involve State and local authorities as well.

Addressing hate crimes is a very important part of addressing public safety, and crime reduction and the Department is working on various fronts to improve hate crime reporting, investigation, and prosecution.

Question 8(c). The FBI has collected data on hate crimes since 1990 when Congress passed the Hate Crime Statistics Act. However, it’s becoming increasingly clear that the FBI’s tally is incomplete, which prevents us from understanding the scope and scale of the problem.

While the FBI typically reports 7,000 to 10,000 hate crimes, the Bureau of Justice Statistics estimates that the true number may approach 300,000, which is approximately 30 times the FBI estimation. As the Bureau of Justice Statistics report also indicates, the percentage of religiously motivated hate crimes nearly tripled between 2004 and 2012.

How is DOJ working to account for these discrepancies so that there is more accurate reporting?

Answer. The Federal Bureau of Investigation (FBI), Uniform Crime Reporting (UCR) Program’s Hate Crime (HC) data collection and the Department of Justice, Bureau of Justice Statistics’ National Crime Victimization Survey (NCVS) use different methodologies for collecting hate crime data.

UCR HC collects data on hate crimes reported to law enforcement (LE). NCVS collects data on hate crime offenses, which are reported and not reported to LE.

Each collection uses different standards for classifying an incident as a hate crime. The use of hate crime language reported during an NCVS interview is a qualifying bias indicator. The same hate crime language used during a UCR HC incident may not show enough sufficient evidence for a LE investigator to classify the incident as a hate crime. Additionally, UCR HC incident data are based on the offender's perception, while NCVS crimes are based on the victim's perceptions of the offender's motivations.

Throughout 2015, the UCR Program participated in five regional training sessions sponsored by a United States Attorney's Office (USAO). Training locations were chosen based on the low number of law enforcement agencies (LEAs) reporting hate crime statistics to the UCR Program. The training focused on increasing the understanding of how State and Federal entities can work together to prosecute hate crime incidents and emphasized the benefits of reporting hate crime statistics to the local law enforcement personnel in attendance. Proceeding this effort, in November 2016, the UCR Program provided each USAO with a list of LEAs, broken down by district, which either did not participate or reported zero hate crime incidents to the UCR Program in 2015. In an effort to improve reporting, United States Attorneys were encouraged to contact the LEAs in their districts to emphasize the importance of hate crime reporting and offer assistance if necessary.

In fiscal year of 2016, the FBI's Criminal Justice Information Services (CJIS) Division provided 49 training sessions to participants from a combined 1,414 local and State agencies. During these training sessions, hate crime information was provided to over 2,500 attendees. The FBI will continue to provide training to local LEAs and will emphasize hate crime collection to the attendees.

The FBI UCR Program is actively participating on the Subcommittee on Hate Crimes of the Attorney General's Task Force on Crime Reduction and Public Safety. This group is focused on developing strategies for improving hate crime data collection.

Question 8(d). The number of law enforcement agencies reporting their hate crimes statistics to the FBI seems to be decreasing. In 2015, more than 3,000 law enforcement agencies did not provide hate crimes data to the FBI, an increase of 500 non-reporting agencies from 2014.

What do you intend to do to make it easier for local agencies to report this crucial data to the FBI?

Answer. The FBI Uniform Crime Reporting (UCR) Program is in the process of transitioning all law enforcement agencies (LEAs) to the National Incident-Based Reporting System (NIBRS) by January 1, 2021. Reporting via the NIBRS will improve the quality, reliability, and accuracy of the data received from participating LEAs. It will also make it easier for LEAs to report hate crime data because it will be collected within the NIBRS record layout.

Question 8(e). What do you think would foster more accurate and complete reporting from local police to the FBI?

Answer. The National Incident-Based Reporting System (NIBRS) transition will improve the quality, reliability, and accuracy of the data received from participating LEAs and will make it easier for LEAs to report hate crime data. In addition, the FBI UCR Program is actively participating in the Subcommittee on Hate Crimes of the Attorney General's Task Force on Crime Reduction and Public Safety. This group is focused on developing strategies for improving hate crime data collection.

In November 2016, the FBI UCR Program provided each U.S. Attorney's Office with a list of LEAs broken down by district, which either did not participate or reported zero hate crime incidents to the FBI UCR Program in 2015.

In an effort to improve reporting, U.S. Attorneys have been encouraged to contact the LEAs in their districts to emphasize the importance of hate crime reporting and offer assistance if necessary. The FBI UCR Program is currently working with the FBI Civil Rights Unit to provide this same information by FBI Field Office for the 2016 data. With the support of the Department and the FBI's Civil Rights Unit, the UCR Program conducts outreach to the local law enforcement agencies and educates their officers on how to investigate bias-motivated crimes. The FBI will continue to emphasize the benefits of reporting hate crime statistics to all local law enforcement participants.

The FBI also believes that obtaining the commitment of the local agency administrators to provide hate crime investigative training opportunities to their law enforcement officers would foster more accurate and complete hate crime reporting. Many officers may not be aware of the signs to look for when investigating a bias-motivated crime. Often times, a hate crime incident requires additional investigation in order to ascertain if the offense was or was not motivated by the offender's bias against the victim. Investigative hate crime training would provide law enforcement officers with the ability to establish whether an incident was motivated by

bias. Additionally, instituting a hate crime point of contact or unit within the individual agencies could also improve the reporting of hate crime incidents.

Question 8(f). What do you think would foster more accurate and complete reporting of hate crimes by victims?

Answer. Developing strong relationships between local law enforcement and the advocacy/community groups within their jurisdictions is key to improving hate crime reporting by victims because it establishes trust between the two groups. Providing a hate crime point of contact within local agencies could also foster positive relationships between law enforcement and hate crime victims to ultimately increase levels of victim reporting.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

Question 9. Mr. Rosenstein, the State Criminal Alien Assistance Program (SCAAP) is a critical source of reimbursements for county sheriffs in California who incur costs due to detaining convicted criminal aliens.

Given the rhetoric from this administration related to immigration, I was particularly surprised to see that your budget proposed eliminating this critical program—and that you're asking already stretched local jurisdictions to pay to house individuals charged with immigration violations—which is the responsibility of the Federal Government.

Given the administration's prioritization of combatting immigration crimes, why does your budget propose to eliminate Federal support for local communities through the SCAAP program and essentially create a new unfunded mandate?

Answer. The Department has not requested funding for SCAAP since fiscal year 2002 and continues to propose elimination of the SCAAP so that the administration can increase Federal investments in border enforcement and border security initiatives that will address more effectively the public safety threats posed by criminal aliens. The SCAAP does not require recipients to use their awards solely for the purpose of addressing the cost of detaining illegal aliens in State, local and Tribal detention facilities and cannot provide sufficient reimbursement to fully address State and local concerns. In 2016, the reimbursement rate was about 17 cents on the dollar, with just four States—California, Florida, New York, and Texas—receiving over two-thirds of available funds. Further, the program has no performance metrics or programmatic requirements associated with the funds to improve public safety.

HUMAN TRAFFICKING AND INJUNCTION AUTHORITY

Question 10(a). While significant attention has been paid to the supply side of human trafficking (breaking up trafficking rings, monitoring websites like backpage, and rescuing girls), I am concerned that we are still not doing enough to reduce the demand, and address the problem of trafficking over the Internet.

a. What is your strategy to address human trafficking over the Internet?

Answer. The Department of Justice deploys all available tools to address human trafficking over the Internet and related criminal activity including, where appropriate, prosecution of the website for its role in the criminal activity. For example, the Department successfully prosecuted the owner and operator of myredbook.com for using a facility of interstate commerce with the intent to facilitate prostitution. The defendant was sentenced to 13 months in prison and ordered to forfeit almost \$1.3 million in cash and property. Evidence presented at sentencing established that over 50 children appeared in ads for prostitution on the site. With respect to demand, we refer to you to this link: <https://www.judiciary.senate.gov/imo/media/doc/06-2816%20Steinberg%20Testimony.PDF>. Starting on PDF page 6 is a collection of cases that the Department has brought against individuals who pay to have sex with children. These cases utilize multiple statutes, including those that prohibit sex trafficking, production of child pornography, and online enticement and coercion. The Department also routinely addresses the demand side of the equation in its training and guidance, including at the National Law Enforcement Training on Child Exploitation, held in early June and attended by 1,400 Federal, State, local, and Tribal law enforcement officers and prosecutors. The Department's National Strategy to Combat Human Trafficking is available at: <https://www.justice.gov/humantrafficking/page/file/922791/download>. As part of the National Strategy, each Federal district was required to develop a district-specific plan to address human trafficking in its region.

Question 10(b). If trafficking laws were updated to include civil injunction authority to allow DOJ to bring civil cases against traffickers to prevent them from trafficking young victims, will you commit to using such authority?

Answer. The Department will use all available legal tools to combat human trafficking, including civil injunctive relief if a provision authorizing such relief were enacted. Whether we would pursue a criminal or a civil remedy in a particular case would depend on a variety of factors, including the available evidence, the needs of the victim, and the interests of justice. On May 10, 2017, Attorney General Sessions issued a new charging and sentencing policy to the Department. The Attorney General instructed Federal prosecutors to charge defendants with the most serious, readily provable offense. Consistent with that policy, Federal prosecutors should charge sex traffickers with violations of 18 U.S.C. § 1591 when that is the most serious and readily provable offense and unless strict application of the new charging policy is not appropriate.

HUMAN TRAFFICKING AND RESTITUTION FOR VICTIMS

Question 11. In a 2015 law review article, the Human Trafficking Pro Bono Legal Center reported on the low rates of restitution orders in human trafficking prosecutions. In a study of Federal human trafficking cases brought over a four period, Federal courts failed to order restitution in nearly two-thirds of cases involving sex trafficking offenses.

They also found that the victims least likely to obtain restitution orders were children trafficked in the sex industry. Less than one-in-three defendants who commit sex trafficking offenses against children were ordered to pay restitution to their victims.

Can you discuss your efforts to ensure that prosecutors are trained to ensure that trafficking victims' receive restitution?

Answer. The Department of Justice is committed to seeking restitution for victims of trafficking, and has been actively training Federal prosecutors nationwide on best practices in securing restitution orders, including strategies for meeting the government's burden of proving the victim's actual losses as defined under applicable statutes. If restitution was not ordered in a particular case, it could be for any number of reasons, including insufficient evidence to pursue a claim, the court's rejection of the restitution request, or because the victim did not wish to seek restitution.

Regarding training, the following are examples of training and other guidance the Department is or will be offering to address restitution in human trafficking cases:

- In January 2017, the Department provided advanced human trafficking training to Federal investigators, prosecutors and law enforcement victim assistance professionals from two Anti-Trafficking Coordination Teams (ACTeams). The training included a session on financial investigations, restitution, and remission and restoration.
- In February 2017, at the Human Trafficking in Indian Country course at the National Advocacy Center, Department representatives gave a presentation focused on mandatory restitution for victims.
- In March 2017, the Department presented a two-part webinar series for United States Attorney's Offices and litigating components entitled, "Mandatory Restitution in Human Trafficking Cases." This two-part series included an overview of the law regarding restitution for victims of human trafficking and specific case examples of successful recovery of restitution in human trafficking cases.
- In June 2017, the Department sponsored the National Law Enforcement Training on Child Exploitation in Atlanta. The conference had over 1,400 attendees, including over 100 Federal prosecutors. A large number of the course offerings related to the commercial sexual exploitation of minors, including the lecture: *Providing Restitution for Victims and Forfeiting Offenders Assets: Commercial Sex Trafficking*.
- In August 2017, at the Department's National Advocacy Center, the Department conducted training for Federal prosecutors who specialize in child exploitation offenses. These prosecutors were trained on the importance of seeking restitution in sex trafficking cases and the mandatory nature of this restitution.
- In September 2017, in Fargo, North Dakota, the Department is participating in training of Federal, State, local, and Tribal prosecutors and law enforcement agents. This training includes the necessity of seeking restitution in human trafficking cases and mechanisms for successfully obtaining a restitution order.
- In the Fall of 2017, the Department will publish a USA Bulletin dedicated to human trafficking prosecutions. That bulletin will contain two articles regarding restitution in Human Trafficking cases: *Follow the Money: Financial Crimes and Forfeiture in Human Trafficking Prosecutions*, and *Mandatory Restitution: Complying with the Trafficking Victims Protection Act*.
- In November 2017, at the Department's National Advocacy Center, the Department will provide training to Federal prosecutors on investigating and pros-

ecuting human trafficking cases. Part of this training will include instruction on obtaining restitution and the best practices for successfully obtaining restitution.

LITIGATING THE BORDER WALL

Question 12(a). Your budget requests \$1.8 million to fund 20 positions, including 12 lawyers, to file lawsuits for the Federal Government to take property from private landowners for the President's proposed "border wall." I understand the \$1.8 million request only covers the cost of the personnel required.

a. How many such lawsuits does the Department expect to file in fiscal year 2018?

Answer. ENRD cannot predict the number of condemnations that will occur in 2018. Cases are referred to the Department from the requesting agency, which, with respect to the Border Wall, would be the Department of Homeland Security. ENRD will negotiate with landowners and seek to settle cases in order to mitigate the amount of litigation necessary for construction of the Border Wall.

Question 12(b). How much private land would need to be taken by the Federal Government in order to complete the President's wall, and which State do you expect to be affected most?

Answer. ENRD cannot predict the amount of land that will be taken to complete the Border Wall. Condemnation cases are referred to the Department of Justice from the requesting agency, which, in this instance, would be the Department of Homeland Security.

Question 12(c). How much do you anticipate some of these contested lawsuits to cost the American taxpayer?

Answer. ENRD is unable to answer the question until the cases are referred to the Department of Justice. ENRD will negotiate with landowners and seek to settle cases in order to mitigate the amount of litigation necessary for construction of the Border Wall.

Question 12(d). CNN reported earlier this year that more than 400 Federal lawsuits were filed challenging the loss of private land when the government previously sought to build barriers along the Southern Border. In fact, it is my understanding that there is still ongoing litigation between the Federal Government and private land owners.

It's important to note, these lawsuits were the result of the government building only 650 miles of barriers along the Southern Border. In contrast, President Trump has indicated he would like 2000 miles worth of Border wall.

If previous litigation remains ongoing from the 2006 Fence expansion, and we're now in 2017, how many years do you anticipate the Federal Government will be litigating President Trump's border wall?

Answer. ENRD cannot predict the number of years the Division will be litigating condemnation cases relating to the Border Wall, much as it cannot predict the number of condemnations that will occur in 2018. ENRD will negotiate with landowners and seek to settle cases in order to mitigate the amount of litigation necessary for construction of the Border Wall.

APPROPRIATIONS GUN RIDERS

Question 13(a). Year after year, the bills produced by this Subcommittee and its House counterpart include a number of policy riders that limit the Federal Government's ability to enforce existing gun laws. These provisions do everything from limiting ATF's ability to make commonsense updates to its definitions, to requiring sellers to report suspicious transactions, to properly classifying dangerous ammunition.

a. Can you describe how these appropriations riders impact your Department's ability to protect public safety?

Answer. The Department seeks to manage its resources to achieve maximum value for taxpayers in carrying out its mission. ATF and other Department agencies are most effective when they have maximum flexibility to allocate resources to achieve mission objectives. In light of its critical mission to reduce violent firearm crimes, ATF must continually adjust resource allocations to respond effectively to changes in threats to public safety. In the exercise of its constitutional authority to appropriate funds for the necessary and proper operations of government, Congress has chosen to use appropriations riders to restrict the manner in which ATF may use appropriated funds in the enforcement of Federal firearms laws and regulations. These uncodified restrictions pose a challenge to the Department and ATF, as they must often be interpreted without the benefit of legislative history based on hearing testimony, floor debates, or a well-established record of Congressional intent.

The Department believes that the best approach is for Congress to amend or repeal provisions in statutes that it determines should no longer be enforced, and allow the Department and ATF to allocate their limited resources in a manner that best protects public safety.

Question 13(b). How can you actually enforce existing laws when Congress puts all of these obstacles in your way?

Answer. The Department and ATF continually strive to achieve their mission objectives within the limitations imposed by appropriations riders.

MARIJUANA ENFORCEMENT

Question 14(a). Twenty-nine states and the District of Columbia have legalized medical or recreational marijuana.

I sent a letter on March 2, 2017 to Attorney General Sessions requesting clarification on whether the Department intends to continue the policies contained in the Cole Memorandum, which outlines eight Federal enforcement areas related to marijuana. Unfortunately, I have yet to receive a response to this letter.

a. Does the Department intend to revise policies related to Federal marijuana enforcement? If so, how and when?

Answer. As the Attorney General has made clear, the Department of Justice is currently reviewing the existing policies of the Department to determine whether they are consistent with the Attorney General's priorities.

Question 14(b). When can I expect to receive a response to the letter I sent to the Department in March?

Answer. We will be in a position to respond to the interrogatories in the letter after the Attorney General has received and considered all appropriate recommendations.

FEDERAL SUPPORT FOR RURAL COMMUNITIES

Question 15. Mr. Rosenstein, I have heard from numerous rural communities in California's Central Valley, such as the City of Mendota, about increasing gang violence related to foreign gangs like MS-13.

According to law enforcement in California, gang members are being directed by their leaders to escape large cities like Los Angeles and lie low in small, rural communities that are scarcely equipped to handle the resulting increase in crime.

I ask that you look into this situation and see if your Department can better assist these small rural communities, particularly in the form of additional grants and support from Federal law enforcement agencies.

Answer. The Department is committed to working with Congress and our State, local, and Tribal partners to improve public safety and uphold the rule of law in all of America's communities. To accomplish this goal, the Attorney General's Task Force on Crime Reduction and Public Safety examined the changing public safety needs of America's communities, including our rural communities, and made recommendations to the Attorney General on new policies or legislation needed to strengthen the Department's crime-fighting efforts.

At this time, the Department's Office of Justice Programs does not have any programs that specifically target gang violence in rural areas. However, many small towns and rural areas benefit from the Byrne Justice Assistance Grants (JAG), as well as the Community Oriented Policing Services Hiring Program. Areas experiencing significant increases in violent or gang-related crime may also want to consider participating in the Department's proposed Project Safe Neighborhoods Block Grants program.

ILLEGAL MARIJUANA GROWS AND PUBLIC LANDS

Question 16. Mr. Rosenstein, I have heard from numerous rural counties and tribes about increasing incidents of illegal marijuana grows on public and Tribal lands that are attracting criminal activity and creating environmental hazards.

The problem is particularly acute for California communities that border National Parks and Forests as well as for tribes with limited law enforcement capabilities. I am particularly concerned by reports that much of this activity is driven by foreign drug cartels, particularly from Mexico.

I ask that you direct the DEA to work more closely with local communities and tribes in order to crack down on illegal marijuana grows on public lands, particularly in rural areas of states that have legalized recreational marijuana, like California.

Answer. DEA continues to work with Federal, State, Tribal, and local law enforcement on illegal marijuana grows on public lands. In fact, DEA administers a Domestic Cannabis Eradication/Suppression Program, which is a nationwide law enforce-

ment program that exclusively targets marijuana. The program receives funding from the Department of Justice's Asset Forfeiture Fund through reimbursable agreements. The majority of this funding is then allocated to more than 120 State and local agencies for eradication campaigns and suppression programs. DEA's current performance measure for the program is the number of marijuana plants eradicated (including plants cultivated indoors and outdoors). In CY 2016, 1,832,947 marijuana plants were seized and destroyed.

CUTS IN BYRNE JAG FUNDING

Question 17. DOJ's fiscal year 18 budget proposes a \$75 million, or 22 percent cut, in the Byrne Justice Assistance Grant (Byrne JAG) formula grant program (representing a cut of about \$3.5 million to California). This despite strong rhetoric from President Trump about his unwavering support for State and local law enforcement.

Does this approximately 20 percent cut to Byrne JAG represent this administration's policy going forward?

Answer. The Department understands the importance of JAG grants to State, local, and Tribal governments. In fiscal year 2016, this program made more than 1,060 grant awards totaling more than \$263.7 million. State, local, and Tribal jurisdictions use JAG funds to cover a wide variety of expenses, such as overtime pay for officers, vehicles and equipment, technology upgrades, and interagency task force operations. The Office of Justice Programs (OJP) is continuing its effort to develop performance measures for this program to help grantees determine the most effective uses for their JAG funding.

The Department must balance the need for broad, multi-purpose programs like the JAG program with other Department priorities, such as programs specifically designed to target violent crime or opioid drug abuse. The Department carefully balances its funding requests every year based on a variety of factors, including performance data, program evaluation findings, the Department's goals, and the Department's assessment of the most important threats facing our State, local, and Tribal law enforcement partners.

This requested decrease—which will reduce overall Byrne Justice Assistance Grant (JAG) funding by approximately 11 percent from 2017 funding levels—reflects the Department's view that it can more effectively reduce violent crime through the newly proposed Project Safe Neighborhoods Block Grant program. This redirection of resources will ultimately benefit State, local, and Tribal jurisdictions by reducing the amount of violence and crime they must address.

SANCTUARY CITIES/BYRNE JAG AS PENALTY

Question 18. Since the transition, President Trump has threatened to withhold a State or city's entire Byrne JAG and COPS Hiring Grants allocation as penalty for sanctuary policies that go beyond what the law requires.

Indeed, the fiscal year 18 budget request proposes punitive penalties to law enforcement funding if State and local law enforcement do not comply with policies that go beyond even what the law requires with respect to immigration laws.

How does the Department reconcile its support for State and local law enforcement with its proposal to withhold Byrne JAG and COPS funds in penalty?

Answer. As Attorney General Sessions has said, "[s]o-called 'sanctuary' policies make all of us less safe because they intentionally undermine our laws and protect illegal aliens who have committed crimes." The purpose of these Department programs generally is to support law enforcement and improve the functioning of the criminal justice system. The Department has long required grant recipients to provide certain "standard assurances" in which the recipient certifies compliance with "all applicable Federal statutes [and] regulations . . .". This year, the Department is also imposing special conditions on grant recipients, which would require grant recipients to: (1) certify compliance with 8 U.S.C. § 1373; (2) permit personnel of the U.S. Department of Homeland Security (DHS) to access any detention or correctional facility in order to meet with an alien and inquire as to his or her right to be or remain in the United States; and (3) provide at least 48 hours' advance notice, where possible, to DHS regarding the release date and time of an alien in the grant recipient's custody when DHS requests such notice in order to take custody of the alien. Rather than being punitive in character, these special conditions are designed to further, through Federal programming, the Byrne JAG statute's requirement that recipients comply with Federal law and coordinate with other criminal justice agencies in order to improve the functioning of the criminal justice system. This approach is consistent with long-established principles of cooperation among law enforcement agencies.

DOMESTIC VIOLENCE CRIMES AND GUNS

Question 19(a). Many domestic abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are able to stockpile an arsenal of firearms and ammunition despite being prohibited from possessing firearms or ammunition under Federal firearms law.

Local domestic violence programs often attempt to help victims by seeking enforcement of Federal law and removal of the firearms, but they are unable to get assistance from the ATF and other Federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer numbers of firearms in the possession of domestic violence offenders.

a. How will ATF improve their response to cases like these, which are likely to lead to homicides?

Answer. One of ATF's mission priorities is the enforcement of 18 U.S.C §§ 922(g)(8) and 922(g)(9), which prohibit persons subject to domestic violence restraining or protection orders and persons who have been convicted of a misdemeanor crime of domestic violence from possessing or receiving firearms. ATF works closely with our State and local law enforcement partners, local prosecutors and United States Attorney's Offices (USAOs), to identify for investigation and prosecution domestic violence offenders who possess or attempt to obtain firearms. For example, in Spartanburg, South Carolina, ATF has partnered with the USAO, the Spartanburg County Solicitor's Office, and local law enforcement to implement "Operation Homefront," an initiative focused on identifying for Federal prosecution domestic violence offenders who use and unlawfully possess firearms.

Question 19(b). What kind of resources will you pledge to devote to make sure that guns are not accessible to prohibited domestic abusers who pose a dangerous risk to those around them?

Answer. The enforcement of Federal prohibitions on firearm possession by domestic abusers is an ATF priority, and the Bureau will continue to work with all public safety partners to identify, investigate and prosecute these offenders. In addition, Industry Operations Investigators will continue to work with members of the firearms industry to provide education and training on the Federal prohibitions on the possession and receipt of firearms by these individuals.

Question 19(c). What commitment can you make to have more ATF agents and ATF victim assistants trained and ready to respond to dangerous situations like this?

Answer. All ATF agents receive extensive training on how to deal with violent offenders, including those who engage in domestic abuse. This training includes specific instruction on de-escalation techniques, which emphasizes the tactical and communication skills particularly applicable to investigations involving domestic violence incidents. ATF also requires all agents to complete annual victim-witness training, and it has a robust victim-witness coordination program that includes placement of a highly trained victim-witness coordinator in every ATF field division. These victim-witness specialists provide support and assistance to the victims of domestic violence in cases investigated by ATF, and they work closely with other resources in the community to enhance awareness of ATF's commitment to the prevention of domestic violence involving firearms.

Question 19(d). Despite the well-documented danger domestic abusers with firearms pose to their victims, their communities, and law enforcement, only a very small proportion of protective order and misdemeanor domestic violence records are being submitted to NCIC's Protection Order Files and NICS.

In what ways can the DOJ take action to improve entry of these records, and what report language can the committee include to facilitate such improvements?

Answer. Entries into the National Crime Information Center (NCIC) Protection Order File are strictly voluntary. Actions the Department of Justice can take to improve entry of Protection Order File include increasing education and training on the NCIC Protection Order File to the criminal justice community and increasing partnerships with Federal, State, local, and Tribal agencies to determine their specific needs and develop meaningful plans to increase protection order entries.

Obtaining missing dispositions within the criminal history record is a significant priority. The Criminal Justice Information Services (CJIS) Division consistently utilizes the CJIS Advisory Policy Board Process to discuss the critical need for improved reporting of records to ensure the criminal history records and criminal dispositions are up-to-date and accurate. The FBI continues strategic outreach efforts with local, State, Tribal, and Federal partners via conferences, teleconferences, presentations, and training events regarding the importance of disposition reporting.

The FBI supports report language that includes a commitment to increase funding to Federal, State, local, and Tribal criminal justice agencies to provide additional training.

GRANTS FOR ORGANIZATIONS THAT ASSIST MISSING CHILDREN

Question 20. According to Section 5775 of Title 42, OJJDP is allowed to provide grants to applicants who have demonstrated or demonstrate ability in “locating missing children or locating and reuniting missing children with their legal custodians.”

I wrote to DOJ last year, requesting DOJ to consider issuing such grant opportunities so that organizations like the Polly Klaas Foundation, which has helped families and loved ones reunite with missing children, can pursue Federal funding to assist in their mission. I received a response indicating that for fiscal year 2017, no such further grants would be issued.

Will you commit to issuing such grants for fiscal year 2018?

Answer. The Department’s Missing and Exploited Children funding supports child sexual exploitation and missing and abducted children investigations, as well as training for law enforcement personnel and the community to increase their awareness on these issues. More specifically, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides funding to organizations to implement programs whose purpose is to increase the capacity of communities nationwide to respond to incidents of missing and exploited children. These programs include:

- Missing and Exploited Children’s Training and Technical Assistance program
- National AMBER Alert Training and Technical Assistance Program
- National Center for Missing and Exploited Children
- Internet Crimes Against Children Task Force Program

At this time, OJJDP does not anticipate offering additional competitive funding opportunities in fiscal year 2018 specifically related to comprehensive search and rescue efforts for missing children. In fiscal year 2018, OJJDP will continue to support the above programs, which continue to work diligently to respond to such incidents and provide critical recovery services for child victims. Furthermore, OJJDP will continue to engage in program planning annually and will consider your recommendation to issue a funding opportunity to enhance recovery efforts of missing and abducted children.

VOTING RIGHTS AND VOTER SUPPRESSION

Question 21(a). After your nomination hearing in March, I submitted a number of questions to you about voting rights and voter fraud. Specifically, I asked if you believe there is credible evidence that over 2.5 million people voted illegally in the last election, and I asked what steps you would take to ensure strong voting rights enforcement continues. You responded to the first question that you were “not aware of the context or basis for the [President’s] remarks and therefore [you were] not in a position to comment.” You also pledged to “fairly, effectively and appropriately enforce voting rights laws and other laws within the Department’s jurisdiction.”

a. Are you now in a position to comment on whether there is credible evidence that over 2.5 million people voted illegally in the last election?

Answer. I am not aware of the basis for the remarks and therefore am not in a position to comment.

The Department has a process for receiving and reviewing allegations of any potential violations of Federal laws related to voting, including in years in which a Federal general election occurs. This process considers all allegations that implicate Federal criminal laws, including those that prohibit election fraud, and Federal civil laws that protect voting rights, among other allegations of potential violations of Federal election laws. The Department has maintained this process for many years and will continue to do so. The Department will review and consider all allegations of Federal law violations for the 2016 elections and all other elections according to its usual process. It will make decisions based solely on the facts and the law.

Question 21(b). If not, will you commit to obtaining the information that you need to answer this question and to doing so by July 31, 2017?

Answer. Please see the response to question 21(a).

Question 21(c). Since becoming Deputy Attorney General, what steps have you taken to ensure that strong voting rights enforcement has continued?

Answer. The Department remains committed to enforcement of the Voting Rights Act and the other Federal voting rights laws. This work has been a critical law enforcement function of the Department for decades and continues to be a priority.

The Department will continue to use every tool available to it to ensure that all Americans can exercise their right to vote free from discrimination.

Question 21(d). In the time since you submitted your responses to my questions on voting rights, President Trump has established a Presidential Advisory Commission on Election Integrity. The administration claims the purpose of this Commission is “to promote fair and honest Federal elections.” The Department also released a Fiscal Year 2018 Budget and Performance Summary. The “fiscal year 2018 Strategy” for the Civil Rights Division states the following with respect to voting rights: “The Department will continue to protect voting rights through efforts to detect and investigate voting practices that violate Federal laws, through affirmative litigation to enjoin such practices, and through the monitoring of elections all throughout the country each year.” The fiscal year 2018 Strategy makes no reference to investigating allegations of voter suppression or to ensuring that all of those eligible to vote are not disenfranchised.

Were you consulted by President Trump or anyone in the Trump administration about the establishment of the Presidential Advisory Commission on Election Integrity?

Answer. No.

Question 21(e). In light of the Justice Department’s resources and expertise, do you believe that this Commission is necessary “to promote fair and honest Federal elections”?

Answer. The Department of Justice is committed to enforcing all Federal voting rights laws, including the Voting Rights Act, and to ensuring that the rights of every American are respected.

Question 21(f). What role did you play in drafting the fiscal year 2018 Strategy for the Civil Rights Division?

Answer. The Fiscal Year 2018 Strategy for the Civil Rights Division was developed through the Department’s usual budget formulation process. The Department’s Fiscal Year 2018 Strategy for the Civil Rights Division and the Department’s enforcement priorities have not excluded any violations of the Federal voting rights laws from the scope of its enforcement. Whenever warranted by the facts and the law, we will use all legal authorities at the Department’s disposal to stand against disenfranchisement and to safeguard the right of every American to register to vote and to cast a ballot.

Question 21(g). What role did Rachel Brand play in drafting the fiscal year 2018 Strategy for the Civil Rights Division?

Answer. As noted above, the fiscal year 2018 Strategy for the Civil Rights Division was developed through the Department’s usual budget formulation process.

Question 21(h). What will the Civil Rights Division do to investigate allegations of voter suppression?

Answer. The Department will continue to investigate all credible allegations it receives of violations of the Federal voting rights laws, and will continue to undertake its own efforts to identify and resolve violations of the Federal voting rights laws around the country.

Question 21(i). What will the Civil Rights Division do to ensure that all of those eligible to vote are not disenfranchised?

Answer. The Department will continue to use every tool available to it to ensure that all Americans can exercise their right to vote free from discrimination. Whenever warranted by the facts and the law, the Department will continue to use all legal authorities at its disposal to stand against disenfranchisement and to safeguard the right of every American to register to vote and to cast a ballot.

QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER A. COONS

Question 1. During his January 10 confirmation hearing, Attorney General Jeff Sessions stated that he would recuse himself from any matters involving the investigation into Secretary Clinton’s email server. A transcript of the hearing is available at <http://www.cq.com/doc/congressionaltranscripts-5017061?1&search=VDHxVWc4>.

- a. Are you aware of Attorney General Sessions’ recusal regarding any matters involving the investigation into former Secretary Clinton’s email server?
- b. When did that recusal become effective?
- c. What is the scope of Attorney General Sessions’ recusal regarding any matters involving the investigation into former Secretary Clinton’s email server?

Answer. On March 2, 2017, Attorney General Sessions announced that he had decided to recuse himself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.

Question 2. The Trump administration's original stated reason for removing Director Comey was his conduct relating to the Clinton email investigation. Why did Attorney General Sessions participate in this matter when he told Congress he would recuse himself?

Answer. Attorney General Sessions did not recuse himself from removing the FBI Director.

Question 3. Are you aware of any actions by the Attorney General that would suggest participation in matters from which he is recused?

Answer. No.

Question 4. Has the Department of Justice assessed the longer-term budgetary impacts of forcing prosecutors to charge even low-level offenders with the most serious offense possible?

Answer. The Department of Justice (Department) regularly assesses the budgetary impacts of its activities and funding resources, including the budgets of its litigating divisions, U.S. Attorney's Offices and the Federal Bureau of Prisons. I support the enforcement of all Federal criminal statutes in a manner that efficiently utilizes the Department's resources to address the most significant threats to public health and safety.

Question 5. How does the Department of Justice's fiscal year 2018 budget address the new charging policy's increased burdens on the courts, prisons, staffing, and re-entry?

Answer. The Department's fiscal year 2018 budget proposal totals \$27.7 billion to support the Federal law enforcement and criminal justice priorities of our State, local and Tribal law enforcement partners. The request represents a comprehensive investment in the Justice mission. The Department is dedicated to advancing the safety, the security, and the rights of all Americans.

Question 6. During your time as United States Attorney for Maryland, how many times did you directly speak with the President of the United States? If conversations occurred, what did you discuss during those conversations?

Answer. I met President Bush and President Obama several times at public events and at gatherings of government officials.

Question 7. Since being confirmed as Deputy Attorney General, how many times have you had private, one-on-one conversations with President Trump, in person or over the phone? If conversations occurred, what did you discuss during those conversations?

Answer. It would not be appropriate for me to disclose or describe any communications I may have had with the President.

Question 8. In my questions for the record during your confirmation hearing, I asked if it was ever appropriate for the President or another White House official to contact the Department of Justice or the FBI with instructions on how to conduct an ongoing criminal investigation. You answered,

"Any contacts from the President or the White House must comply with Department policies, including a 2009 memorandum by Attorney General Eric Holder. It would be my responsibility to ensure that investigations comply with Department policies, and that partisan considerations do not influence the handling of particular cases."

Director Comey testified before the Intelligence Committee that he believed President Trump directed him to stop the FBI's ongoing investigation into General Michael Flynn. What have you done to ensure that the President's actions do not influence ongoing cases?

Answer. I am not aware of any such improper influence during my tenure as Deputy Attorney General.

Question 9. In my questions for the record during your confirmation hearing, I asked how you would ensure that there is no political interference with regard to any investigation into Russian interference. You answered, "I will follow and enforce applicable policies and procedures prohibiting political interference." Please detail what procedures you are following and enforcing.

Answer. On May 17, 2017, I appointed Robert S. Mueller III to serve as Special Counsel to oversee the previously confirmed FBI investigation of Russian Government efforts to influence the 2016 presidential election and related matters. In addition, the Department continues to abide by the referenced policy regarding contacts with the White House.

Question 10. How has the Department of Justice implemented and enforced the Death in Custody Reporting Act and the FBI National Use of Force database?

Answer. Following the enactment of the Death in Custody Reporting Act (DCRA) in 2000, the Bureau of Justice Statistics (BJS) developed three programs to collect data on deaths in prisons, jails, and local law enforcement agencies using its base budget:

1. Deaths in Custody Reporting Program—Jails (DCRP-Jails) in 2000;
2. Deaths in Custody Reporting Program—Prisons (DCRP-Prisons) in 2001; and
3. Arrest-Related Deaths (ARD) in 2001.

Likewise, BJS has collected data for publication from State Statistical Analysis Centers (for ARD data), local jails, and State departments of corrections; however, BJS collections are voluntary.

When DCRA was reauthorized in 2014 and connected to Byrne Justice Assistance Grants (JAG), the reauthorization added:

- Discretionary penalties for States' non-compliance;
- Requirements for Federal law enforcement agencies to report on deaths in custody; and a
- Requirement for the Attorney General to report to Congress.

The enforcement of the DCRA JAG penalty provision is discretionary, but if the Department of Justice did enforce it to encourage reporting at the State level, it would require the Bureau of Justice Assistance (BJA) to take over full DCRA data collections (ARD, State prisons, and local jails) after the 2017 calendar year, because, as a Federal statistical agency, BJS cannot enforce any penalty for non-compliance. The Department is still assessing the most appropriate way forward to enforce both the spirit and letter of DCRA.

The National Use-of-Force Data Collection is managed by the FBI's Uniform Crime Reporting (UCR) Program. The UCR Program collects information regarding law enforcement's use of force resulting in the death or serious bodily injury of a person, or when law enforcement discharges a firearm at or in the direction of a person. The UCR Program does not collect information on deaths in custody attributable to suicide, accidents, or natural causes. In addition, the National Use-of-Force Data Collection does not obtain information from correctional facilities. Due to these two factors, the National Use-of-Force Data Collection cannot be used for complete reporting of information as required under DCRA.

As an FBI Director's Priority Initiative (DPI) focused on crime data modernization, the FBI worked with the Department, representatives from major law enforcement organizations, and local, State, Tribal, and Federal agency representatives to develop the content of this new data collection initiative. The DPI developed a solution, which allows law enforcement agencies to participate in the data collection with minimal costs, as agencies only require a computer and an Internet connection to report data to an FBI portal.

On June 7, 2017, the National Use-of-Force Data Collection pilot project was authorized by the Department and the Office of Management and Budget. The pilot project officially commenced on July 1, 2017, and will end on December 31, 2017. The focus of the pilot project will be on data completeness and data quality. By collecting statistical information and obtaining feedback from a targeted group of law enforcement agencies, the FBI will be able to strengthen the guidance and instructions provided on the questionnaire, as well as make adjustments to the questionnaire itself before an anticipated full deployment in early 2018.

Question 11(a). Then-President-elect Trump claimed that millions of people voted illegally in the presidential election.

- a. Do you believe there should be an investigation into alleged instances of voter fraud in the 2016 presidential election?

Answer. The Department has a process for receiving and reviewing allegations of any potential violations of Federal laws related to voting. The process considers all allegations that implicate Federal criminal laws, including those that prohibit election fraud, and Federal civil laws that protect voting rights, among other allegations of potential violations of Federal election laws. The Department has maintained this process for many years and will continue to do so. The Department will review and consider all allegations of Federal law violations for the 2016 election and all other elections according to its usual process. It will make decisions based solely on the facts and the law.

Question 11(b). If so, on what information do you base that belief?

Answer. As noted above, the Department will continue to review any election-related allegations according to its usual process.

Question 11(c). Has the Department of Justice fiscal year 2018 budget requested additional resources, above the fiscal year 2017 budget for the enforcement of election laws?

Answer. The Department of Justice failed to provide the Committee with a response to this question by the time the record was closed, which was 125 days after the Department originally received the question and 95 days after the Committee's requested deadline for a response.

Question 12. The FBI reported that hate crimes targeting Muslims increased by 67 percent in 2015. What resources has the Department of Justice relied upon to address rapid, documented increases in crimes?

Answer. The Department is committed to making communities safe for all Americans. During the Hate Crimes Summit in June, the Attorney General told those gathered: “As long as I am Attorney General, the Department of Justice will continue to protect the civil rights of all Americans—and we will not tolerate the targeting of any community in our country.” To carry out this commitment to combat violent crime and restore public safety, in February the Department established the Task Force on Crime Reduction and Public Safety. In March, the Attorney General issued a memo to all Federal prosecutors, making clear that prosecuting violent criminals is a high priority, and directing them to work closely with their Federal, State, local and Tribal law enforcement partners to target the most violent offenders in each district. Since the summer of 2017, the Civil Rights Division has assigned 12 additional attorneys to its Criminal Section, which handles hate crimes. And in fiscal year 2017, the Department indicted 23 defendants involved in committing hate crimes, and obtained (either through plea or after trial) convictions of 21 defendants involved in committing hate crimes. Thus, hate crimes are a priority.

With regard to combating hate crimes against the Muslim community in particular, the Civil Rights Division has undertaken a number of steps. Its Criminal Section has a dedicated prosecutor who serves as a contact point with the Department to identify, collect, and track possible hate crimes against Muslim-Americans, as well as against Arab, Sikh, South Asian, and Hindu-Americans. The Civil Rights Division engages in regular outreach to Muslim communities to encourage reporting of hate crimes, educate communities about hate crimes, and address other civil rights issues. Recent cases include charges against two men on September 28, 2017, for allegedly vandalizing a mosque in Tennessee, a guilty plea on October 19, 2017, by a Florida man for making a telephonic threat to members of a mosque, and an indictment of a man on June 22, 2017, for the alleged arson of a mosque in Texas.

Question 13. As you know, the Legal Orientation Program (LOP) at the Executive Office for Immigration Review (EOIR) provides services to individuals detained in removal proceedings to educate them about the immigration process and their rights and responsibilities. A 2012 EOIR report to the Senate Appropriations Committee shows that LOP participants moved through immigration court 12 days faster on average than detained persons who did not participate in the program. Immigration and Customs Enforcement saved an average of \$677 in detention costs for each LOP participant. Given the increases sought by the administration for expanding deportation and immigration enforcement, the Department must ensure that LOP is adequately resourced to handle the additional numbers of detained individuals so that their cases are handled as fairly and efficiently as possible.

What is the Department’s plan to ensure the projected additional detainees have adequate access to legal services, or at least as much access as they currently have?

Answer. Since 2003, the Executive Office for Immigration Review (EOIR) has maintained a Legal Orientation Program (LOP). Under the LOP, EOIR contracts with nonprofit organizations to provide group and individual orientations, self-help workshops, and pro bono referral services for detained individuals in removal proceedings. LOP’s primary focus is on detention centers; the Program is operational in 39 Immigration and Customs Enforcement (ICE) detention centers (including three ICE family residential centers).

QUESTIONS SUBMITTED BY SENATOR BRIAN SCHATZ

Question 1. What is the scope of Attorney General (AG) Sessions’ recusal? What matters is he allowed to be involved in? Please be as specific as possible.

Answer. On March 2, 2017, Attorney General Sessions announced that he had decided to recuse himself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.

Question 2. Who determines what matters the AG is allowed to be involved in?

Answer. I and the Department components that might have relevant information pertaining to those matters that are within the scope of the Attorney General’s recusal are aware of the scope of the recusal and will not involve the Attorney General in a matter from which he is recused.

Question 3. What procedures are in place to ensure that the AG is excluded from matters within the scope of his recusal?

Answer. Contemporaneously with the Attorney General’s recusal, his Chief of Staff sent an e-mail to relevant Department components directing them not to brief

or otherwise involve the Attorney General or other officials in the Office of the Attorney General about the matters from which the Attorney General recused himself.

Question 4. In the event that a matter were to reach the AG that falls within the scope of his recusal, what are the procedures for correcting the issue and maintaining the independence of the investigation?

Answer. It is unlikely that a matter from which the AG is recused would reach him, but he and his staff are aware of the scope of his recusal, and I am confident the AG would take no action on the matter.

Question 5. What are the procedures for monitoring the AG's compliance with his recusal for matters that may reach him outside the proper channels at the Department of Justice (DOJ)?

Answer. The AG is assisted in complying with his recusal requirements by consulting with career officials, including career ethics officials.

Question 6. Is the AG recused from all matters that are currently or will be under investigation by the special counsel?

Answer. The Special Counsel reports to me as the Acting Attorney General.

Question 7. Do you commit to informing Congress in the event that the recusal is breached?

Answer. It is generally not appropriate to make commitments based on hypothetical scenarios.

Question 8. Are there staff that work for AG Sessions who are also recused from any investigation related to the presidential election?

Answer. See response to question 3.

Question 9. How will their recusal be overseen and enforced?

Answer. See response to question 3.

Question 10. Will AG Sessions continue to have managerial responsibilities over attorneys, staff, or other officials within DOJ who are or will work on investigations from which the AG has recused?

Answer. I am the Acting Attorney General for purposes of the matters from which the Attorney General has recused.

Question 11. Has anyone from DOJ informed the president and his staff about proper procedures for their communications with the AG and his staff to ensure compliance with the recusal?

Answer. The Attorney General issued a press release contemporaneously with his recusal and held a press conference regarding it.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN, III

ALCOHOL, TOBACCO AND FIREARMS FACILITY

Question 1(a). In my State of West Virginia, we have facilities in Martinsburg at which the Bureau of Alcohol, Tobacco, and Firearms conducts most of its firearms licensing and tracing work. The facility is currently understaffed, and once-routine operations can currently take several months to complete because the demand far exceeds the manpower of the staff.

We are concerned that the administration's budget will not provide the staffing that ATF needs to succeed. This isn't good for the agency and it isn't good for gun owners, who have an expectation that their requests will be processed reasonably quickly.

a. Is the Department committed to giving the ATF the tools and funding it needs to process the requests of law abiding gun owners?

Answer. Yes, the Department is committed to ATF's mission and its needs at the National Firearms Act (NFA) Division. ATF's fiscal year 2018 budget request included additional funding to assist in expediting the processing of NFA applications. For NFA operations beyond fiscal year 2018, ATF has identified information technology and space resource requirements necessary for timely and efficient processing of NFA applications.

Question 1(b). How does the Department plan to cut down on the unreasonable wait time for license processing?

Answer. The President's fiscal year 2018 Budget includes an ATF program increase of \$4,000,000 to expedite the processing of NFA applications. In the interim, ATF has taken several steps to address the high volume of pending NFA applications and elevated processing times. ATF has redirected resources from other program areas to support critical staffing needs of NFA. It realigned financial resources to support both government employees' and contract staff overtime efforts in the processing of NFA applications. It temporarily redirected resources to support the processing of NFA applications, and initiated a business process re-engineering ef-

fort to further evaluate and identify workflow efficiencies and needed technological improvements.

SECOND CHANCE ACT/OFFENDER REENTRY PROGRAMS

Question 2(a). I've introduced a bill called the Clean Start Act that seeks to help former addicts with criminal records seal those records if they complete a comprehensive addiction treatment program and show that they have turned their lives around. While I believe that the Federal Government must lead the way in helping low level, nonviolent offenders get back to work, the bulk of these addicts are prosecuted at the State level, which is why funding for State Second Chance programs is so important.

Just this year, West Virginia enacted its own version of the Second Chance Act and I look forward to seeing it implemented. As the opioid epidemic continues to take its toll in my State and others, we have an ever-increasing number of men and women who face severely limited job opportunities after serving their time for crimes committed as a result of addiction.

a. What can you tell us about the administration's commitment to helping former offenders re-join the workforce and once again become responsible taxpayers?

Answer. The Second Chance Act program improves public safety by helping individuals returning from prison or jail successfully reintegrate into the community, thus reducing rates of criminal recidivism. It provides grants to help State, local, and Tribal corrections and public safety agencies implement and improve a variety of reentry services including housing, educational and employment assistance, mentoring relationships, mental health services, substance abuse treatment services, and family-support services.

Question 2(b). What programs and initiatives does the Department believe will be most effective in preventing recidivism among first time offenders?

Answer. The Department supports an evidence-based approach to corrections and reentry. Through Second Chance grant funding and technical assistance, the Department emphasizes the use of risk and needs assessments to determine appropriate supervision levels for each released offender. The Department also promotes reentry programming that assesses the risk posed by each offender and addresses his or her behavioral needs.

GANGS

Question 3(a). Gangs, including the notorious MS-13, have increased their activity in recent months and are now operating out of almost every State, including rural states such as West Virginia.

a. What can Congress do to best support the Department in its efforts to crack down on gang activity and street crime?

Answer. Congress can support these efforts by fully funding our budget requests for additional prosecutors, programming, and resources.

Question 3(b). What can you tell us about how your FBI agents and prosecutors intend to identify, catch, and prosecute violent gang members and prevent gangs from gaining resources and territory?

Answer. For decades, the FBI has successfully investigated violent criminal groups by focusing on intelligence-driven investigations and using the Enterprise Theory of Investigation (ETI). There are several components the FBI utilizes to make this strategy work, including:

—*Safe Streets Gang Task Forces/Transnational Anti-Gang Teams (TAG).*—These teams seek to reduce violent and gang-related crime by identifying, prioritizing, targeting, investigating and deterring the most violent and dangerous criminal offenders.

—*National Gang Intelligence Center (NGIC).*—The NGIC is a multi-agency information sharing entity that provides intelligence support to law enforcement agencies through timely and accurate information sharing on gang migration, criminal activity, and associations. A primary focus of the NGIC is to prioritize gangs that pose a significant threat to communities throughout the United States.

—*OCDETF Fusion Center (OFC).*—The OFC is a multi-agency operational intelligence center that provides law enforcement with analytical resources, case deconfliction, and information sharing to develop the most complete intelligence picture of targeted drug trafficking organizations and other complex criminal organizations.

—*Transnational Organized Crime (TOC) Watchlist.*—The TOC Watchlist is an actor centered database operated in conjunction with the Terrorist Screening Center (TSC). Known MS-13 members can be entered into the Watchlist to as-

sist investigators in tracking travel patterns of their known subjects in and out of the United States.

—*Violent Incident Crime Reduction Strategy (VIC-Red)*.—The VIC-Red is a new initiative to leverage intelligence, operations, law enforcement partnerships and community resources in an effort to reduce violent crime.

While these are only a few of the initiatives the FBI utilizes in addressing the threat posed by gangs, these programs have proven successful. In the past year (June 2016—June 2017), the FBI arrested over 15,000 individuals related to violent crime and gangs, took part in 215 dismantlements, disrupted almost 1,600 gangs, and recovered almost 5,000 weapons.

Question 3(c). Do you believe that existing DOJ programs and prosecution tools will be sufficient to push back the increase in gang activity or are new programs and tools required?

Answer. In its fiscal year 2018 budget request, the Department has requested an overall \$198.5M enhancement to further the priority of combating violent crime, which includes an additional \$19 million for 230 AUSA positions. This request will meet the Department's resource needs to thwart gang activity by increasing the number of violent crime prosecutors needed to target and prosecute gang members who drive much of the violence menacing communities. The additional positions will also help leverage the United States Attorneys' ability to convene Federal, State, and local law enforcement to improve public safety. These prosecutors will combat all types of violent crime, including gang violence, through comprehensive strategies involving vigorous prosecution and prevention efforts. Resources will be provided to the offices with the highest demonstrated need in areas that are necessary to accomplish the objectives of reducing violent crime and gang activity.

In addition, the Department's budget request seeks to reinvigorate Project Safe Neighborhoods (PSN) by asking for \$70 million for a new Project Safe Neighborhoods (PSN) block grant program. Since 2001, PSN has been the Department's primary initiative to combat gun and gang violence. Initially, PSN focused on Federal firearms offenders, but the Department expanded the program in 2006 to address violent street gangs. The current PSN strategy focuses on both the eradication of illegal firearms and the interdiction of violent gang activity. Each United States Attorney's Office (USAO) is responsible for appointing a PSN Coordinator (usually a seasoned violent-crime Assistant United States Attorney) and developing a PSN/anti-violence strategy that addresses PSN's five objectives: (1) increased Federal and local partnerships; (2) strategic planning, including proactive plans for crime prevention and using research partners; (3) training for local law enforcement; (4) increased local outreach; and (5) accountability, as measured by a reduction in violent crime. PSN grants provide support to local law enforcement authorities, outreach-and-prevention providers, and researchers to implement the USAO-led district PSN strategy. A 2009 Michigan State University study showed that when the PSN strategy was faithfully implemented in a target jurisdiction, it resulted in significant violent-crime decreases. While PSN has remained an operative national strategy, annual funding for the PSN program declined substantially over the last 8 years, resulting in many districts not receiving any funding and in inconsistent implementation among the 94 Federal districts. The requested increased budget support for PSN—a proven violence-reduction strategy—would set the Department on a course to roll back recent increases in violent crime and gang activity.

The Organized Crime Drug Enforcement Task Forces (OCDETF) is another Department component that plays a significant role in reducing gang activity. OCDETF targets major street gangs and transnational criminal gangs through multi-agency/multi-jurisdictional partnership and coordination among prosecutors and Federal, State, local, and Tribal law enforcement agencies to effectively target each gang as a criminal enterprise. As a matter of course, OCDETF investigations target gangs that engage in violence or weapons trafficking in the course of producing or distributing illegal drugs in multiple judicial districts or localities. Even if a violent gang distributes only small amounts of illegal drugs in a single judicial district or locality, OCDETF designation is appropriate if the investigation intends to work up the chain to the gang's source of supply. OCDETF designation is also appropriate for investigations against violent criminal organizations or gangs that may not yet have a demonstrated potential to link to components and/or facilitators of regional, nationwide, or transnational criminal organizations, but are actively engaged in violence and produce or distribute large amounts of illegal drugs in multiple judicial districts or localities.

Since its inception in 1982, OCDETF has targeted more than 1,000 gangs nationwide. OCDETF also keeps a single, interagency list of the most significant criminal organizations operating in or impacting each of OCDETF's nine Regions. These are designated as Regional Priority Organization Targets (RPOTs). More than 12 per-

cent of the RPOTs on the fiscal year 2017 OCDETF RPOT List are well-known national and transnational gangs, such as the Black Mafia Family, Bloods, Gangster Disciples, Hells Angels, Insane Spanish Cobras, Latin Kings, Mexican Mafia, Nuestra Familia, Sureños, and Vice Lords.

In the last two and one-half fiscal years, OCDETF initiated 535 gang cases, or 22.3 percent of the cases initiated during that time period. In the first 6 months of fiscal year 2017, OCDETF initiated 138 gang cases, or 28.6 percent of the total new caseload for the year. Currently OCDETF reporting shows that 19.2 percent of its active caseload (877 cases) involves gangs. After a review conducted in April 2017, 43 OCDETF cases were identified as involving MS-13 specifically.

Three of the nine OCDETF Regions—Great Lakes, Mid-Atlantic, and New York/New Jersey—have had Regional Gang Strategic Initiatives for a number of years. During the first 6 months of fiscal year 2017, these three Regional Gang Strategic Initiatives yielded 40 new OCDETF gang cases, along with 223 defendants indicted and 226 defendants convicted in cases initiated in previous years. Further, on July 6, 2017, the OCDETF Director signed a new OCDETF National Gang Strategic Initiative to support OCDETF field components in their efforts to address criminal gangs. This National Gang Strategic Initiative provides programmatic support and seed money for OCDETF components to exploit the vulnerabilities of violent gangs through targeted initiatives designed to develop information and evidence on gang criminal activity in investigations that are intended to reach the OCDETF level but have not yet done so. By learning and developing best practices, sharing information, and linking and de-conflicting lower level investigations, participants are more likely to develop new investigations suitable for OCDETF designation. Additionally, the increased agency focus on criminal gangs, and the resulting OCDETF and non-OCDETF investigations, will have a greater impact in disrupting and dismantling gang-related violence and other criminal activity throughout the country.

THE FBI/CJIS FACILITY IN CLARKSBURG

Question 4. In my State of West Virginia, we have facilities in Clarksburg at which the FBI conducts much of its work in running background checks, evaluating evidence, and identifying leads in criminal investigations. These facilities are part of the FBI's Criminal Justice Information Services division, known as CJIS.

CJIS supports its work primarily through user fee collections. In this year's budget, a rescission was implemented regarding CJIS's ability to access these user fees to fund improvements to their technology (per the GAO definition, a rescission cancels the availability of budget authority previously enacted before the authority would otherwise expire.). CJIS facilities have not kept up with advances in technology, and we are concerned that this rescission will hamper the FBI's ability to conduct searches of its databases and more quickly identify dangerous suspects.

We'd be interested in learning more about the Department's plan for modernizing the CJIS system, specifically the purpose behind diverting user fees away from CJIS system modernization.

Answer. The Department will continue to work with the FBI and its CJIS Division to ensure that no services will be impacted by the cancellation of unobligated balances and that no critical upgrades and enhancements are forgone. Some of the planned IT modernization activities include (1) the enhancement of Combined DNA Index System (CODIS) to handle rapid DNA and other new capabilities, (2) development of tools to process large volumes of video and photographic evidence; and (3) modernization of crime data reporting through the National Incident-Based Reporting System (NIBRS).

PRISON RAPE ELIMINATION ACT (PREA) IMPLEMENTATION

Question 5. In the Senate, Attorney General Sessions was instrumental in the passage of the Prison Rape Elimination Act of 2003, and the President's fiscal year 2018 budget request proposes a \$5 million increase for grants to support PREA implementation. In the Department's budget documents, it mentions continuing Federal research into prison rape, funding the great work of the National PREA Resource Center, and providing grants to local agencies to work toward compliance. I'm proud of the fact that the West Virginia statewide Regional Jail Authority fully implemented PREA, and did so with the support of a Federal demonstration grant.

Can you tell us whether some of the PREA funding should be used to restart these PREA Demonstration Grants to states, which had been suspended for the last 2 years due to insufficient funds?

Answer. The \$15.5 million requested for the Prison Rape Elimination Act (PREA) program in fiscal year 2018 will provide vital support for all of the Department's ongoing obligations related to PREA implementation. The request will support new

PREA requirements established in the Justice For All Reauthorization Act (JFARA) of 2016, such as a requirement for the Department to collect all past and current PREA audit reports from the Nation's governors and make them publicly available online. This funding will also support data collection and statistical analysis on sexual assault in detention facilities; the work of the National PREA Resource Center; and continuing implementation and enhancement of the PREA audit process.

The Office of Justice Programs (OJP) recognizes the need to provide adequate funding to support all aspects of the Department's PREA-related responsibilities. OJP is prioritizing support for the PREA Demonstration Grants program, which supports local PREA implementation efforts, in fiscal year 2018. The additional resources requested for the PREA Program as part of the fiscal year 2018 budget request are an essential part of OJP's efforts to ensure that implementation efforts are appropriately funded.

COMPREHENSIVE SCHOOL SAFETY INITIATIVE

Question 6. We created the Comprehensive School Safety Initiative (CSSI) a few years ago as a response to the Sandy Hook Promise Elementary school shooting tragedy. The purpose of this initiative is to research and implement innovative school safety programs to increase the safety of our children within their schools.

The initiative has resulted in an FBI and Secret Service-based school threat assessment and intervention program that trains schools to regularly identify threats, investigate and determine if a threat is serious, and intervene to prevent future tragedies. This program has already prevented school shootings and suicides within schools across the Nation, preventing a school shooting as recently as this past January.

Given that the President's budget cuts funding for CSSI in half, what other programs will the Department of Justice fund and implement to increase safety in our schools, including the use of school threat assessment?

Answer. The Department is proud of the work that has been done under the Comprehensive School Safety Initiative (CSSI), which is administered by the National Institute of Justice (NIJ). Since its inception in fiscal year 2014, the program has launched 72 competitive grant-funded projects in 33 states (plus the District of Columbia and Puerto Rico). All projects are research-focused and 85 percent of CSSI funding supports projects that rigorously evaluate school safety interventions such as the threat assessment efforts mentioned. CSSI-funded school safety interventions are being tested in over 2,700 schools nationwide.

While these research-focused projects are promising, they have project periods that range from three to 5 years, and as such, have not yet produced their final results. Close to \$300 million is actively invested in this program to date to increase the safety of children in schools. The President's fiscal year 2018 Budget acknowledges this considerable investment and recognizes that, to make the best use of Federal resources, we should wait for the results of current projects to determine the best use of future funds.

BUREAU OF PRISONS STAFFING AND CORRECTIONAL OFFICER SAFETY

Question 7(a). West Virginia houses several Federal prisons, including FCI Beckley, FCI Gilmer, FCI Hazelton, FCI McDowell, FCI Morgantown, and USP Hazelton. Correctional officers who work at these prisons place their lives on the line to protect public safety, and I am proud of the work that they do.

Over the past year, I have heard disturbing reports of understaffing at Federal prisons in West Virginia and across the country that have left correctional officers vulnerable to attack by the inmates in their charge. My concern was heightened when I learned that the Department of Justice plans to maintain a hiring freeze for the Bureau of Prisons—even though the administration has specifically exempted from the scope of the hiring freeze all positions that protect the public safety.

a. Can you tell us why the Department does not believe that the positions of Bureau of Prisons correctional officers are positions that protect the public safety?

Does the Department plan to revisit this determination at any time?

Answer. In accordance with the President's Hiring Freeze memorandum and Attorney General's guidance, the Department has limited its hiring exemptions to the positions required to accomplish our national security and public safety responsibilities. In the case of the Bureau of Prisons, the Department is permitting hiring capped at the staffing level existing on January 22, 2017. Within that overall level of staffing, the Bureau of Prisons (BOP) has flexibility to hire the positions it deems most critical and at the locations it deems most critical. BOP will continue to closely monitor its staffing levels to ensure the continued safety and security of BOP employees, inmates, and the public.

Question 7(b). Can you tell us about the Department's position on the use of augmentation? Does the Department believe that the use of augmentation is in line with its own goals for public safety and the safety of its correctional officers?

Answer. All BOP staff assigned to correctional facilities are law enforcement officers and are considered correctional workers first, regardless of their occupation. Staff, including non-custody staff, are all trained accordingly and are expected to perform law enforcement functions as necessary. While augmentation is not a common practice because it is important for non-custody staff to perform the jobs for which they were hired, it is an option BOP employs as needed to ensure safety and security.

Question 7(c). Does the Department have any immediate plans to nominate a permanent Director to oversee the Bureau of Prisons?

Answer. On August 1, 2017, the Attorney General announced the selection of General Mark S. Inch as the Director of the Federal Bureau of Prisons.

QUESTIONS SUBMITTED BY SENATOR CHRIS VAN HOLLEN

SPECIAL COUNSEL

Question 1(a). 28 CFR Part 600.7, Conduct and Accountability, states that "The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies."

a. Do you believe that an order from the President to fire the Special Counsel constitutes "good cause"?

Answer. If there is not good cause, I would not fire the Special Counsel.

Question 1(b). Do you believe that the Constitution implicitly grants sitting presidents immunity from criminal prosecution?

Answer. The Department of Justice's Office of Legal Counsel reached that conclusion in a published opinion in 2000. See *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222 (2000). As that opinion explained, its conclusion was consistent with a 1973 opinion of the Office of Legal Counsel and with a brief that the Solicitor General filed in 1973 taking the position that the President, unlike the Vice President, could not be subjected to indictment and criminal prosecution while in office. I have no reason to disagree with this long-standing position of the Department.

Question 1(c). Department of Justice regulations authorize the Attorney General to "request that the Special Counsel provide an explanation for any investigative or prosecutorial step." How frequently will you ask the special counsel to report to you on his investigation? To what extent will you require the special counsel to coordinate with the Justice Department's National Security Division?

Answer. I have an appropriate level of interaction with the Special Counsel's Office consistent with the regulations and will maintain sufficient documentation to ensure the ability to comply with the reporting requirement in 28 C.F.R. § 600.9(a)(3) if that provision is implicated.

Question 1(d). What will be the process for reporting the progress and results of the Special Counsel's investigation to Congress?

Answer. See 28 C.F.R. § 600.9.

Question 1(e). Will you report to the Special Counsel any efforts by any member of the Trump administration to impede the investigation of the Special Counsel?

Answer. I would notify the Special Counsel about any information relevant to his investigation.

Question 1(f). Did you get any pressure from AG Sessions, McGahn, or anyone else not to appoint a special counsel?

Answer. I did not discuss that issue with the Attorney General or Mr. McGahn.

Question 1(g). Has President Trump—or any of his agents—asked you to fire Special Counsel Mueller?

Answer. No.

JAMES COMEY

Question 2. In his testimony before the Senate Intelligence Committee last week, James Comey said he spoke to you and Attorney General Sessions about his "serious concern about the way the president is interacting, especially with the FBI." Can you describe this conversation?

Answer. Consistent with the Department's long-standing policy regarding the confidentiality of information relating to pending matters, I am not in a position to respond to your question.

JUSTICE DEPARTMENT POLICY RE: CONVERSATIONS WITH THE PRESIDENT

Question 3. Attorney General Sessions has said that it is Department of Justice policy to not disclose to Congress private conversations with the President.

- a. Can you provide this Committee a copy of this policy?
- b. When was this policy adopted?
- c. Who crafted this policy?
- d. What were the factors considered when this policy was adopted by the Department of Justice?

Answer. The Attorney General relied on longstanding executive branch policy and practice in declining to disclose the content of confidential communications with the President in response to questions during a voluntary appearance before a congressional committee. As the *New York Times* recognized after the Attorney General's testimony: "Previous Executive Branch officials of both parties have withheld information requested by Congress in the same manner." Charlie Savage, "On Executive Privilege and Sessions' Refusal to Answer Questions," *N.Y. Times*, June 16, 2017, at A18. That policy and practice has not been reduced to writing in a single Department of Justice policy document, but key underlying principles are stated in several executive branch policy and legal documents. President Reagan's 1982 memorandum about "Procedures Governing Responses to Congressional Requests for Information" said that "executive privilege shall not be invoked without specific Presidential authorization," that "[l]egitimate and appropriate claims of privilege should not thoughtlessly be waived," that executive privilege should be "asserted only in the most compelling circumstances," and that a "tradition of accommodation" involving "good faith negotiations between Congress and the Executive Branch" should be "the primary means of resolving conflicts between the Branches." A published opinion of the Department's Office of Legal Counsel from 1982 discusses the "presumption of confidentiality accorded presidential communications" and notes that "[t]he President customarily reserves exclusively to himself the power to assert the claim of executive privilege against Congress." *Confidentiality of the Attorney General's Communications in Counseling the President*, 6 Op. O.L.C. 481, 483, 485 (1982). A subsequent published opinion explains that a dispute between the branches involving "information of a sensitive nature" typically begins "with an informal oral or written request from a congressional committee," which may be followed by negotiations between the executive branch agency and the committee staff, and, if the dispute is not settled, by a subpoena, at which point, "if further negotiation is unavailing, it is necessary to consider asking the President to assert executive privilege." *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 161–162 (1989). As the Supreme Court has explained, the presidential communications privilege is "fundamental to the operation of Government" and "necess[ary] for protection of the public interest" because it ensures that the "President and those who assist him" are "free to explore alternatives in the process of shaping policies and making decisions." *United States v. Nixon*, 418 U.S. 683, 708 (1974). As a result, "[t]he President can invoke the [presidential communications] privilege when asked to produce documents or other materials that reflect presidential decisionmaking and deliberations and that the President believes should remain confidential." In re Sealed Case, 121 F.3d 729, 744 (D.C. Cir. 1997).

YOUR STATEMENT ON JUNE 15

Question 4(a). On Thursday, June 15, 2017 you released a statement urging Americans to exercise caution regarding news stories and anonymous officials. This statement was released hours after a Washington Post article alleged that President Trump is now a target of Mueller's investigation.

- a. Why did you release this statement?

Answer. I released the statement because it is important to remind citizens that they should be cautious about accepting the veracity of statements attributed to anonymous "officials" whose credibility cannot possibly be evaluated by the reader.

Question 4(b). Did you release this statement in reaction to and to counter the claims within the Washington Post article?

Answer. I released the statement in reaction to the multitude of claims attributed to anonymous "officials" and persons allegedly "close to" or "familiar with" Federal investigations. Such stories often are written to make it appear that the source is a Department of Justice employee, and without alerting readers that the story may be false, and the source may not even be an executive branch employee.

Question 4(c). Did anyone from the Trump administration ask you to make this public statement?

Answer. No.

Question 4(d). Did you consult with anyone, including, Attorney General Sessions, before you released the statement?

Answer. This statement, like all statements released by the Office of the Deputy Attorney General, was reviewed by appropriate personnel in the Office of the Deputy Attorney General and in the Office of Public Affairs before its release.

Question 4(e). Why did you include the phrase “they do not identify the country” within the statement?

Answer. The credibility of any source of information normally is assessed based on what details we know about the individual in order to evaluate, among other things, whether the individual is in a position to know the information attributed to the individual, whether the individual is usually truthful, and whether the individual is biased. When considering whether to believe what a person says—even when testifying under oath in court—factfinders consider detail relevant to credibility. Reporters are free to use any source they want, and they are free to obscure a source’s true affiliation and degree of personal knowledge. There is no legal requirement that a reporter verify the background or credibility of a “source,” nor is there any legal requirement that a reporter truthfully describe the source so that readers can assess the credibility of the story for themselves. Absent details, a reader cannot know whether or not there is a credible and reliable source.

Question 4(f). Do you have evidence that foreign actors are in fact, acting as anonymous sources?

Answer. See response to question 4(e). My point is that when we do not know the source, we do not know the source.

SUBCOMMITTEE RECESS

Senator SHELBY. This subcommittee stands in recess until Thursday, June 29, at 10 a.m., when we will take the testimony of Acting NASA Administrator Robert Lightfoot.

The subcommittee is adjourned.

[Whereupon, at 12:14 p.m., Tuesday, June 13, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, June 29.]