U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

January 25, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions for the record, which were posed to former Attorney General Alberto Gonzales following his appearance before the Committee on July 24, 2007. The hearing concerned Department of Justice Oversight. This submission provides responses to a large number of questions posed by the Committee. The Department is working expeditiously to provide the remaining responses, and we will forward them to the Committee as soon as possible.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, they have no objection to the submission of this letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Questions for the Record
Posed to former Attorney General Gonzales
Following the July 24, 2007,
Senate Committee on the Judiciary Hearing
Regarding DOJ Oversight
Part 1

Leahy 3 The Washington Post reported on July 28 that in October 2004, the FBI did report an intentional violation of law in connection with the collection of financial information as part of a national security investigation. That report was sent to the Department of Justice. How is that report consistent with your April 2005 and July 2007 testimony, by any definition of abuse or violation?

ANSWER: While the October 2004 Intelligence Oversight Board (IOB) report by the FBI notes that the FBI agent's conduct of requesting financial records was intentional, the report also makes clear that the agent, who was a rookie in probationary status, did not realize that she had acted contrary to the statute and FBI policies. Thus, while the agent's conduct was clearly intentional and in violation of the relevant laws and policies, such an unwitting violation should not be viewed as systematic and recurring "abuse." Additionally, as you know, the matter was referred to the FBI's Office of Professional Responsibility to determine what actions should be taken with respect to the agent.

Leahy 4 According to news reports and briefings provided by the FBI, the FBI has been conducting an internal audit of its use of National Security Letters that has confirmed the findings of the March 2007 Inspector General report that there was and I quote: "widespread and serious misuse of the FBI's national security letter authorities." Do you agree that on your watch, there has been "widespread and serious misuse of the National Security Letter authorities"?

ANSWER: The Inspector General (IG) did not find intentional or deliberate violations of the national security letter (NSL) statutes, Attorney General Guidelines, or internal FBI policies with respect to the issuance of NSLs. However, the deficiencies identified that with respect to the FBI's use of NSL authorities are serious and, as a result, Former Attorney General Gonzales and FBI Director Mueller ordered substantial and significant corrective actions to address those problems, including implementation of all of the IG's recommendations.

Leahy 36 The President issued an executive order recently governing interrogations conducted by the CIA. While the order took the positive step of recognizing that the Geneva Conventions and the ban on cruel and inhuman treatment apply to CIA detention and interrogations, it also suggested a return to secret prisons and unchecked

interrogations. Does the issuing of this order mean that the President is authorizing the resumed use of secret CIA prisons?

ANSWER: As the President explained on September 6, 2006, the CIA detention and interrogation program has disrupted terrorist attacks and saved lives. Congress enacted the Military Commissions Act of 2006 to ensure that the CIA program could go forward, consistent with United States obligations under Common Article 3. Accordingly, the President issued the Executive Order to provide authoritative guidance as to the meaning of Common Article 3 as it applies to the CIA program. Beyond that, we are not able to discuss publicly the status of any ongoing intelligence activities.

Leahy 37 The executive order provides for no external check on the interrogation techniques used or the conditions of these prisons. Given the recent history of abuses, on what basis should we rely on this Executive Order to ensure that detainees will be kept and interrogated in accordance with the law, international obligations, and sound policy?

ANSWER: The statutory prohibitions incorporated into Executive Order 13440 provide clear external checks on the CIA program. The Order specifically requires that the CIA Director issue written policies to ensure that the activities within the CIA program comply with all applicable laws (including the anti-torture statute and the War Crimes Act), as well as the detailed procedures and safeguards contained within the Order. The Order requires appropriate training for CIA personnel, effective monitoring to ensure the safety of detainees, and rigorous compliance with the procedures and safeguards contained within the Order. The President has directed that anyone who breaks the rules be held accountable, and violators could face administrative action by the CIA Director. For those violations that constitute crimes, there is also the potential for criminal prosecution.

Leahy 40 Kyle Sampson and Monica Goodling claimed that approval to factor politics into the hiring of immigration judges came from the Justice Department's Office of Legal Counsel. However, on May 25th, the Department issued a statement that it had no record of such an opinion. Do you agree that your office was violating civil service laws, which prohibit political considerations in hiring, by using politics as a screen for selecting immigration judges?

ANSWER: The Department has not located any record of legal advice that Immigration Judges are not subject to civil service restrictions on hiring based on political affiliation. The Department agrees that Immigration Judges and Board of Immigration Appeals ("BIA") members occupy positions that have not been exempted from the civil service requirements of 5 U.S.C. § 2302 (with the exception of the BIA Vice Chair, who occupies a general Senior Executive Service position that may be filled by a career or non-career appointee). The civil service laws would permit political affiliation to be taken into account if the positions were exempted or if they were reclassified, but the Department is aware of no plans to do so.

The Department's Office of Inspector General and Office of Professional Responsibility are currently examining the allegations referenced in your question, and we defer further comment on the matter until the completion of their work.

Leahy 44 The report also notes that the Department's Office of Information Policy – the office responsive for coordinating FOIA compliance in the federal government – provided inaccurate information to Congress regarding its oldest outstanding FOIA requests. The Department reported in its 2006 annual report to Congress that its oldest FOIA requests dated back to February 5, 2002. However, the Department provided information to the National Security Archive indicating that requests date back further. Did the Department provide inaccurate information to Congress? Do you want to correct the record regarding these outstanding FOIA requests?

ANSWER: The Office of Information and Privacy (OIP) provided accurate information to Congress. The National Security Archive subsequently corrected its report to reflect that fact. The Department of Justice accurately reported to Congress in 2006 that its oldest FOIA request was from February 5, 2002. That date is the date the request was received, which is the legally operative date as provided for in the FOIA statute. The National Security Archive, which received a copy of the request letter, made its erroneous assertion by using the date of the request letter rather than the date of its receipt by the Department of Justice, although both dates were clearly visible on the face of the letter. The delay between the two dates was likely the result of the Anthrax mail screening program that took place in 2001-2002. After being contacted by OIP, the National Security Archive corrected its report to clarify its earlier statement. The corrected report now states that "[b]ecause agencies calculate their response time from the date of receipt of the request, OIP's report to Congress listing its oldest pending request as dating from February 5, 2002 is not inaccurate."
http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB224/index.htm

Specter 56 The Administration has produced legislation, the FISA Modernization Act of 2007, to modernize the FISA. This was first introduced near the end of the last Congress. In your testimony, you stated that "While FISA has been and continues to be one of our most valuable intelligence tools, it is imperative that the statute be modernized to account for the new technologies and threats of the 21st century. It has been almost thirty years since FISA was enacted, and revolutionary advances in telecommunications technology in that time have upset the delicate balance that the Congress originally struck in the statute. As a result, FISA now imposes a regime of court approval on a wide range of intelligence activities that do not substantially implicate the privacy interests of Americans—an unintended consequence that has impaired our intelligence capabilities. In many cases, FISA now requires the Executive Branch to obtain court orders to monitor the communications of individuals posing a threat to our national security located overseas. This process of obtaining a court order necessarily slows, and in some cases may prevent, the Government's efforts to conduct surveillance of communications that are potentially vital to protecting the national security. This situation is unacceptable—we must quickly reform FISA's outdated legal framework and ensure

that the Intelligence Community is able to gather the information it needs to protect the Nation." However, in the February 6, 2006 hearing that the Senate Judiciary held on the TSP, you stated: "And I know today there's going to be some discussion about whether or not we should amend FISA. I don't know that FISA needs to be amended per se. Because when you think about it, FISA covers much more than international surveillance. It exists even in the peacetime. And so when you're talking about domestic surveillance during peacetime, I think the procedures of FISA, quite frankly, are quite reasonable. And so that's one of the dangers of trying to seek an amendment to FISA is that there are certain parts of FISA that I think provide good protections. And to make an amendment to FISA in order to allow the activities the president has authorized, I'm concerned will jeopardize this program." However, in your letter dated January 17, 2007 to Chairman Leahy and me, you informed us: That on January 10, the FISA Court issued orders "authorizing the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization." You further said that in light of this order, "any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to the approval of the Foreign Intelligence Surveillance Court." You also informed us that the President had determined not to reauthorize the Terrorist Surveillance Program because the FISA Court orders will "allow the necessary speed and agility." In light of these statements, could you tell me why the Administration wishes to modernize the FISA?

ANSWER: The prior statements you cited are not inconsistent with the continuing need to modernize FISA and the existence of the FISA Court orders does not alter the need to modernize FISA permanently and comprehensively to reflect the new threats and technologies of the 21st Century. Changes in telecommunications technologies since 1978 have resulted in FISA's requiring the Government to obtain court orders to intercept the communications of persons overseas—a result that hampers our intelligence capabilities in a manner that we believe was not intended by FISA's drafters and that does not advance the privacy interests of Americans in the United States. It simply makes no sense to extend FISA Court procedures and protections to terrorist suspects overseas. The Administration's FISA modernization proposal incorporates many provisions supported by members of Congress last year—including several proposals made in the bill you introduced, S. 2453 (National Security Surveillance Act of 2006).

The Protect America Act of 2007, which passed the Senate and House with bipartisan support, was a good start. We urge Congress to make that Act permanent and to enact other important reforms to FISA. In particular, it is imperative that Congress provide liability protection to companies alleged to have assisted the Government with intelligence activities in the wake of the September 11 attacks. The Department of Justice looks forward to working with the Congress, and with this Committee, on this important issue.

Specter 57 I am concerned about the provision in the Administration's recent FISA bill that grants immunity for telecommunications companies that have cooperated with the Terrorist Surveillance Program (or any other intelligence surveillance program) since the Sept. 11, 2001, attacks. (Section 408). The White House has failed to provide

Congress with sufficient information about the role of the companies in the Terrorist Surveillance Program or any other program. Congress cannot grant these companies blanket immunity without first learning the facts. For this provision to even be considered, the Administration will have to provide a detailed briefing to Congress about the role these telecommunication companies have played. To this end, what plans have been made to brief the Congress on these essential facts?

ANSWER: Throughout the war on terror, the Administration has notified the Congress about the classified intelligence activities of the United States through appropriate briefings of the Intelligence Committees and congressional leadership. For example, the full membership of each Intelligence Committee has been briefed on the Terrorist Surveillance Program, as have other members of the congressional leadership. Under the National Security Act and the well-established and bipartisan tradition and understanding of both the Executive Branch and Congress, these are the appropriate Committees and Members to address such issues.

With respect to the details you seek, negotiations between the Chairman and the Administration continue on these matters. We are not able to provide additional details on any planned briefings at this time. Nevertheless, we think it is imperative to enact meaningful protection for those who are alleged to have assisted the Government in a time of great need.

Specter 58 In your written testimony you state that your proposed omnibus crime bill, the Violent Crime and Anti-Terrorism Act of 2007, "makes the US Sentencing Guidelines mandatory, as Congress intended, rather than merely advisory. How do you square your testimony with the Supreme Court's decision in U.S. v Booker, 543 U.S. 220 (2005), wherein the Court rejected a mandatory application of the Guidelines?

ANSWER: Under the mandatory guidelines system we are proposing, the sentencing guidelines' minimum would return to being mandatory and again have the force of law, while the guidelines' maximum sentence would remain advisory. This would comport with the constitutional requirements of *Booker*, because defendants, upon conviction, would always be subject to the maximum statutory penalty set by Congress, rather than being subject only to the maximum set in the guidelines. Moreover, such a system would embody the time-tested values of the Sentencing Reform Act of 1984. The sentencing guidelines would work in the same manner they have since their inception: with judges identifying aggravating and mitigating factors in individual cases, with carefully circumscribed judicial discretion, and with results that are certain, consistent and just.

Specter 59 In Booker, the Court stated, "We do not doubt that Congress, when it wrote the Sentencing Act, intended to create a form of mandatory Guidelines system. But, we repeat, given today's constitutional ruling, that is not a choice that remains open." How do you reconcile your proposal and testimony with this language from the Booker decision?

ANSWER: The majority in *Booker* contemplated that advisory guidelines would not be a permanent solution and anticipated that Congress would consider legislation in the wake of

Booker. Indeed, Justice Breyer stated in his majority opinion that "[t]he ball now lies in Congress' court. The National Legislature is equipped to devise and install, long-term, the sentencing system, compatible with the Constitution, that Congress judges best for the federal system of justice." *Booker*, 543 U.S. at 220,265 (2005).

Specter 60 Your proposed bill establishes the Sentencing Guidelines as a mandatory floor – the minimum Guidelines range is binding – but the Guideline maximum is merely advisory. Accordingly, under this approach, which has been labeled a "topless" approach, a court could go no lower than the low range of the Guideline range, but could impose a sentence as high as the statutory maximum. Didn't the Supreme Court in Booker reject the Government's argument along these same lines in the Booker court's remedial holding?

ANSWER: The Department has closely examined the constitutionality of this proposal. We understand that it can survive only as long as the Supreme Court declines to extend the rule in *United States v. Blakely*, 178 Fed. Appx. 302 (4th Cir.), cert. denied 498 U.S. 905 (1990) to findings necessary to enhance a mandatory minimum sentence. We acknowledge that the proposal relies on the Supreme Court's holdings in *McMillan v. Pennsylvania*, 477 U.S. 79 (1986) and *Harris v. United States*, 536 U.S. 545 (2002), which held that judges can sentence defendants based upon facts found by the judge, rather than a jury, as long as these facts are not used to increase the maximum sentence a defendant faces. Thus, courts may impose mandatory minimum sentences based on their own fact-finding. There is no reason to believe that these cases have been weakened that allow judges to impose such mandatory minimums. Although *Harris* was a plurality opinion, it was issued only a few years ago, after *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which the Court explicitly found did not apply. While *Blakely* has redefined what the "maximum sentence" faced by a defendant is, it has not undermined the concept that courts can find facts that determine mandatory minimum sentences within the maximum sentence. Thus, the Department's proposal addresses the Court's concern and complies with *Blakely* and *Booker* by allowing only judicial fact finding within the maximum authorized by the jury's finding of guilt or the defendant's plea.

Specter 61 Maher Arar is a Canadian who, on September 26, 2002, during a stopover in New York, was detained by the United States Immigration and Naturalization Service. Despite carrying a Canadian passport, he was forcibly removed to Syria, the land of his birth. Arar was held in solitary confinement in a Syrian prison where he was regularly tortured for almost a year, until his eventual release and return to Canada in October 2003. Why was Mr. Arar sent to Syria, and not Canada?

ANSWER: The Department provided a classified briefing on the Arar matter to Chairman Leahy and Ranking Member Specter on February 1, 2007. In addition, the Department has sent classified documents regarding the Arar matter to the Senate Select Committee on Intelligence (SSCI) and notified Chairman Leahy and Senator Specter that they can view those documents via SSCI.

Specter 62 In your previous responses, you have stated that "we do not transport anyone to a country if we believe it more likely than not that the individual will be tortured; and we seek assurances, where appropriate, that transferred persons will not be tortured." Considering Syria's long and ignominious record of abusing its own people, how could Syria reasonably assure you that Mr. Arar was in no danger?

ANSWER: Please see the response to question 61, above.

Specter 64 In your March 6, 2006 remarks you stated that "we do not transport anyone to a country if we believe it more likely than not that the individual will be tortured." Is that your understanding of the "substantial grounds" standard required of us by the Article 3 of the UN Convention Against Torture?

ANSWER: Yes. As set forth in the Senate resolution consenting to U.S. ratification of the U.N. Convention Against Torture, "the United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in Article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'" Text of Resolution of Advice and Consent to Ratification of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment as agreed to in the Senate on October 27, 1990, section II(2), *available at* 136 Cong. Rec. 36198 (1990); *see also* 8 U.S.C. § 1231 note (directing appropriate agencies to implement the United States' obligations under the Convention "subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention").

Specter 73 The Seattle Post-Intelligencer has reported that thousands of white-collar criminals across the country are no longer being prosecuted in federal court -- and, in many cases, not at all -- leaving a trail of frustrated victims and potentially billions of dollars in fraud and theft losses – as a result of this Administration's massive restructuring of the FBI after the terrorism attacks of 9/11. According to this report, the White House and the Justice Department have failed to replace at least 2,400 FBI agents transferred to counterterrorism squads. It has further been reported that as Attorney General, you have rejected the FBI's pleas for reinforcements behind closed doors. Is this report true?

ANSWER: The FBI's post-9/11 reallocation of Special Agents (SAs) previously assigned to its criminal program did not diminish the FBI's commitment to criminal matters, but it did reduce the number of FBI SAs available to prevent and respond to crime. The FBI appreciates the efforts of this Committee and the Appropriations Committees to ensure we have the necessary resources. As always, the FBI will work with other DOJ components and OMB to identify the programs and budgeting needed for the FBI to continue to fulfill its responsibilities.

Specter 74 If so, why did you choose not to replace these FBI agents?

ANSWER: Please see the response to question 73, above.

Specter 75 There has been a flood of immigration appeals filed in the Federal Courts causing substantial delays. During a hearing on reducing immigration litigation on April 3, 2006, Assistant Deputy Attorney General Jonathan Cohn testified that one circuit takes over two years to decide the average immigration appeal. One solution to reduce the number of immigration appeals handled by the circuit courts is to consolidate immigration appeals filed in the Federal courts into one U.S. Court of Appeals. Last year you declined to take a position on centralizing immigration appeals. Therefore, I ask you again, do you support centralizing immigration appeals in a single court of appeals?

ANSWER: As you know, immigration reform is a difficult task. It is often not possible to take a firm position on any single immigration issue without knowing what the other parts of an immigration reform package would look like. Consolidating or centralizing immigration appeals in a single court is such an issue. The Department is not categorically opposed to centralizing immigration appeals in a single court of appeals. The Department also acknowledges, however, that immigration litigation reform can be achieved through a variety of mechanisms and that a solution will likely require multiple parts. Moreover, any immigration litigation reform must ensure that other litigation (government and non-government) is not adversely affected.

The Department is very grateful for the additional resources it has received from Congress to litigate immigration cases. These resources allow the Department to meet its obligations to defend final orders of removal in the courts of appeals and, at the same time, meet many of its other critical obligations in other types of cases. It is very important that the Department have the resources to defend immigration cases in the courts of appeals and to carry out its other litigation duties and obligations.

Specter 76 On January 9, 2006 you issued two memoranda to U.S. immigration judges and the Board of Immigration appeals for failing to treat aliens who appear before them with respect and for failing to produce quality work. You wrote that you "believe there are some whose conduct can aptly be described as intemperate or even abusive and whose work must improve." It has recently come to my attention that immigration judges largely operate without the assistance of law clerks. Would you support the hiring of law clerks to assist immigration judges?

ANSWER: Yes. In an August 9, 2006, memorandum that followed the completion of the comprehensive review of the immigration courts and the Board of Immigration Appeals, the Attorney General instructed the Deputy Attorney General and the Director of the Executive Office for Immigration Review (EOIR) to prepare a plan for seeking a budget increase beginning in Fiscal Year (FY) 2008. One purpose for the budget increase was to fund the hiring of more law clerks for the immigration judges. The War Supplemental in FY 2006 authorized EOIR to hire 20 more law clerks (and the money to fund this authorization permanently is included in the Administration's FY 2008 request). In addition, the Department requested and received an additional 20 law clerks in the Administration's FY 2007 request. Accordingly, the Department

supports—and has supported—hiring law clerks for immigration judges and asks for your help and support in securing that funding.

Kennedy 77 This Administration has repeatedly refused to discuss specific techniques used to interrogate detainees, arguing that such techniques are classified. During last week's hearing you refused to discuss five specific interrogation techniques when Senator Durbin and I questioned you about their legality -- painful stress positions, threatening detainees with dogs, forced nudity, waterboarding, and mock execution. In response, you stated at one point, "Senator I'm not going to get into a public discussion here about possible techniques that may be used by the CIA to protect our country." You declined to confirm whether those particular techniques were legal but you and the President are more than willing to comment on the legality of other specific techniques -- those contained in the Executive Order, which publicly prohibits sexual or sexually indecent acts, sexual mutilation, threatening to use the detainee as a human shield, and acts intended to denigrate a detainee's religion or religious practices. Without discussing the substance of the techniques at issue, please explain why you believe public discussion of specific techniques in the Executive Order do not compromise the effectiveness of the classified CIA Program?

ANSWER: As the President has explained, we cannot discuss publicly, and thereby share with al Qaeda operatives, information on what techniques are used in the CIA interrogation program because it would compromise the effectiveness of that vital program. *See*, *e.g.*, Address of the President (Sept. 6, 2006) ("I cannot describe the specific methods used—I think you understand why—if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country.").

Executive Order 13440 ensures that all detainees in the CIA interrogation program are to be treated humanely, in accordance with Common Article 3, by providing the general standards and procedures with which the program must comply. As you note, to provide additional clarity, the Order does identify examples of certain serious and outrageous conduct that any reasonable person would deem beyond the bounds of human decency under any circumstances. The specific acts mentioned in section 3(b)(i)(E) of the order are acts well-recognized as violations of Common Article 3, including in the decisions of international war crimes tribunals. Accordingly, we believe that identifying such prohibited conduct provides greater clarity as to how the United States understands its obligations under Common Article 3 without disclosing classified operational details concerning the CIA program. It would be incorrect to assume, of course, that other acts, which are not specifically prohibited by the Executive Order, are therefore authorized for use in the program.

Kennedy 78 You testified that the Executive Order, "laid out a very careful framework . . . to get information . . . in a way that is consistent with our legal obligations." Do you believe that the Order's prohibitions on specific techniques in Section E are necessary to this framework or are these specific acts already covered by the prohibition in

Section D of the Executive Order? In either case, please explain why you believe the prohibitions on specific acts are, or are not, covered by Section D.

ANSWER: On September 6, 2006, the President recommended the passage of military commission legislation that would have provided that conduct satisfying the prohibition on "cruel, inhuman, and degrading treatment or punishment" codified in the Detainee Treatment Act of 2005 (DTA) would satisfy United States obligations under Common Article 3. There is a strong argument that the prohibition of the DTA, which reflects the constitutional protections that apply to American citizens, are equally or more protective than the baseline wartime standards established by Common Article 3. Some members of Congress expressed concern, however, about codifying the DTA standard as a ceiling upon our Nation's international obligations. Accordingly, under the Military Commissions Act of 2006 (MCA), Congress chose to clarify United States obligations by defining the grave breaches of Common Article 3 under the War Crimes Acts, *see* MCA § 6(b), recognizing the DTA prohibition as an additional prohibition directed at satisfying United States obligations under Common Article 3, *see id.* § 6(c), and reinforcing the President's authority to interpret the meaning and application of the Geneva Convention, including by specifying higher standards than those codified into law, *see id.* § 6(a).

The President exercised that authority under Executive Order 13440. Section 3(b)(i)(D) provides, consistent with the MCA, that the DTA prohibition constitutes an additional requirement with which the CIA program must comply in order to ensure that the program is consistent with Common Article 3. As you note, however, the order does not stop there, but includes additional prohibitions, including section 3(b)(i)(E)'s prohibition on "willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the actions beyond the bounds of human decency." This standard is consistent with how international tribunals have interpreted the "outrages upon personal dignity" term in Common Article 3 conflicts.

Much of the conduct that would violate section 3(b)(i)(E) also would likely be prohibited by section 3(b)(i)(D). The Executive Order, however, requires that the CIA program comply with both of these prohibitions so as to demonstrate and ensure United States compliance with Common Article 3. This approach is consistent with the President's authority not only to interpret the meaning and application of Common Article 3, but also to require the United States to meet higher standards than those codified into law.

Kennedy 79 The most obvious conclusion to be drawn in resolving the apparent inconsistency between the Executive Order's specific discussion of certain techniques and your unwillingness to do the same is that the administration is willing to discuss only those techniques that it considers to be illegal and would therefore not use in any case. In light of the Executive Order's direct prohibition of certain specific techniques, please explain how we may interpret your inability to discuss waterboarding, painful stress positions, forced nudity, use of dogs, and mock execution as anything but a confirmation that the Department of Justice and the President view these techniques as legal in certain circumstances under the President's Executive Order?

ANSWER: Please see the response to question 77, above.

Kennedy 80 In responding to my questions at the hearing you testified that the Executive Order's prohibition of specific techniques was justified because those acts went "beyond the pale." You implied that the five techniques at issue did not rise to this same level. Can you please explain the legal definition of this standard? Focusing specifically on process, as opposed to the substance of any techniques, please also explain in detail the Department's precise procedures in assessing, or commenting upon, those acts which should be specifically prohibited and those which did not merit mention in the Executive Order? What criteria did you use in applying this standard?

ANSWER: With respect to your first question, please see the response to question 77. With respect to the process, the President issued the Executive Order following an extended interagency deliberative process. We believe that it is well established that the conduct specifically prohibited in the Executive Order violates Common Article 3. It would be inappropriate, however, to comment further on the internal deliberations within the Executive Branch.

Kennedy 81 When assessing which specific acts to prohibit, did the President or the Department consider the five acts Senator Durbin and I mentioned: painful stress positions, threatening detainees with dogs, forced nudity, waterboarding, and mock execution?

ANSWER: Please see the responses to questions 77 and 80, above.

Kennedy 82 Senator Durbin asked you whether you believed the use of these five techniques by a foreign government on an American citizen (not a uniformed soldier) would be illegal under international laws. You responded that given our own laws that interpret and codify international law, "it would depend on the circumstances." Do you stand by this statement that there are some circumstances in which use of these five specific techniques by a foreign government on an American citizen would be legal under our understanding of international law?

ANSWER: The Executive Order establishes standards that ensure that the CIA interrogation program complies with Common Article 3. As the International Criminal Tribunal for the Former Yugoslavia has recognized, the application of the "outrages upon personal dignity" standard requires a consideration of the circumstances. *See, e.g., Prosecutor v. Aleksovski,* Case No. IT-95-14/1, ¶ 53 (ICTY Trial Chamber I, 1999) ("The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim"). No doubt, there are some forms of conduct that are prohibited under Common Article 3 regardless of the circumstances, and the Executive Order identifies some of them. For the

reasons explained in the response to question 77, however, we do not believe it would be appropriate to discuss publicly whether other techniques would, or would not, fall under such a prohibition.

Kennedy 83 Please explain under what circumstances it would be legal to use waterboarding.

ANSWER: Please see the response to question 82, above.

Kennedy 84 Please explain under what circumstances it would be legal to use painful stress positions.

ANSWER: Please see the response to question 82, above.

Kennedy 85 Please explain under what circumstances it would be legal to conduct a mock execution.

ANSWER: Please see the response to question 82, above.

Kennedy 86 Please explain under what circumstances it would be legal to use military dogs.

ANSWER: Please see the response to question 82, above.

Kennedy 87 Please explain under what circumstances it would be legal to use forced nudity.

ANSWER: Please see the response to question 82, above.

Kennedy 92 Four federal courts of appeals have reversed an opinion of your Office of Legal Counsel on the Bureau of Prisons' placement of inmates into community reentry centers. As a result, as described in a letter I received dated June 4, 2007, the Bureau's policy is to use two different processes for making placements. In those four circuits, the Bureau follows the long-established practice which preceded the OLC opinion. In the other circuits, the Bureau still uses a process which reflects the OLC opinion. Are you concerned by this unequal application, of the Bureau's policy for placing of inmates in community reentry centers?

ANSWER: Each of the decisions from the four Circuit Courts of Appeals that have invalidated the Bureau of Prisons (BOP) regulations concerning placement of inmates into residential reentry

centers was decided by a two-to-one vote (there has been one dissenting vote to uphold the regulations in each case). The issue has been appealed or is being reviewed for appeal in three more circuits (the First, Sixth, and Ninth Circuits). Because decisions issued in one circuit do not automatically control other circuits, we will follow the rulings of the circuit courts in the four circuits where the regulations have been invalidated and will continue to apply and defend the regulations in the circuits that have not ruled on this matter. If a circuit court rules in favor of the regulations resulting in a split in the circuits, we will consider seeking Supreme Court review to resolve the issue. The goal of the BOP is to have uniform policy and to treat all inmates as equally as possible. Conflicting rulings by courts in different parts of the country certainly make it more difficult for the BOP to achieve this goal and create more work for staff. However, there are other issues where the BOP treats inmates differently based on conflicting court decisions.

Kennedy 93 Does this lay a foundation for legal challenges by individual inmates over unequal treatment?

ANSWER: Different treatment of any persons, including inmates, based on their geographic locations (i.e., judicial circuit) does not constitute a violation of equal protection. A split in the circuits, which results in different treatment of persons based upon their locations, is one of the typical reasons for the Supreme Court deciding to hear a case. The different treatment in such cases is not based on any sort of invalid distinction or classification and, therefore, does not provide a basis for a constitutional challenge.

Kennedy 94 Wouldn't a single process governing all cases be a better way to manage placements in community reentry centers?

ANSWER: We would prefer to have a consistent process nationwide.

Kennedy 95 Is this a process that Congress should approve?

ANSWER: This situation can hopefully be rectified through Congress' consideration of changes to the statutes that govern pre-release custody and the BOP's designation authority.

Section 251 of the Second Chance Act of 2007 would change the time permitted in pre-release custody from the current 10 percent of the term of imprisonment, not to exceed 6 months, to a period of time that is not more than 12 months. The provision maintains the current ability to use the last 10 percent of the term, not to exceed 6 months, for home confinement.

Expanding allowable pre-release custody to 20 percent of the term is needed to provide additional reentry assistance to inmates with short sentences. However, for inmates classified as minimum or low security, confinement in a residential reentry center is more expensive than incarceration in Federal prison, therefore, the expansion of use of residential reentry centers for pre-release purposes must be done judiciously and must not be open to an unrestricted 12

months. Therefore, the Department's position is that the 12-month limit must be paired with a 20 percent limit as well.

In addition, the provision includes language that attempts to prohibit direct court commitments by stating that "Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau...to determine or change the place of imprisonment of that person."

We believe that a stringent prohibition on direct court placements is essential; and we included preferred language as an attachment to our August 1, 2007, letter to the Committee presenting views on the Second Chance Act of 2007 that addresses both of these concerns.

Kennedy 99 In one of my written questions after your January 18, 2007 appearance before the committee, I asked this question about the standard for revoking gun dealers' licenses after they have committed offenses: "Does the Department support reducing the burden of proof to revoke a license from a 'willful' violation to a 'knowing' violation, one that would not require years of repeat offenses to revoke a license?" In your response of April 5, you noted that "willful" is the current standard, but failed to state whether the Department supports reducing this to a "knowing" standard. Does the Department support such a reduction? Please explain in detail.

ANSWER: The current standard of willfulness, as articulated in case law (purposeful disregard of, or plain indifference to, a known legal duty) is sufficient. See Procaccio v. Lambert, 2007 FED App. 0365N (6th Cir. 2007); RSM, Inc. v. Herbert, 466 F.3d 316 (4th Cir. 2006); Article II Gun Shop v. Gonzales, 441 F.3d 492 (7th Cir. 2006); Willingham Sports, Inc. v. ATF, 415 F.3d 1274 (11th Cir. 2005). The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF's) mission is to achieve compliance from Federal firearms licensees to help protect public safety, and the current willfulness standard strikes an appropriate balance by allowing Federal Firearms Licenses (FFLs) an opportunity to comply while at the same time allowing ATF to remove those from the industry that are a danger to the public.

Kennedy 134 Your contradictory and misleading statements about the Terrorist Surveillance Program have been well documented. In February 2006 you said, "there has not been any significant disagreement about the program the President has confirmed. With respect to what the President has confirmed, I do not believe these DOJ officials that you were identifying had concerns about this program." Former Deputy Attorney General Comey's testimony, however, appeared to contradict this account. On July 24th, you testified to the same essential set of facts – most importantly that there was a significant disagreement involving senior DOJ officials over a national security surveillance program. In response to claims that you perjured yourself, you maintain that the intelligence activities at the heart of the disagreement are somehow distinct from the intelligence program that the President confirmed in December 2005. Two days later, however, FBI Director Robert Mueller again seemed to contradict your testimony, telling Congress that

the discussions that took place at the hospital concerned an "NSA program that has been much discussed." As you noted in your testimony there has only been one NSA surveillance program confirmed by the President and discussed publicly, leaving little room to misinterpret the FBI Director's remarks. The Chairman of the Senate Intelligence Committee, Senator Rockefeller, who was briefed on all of the intelligence activities, has similarly stated that they were all understood to be part of one program. Because of the doubt cast upon your testimony, and the consistent rejection by those involved of the distinctions that you rely on in that testimony, it is clear that you cannot continue to parse language on this issue while maintaining your credibility. In answering the following questions please answer truthfully and directly. To remove any doubt as to the distinctions you are relying upon please explain whether an intelligence "program" may consist of several intelligence activities, or if a program is always related to a single activity.

ANSWER: As you know, operational details concerning the Terrorist Surveillance Program (TSP) remain highly classified. Throughout the war on terror, the Administration has notified the Congress concerning the classified intelligence activities of the United States through appropriate briefings of the intelligence committees and congressional leadership. The full membership of each intelligence committee has been briefed on the TSP, as have other members of the Congressional leadership. Current and former Administration officials also have testified in closed hearings regarding these matters. On July 31, 2007, the Director of National Intelligence sent a letter to the Chairman and the Ranking Member discussing this topic, and on August 1, 2007, Former Attorney General Gonzales sent an additional letter to the Chairman and the Ranking Member about this matter. We are not able to provide additional details, beyond those already provided by current and former officials, regarding the meetings you reference at this time.

Kennedy 135 If a program does consist of more than one activity, and without discussing the classified activities themselves, was it your understanding that the NSA surveillance activities being discussed at the time of the disagreement were all part of the same program? For instance, were they all briefed under one overarching title? Did they all receive funding under one programmatic title? Were all of the activities reviewed by the Department of Justice's Office of Legal Counsel together as a coordinated package of intelligence activities? Please provide any documentation in supporting your answers to these questions.

ANSWER: Please see the response to question 134, above.

Kennedy 136 Without going into the substance of any changes, is it your view that the NSA Terrorist Surveillance Program that existed before the visit to Attorney General Ashcroft in the hospital was changed into a different NSA Terrorist Surveillance Program due to the subsequent addition or revision of the intelligence activities contained in the program?

ANSWER: Please see the response to question 134, above.

Kennedy 137 Did this change occur because of the elimination of an NSA data mining activity? Were any other intelligence activities changed or eliminated?

ANSWER: Please see the response to question 134, above.

Kennedy 138 Did you testify to this Committee that there was no disagreement over the "program" that the President confirmed to the American people, based on the above rationale that elimination of contentious activities contained within a single program results in the creation of a new program?

ANSWER: Please see the response to question 134, above.

Kennedy 139 If so, this would suggest that even when there is clear disagreement over the direction of a "program", the removal of controversial elements always creates a new program about which one may claim there has been no disagreement. Given this misleading reasoning, would it have been more accurate to say that there had been no significant disagreement over the intelligence activities that the President has confirmed to the American people?

ANSWER: Please see the response to question 134, above.

Kennedy 140 If this account is incorrect, is it your view, instead, that the intelligence activities at the heart of the disagreement were never part of the NSA Terrorist Surveillance Program? If that is true, then to which program did these activities belong? Please be specific.

ANSWER: Please see the response to question 134, above.

Kennedy 141 Was it your understanding at the time that the Chairman of the Senate Intelligence Committee and the FBI Director regarded the activities as falling under one program, as they have testified? Did they ever communicate this understanding to you in conversation or through written documents?

ANSWER: Please see the response to question 134, above.

Kennedy 147 At the July 24, 2007 hearing on oversight of the Department of Justice, I asked you to explain the Department's poor record of enforcing the Voting Rights Act's prohibition of voting discrimination against African Americans. As I noted then, the Assistant Attorney General for Civil Rights recently sent the Committee a letter stating

that the Department had filed four cases during this Administration alleging discrimination against African Americans in voting. However, of the cases he identified, one was actually investigated and approved during the Clinton Administration (U.S. v. Crockett County (W.D. Tenn.)), and another involved language discrimination, not discrimination based on race (U.S. v. Miami-Dade County (S.D. Fla.)). So the Bush Administration actually has filed only two voting rights cases on race discrimination against African Americans – and it took until 2006 to file those. Yet the Clinton Administration filed 18 voting rights cases alleging race discrimination against African Americans under Section 2 of the Voting Rights Act. Before you were confirmed as Attorney General, you told the Committee that you would give "special emphasis" to the Department's role in protecting civil rights and the right to vote. Given that promise, why has the Department given so little attention to combating race discrimination in voting against African Americans?

ANSWER: During this Administration, the Civil Rights Division has been exceptionally active in enforcing all provisions of the Voting Rights Act and has set a number of records in enforcement.

As stated in the attached letter from Principal Deputy Assistant Attorney General Richard Hertling to Chairman Leahy dated July 3, 2007, during this Administration, the Voting Section (Section) of the Civil Rights Division has filed four cases and successfully litigated a fifth, in addition to interposing thirty-six Section 5 objections, on behalf of African-American voters in various jurisdictions. The cases filed include *United States v. Crockett County* (W.D. Tenn.); *United States v. Euclid* (N.D. Ohio); *United States v. Miami-Dade County* (S.D. Fla.); and *United States v. North Harris Montgomery Community College District* (S.D. Tex.), which also involved protecting the rights of Hispanic citizens. In addition, we successfully litigated *United States v. Charleston County, South Carolina* (D.S.C.) and successfully defended that victory through appeal to the U.S. Supreme Court. Though *Crockett County* was investigated and approved during the prior Administration, it was filed and litigated during this Administration. *Miami-Dade County* involved violations of Section 208 of the Voting Rights Act and alleged that county poll officials effectively prevented Creole-speaking Haitian-American voters in Miami-Dade County with limited ability to understand English from securing assistance at the polls from persons of their choice.

Further, a majority of all of the Division's cases ever brought on behalf of both Hispanic and Asian voters in history under the substantive provisions of the Act were brought during this Administration. On September 27, 2007, the Justice Department announced the settlement of a lawsuit against Kane County, Illinois, alleging violations of the rights of Spanish-speaking voters under the Voting Rights Act. The settlement agreement with Kane County requires the county to provide all voting materials and assistance in Spanish as well as in English and ensures that voters with limited English-proficiency can receive assistance from the persons of their choice. It also permits the Justice Department to monitor future elections. Similarly, the Division has obtained improved and extended consent agreements to better protect Native American voters in many jurisdictions, including Bernalillo, Cibola, Sandoval, and Socorro Counties, New Mexico. The Division also filed a new lawsuit under the National Voter Registration Act to protect

Laguna Pueblo and other Native American voters in Cibola County; Further, we have obtained a Choctaw language program for Mississippi, where nine counties are covered under Section 203.

During this Administration, the Division has brought two thirds of all cases *in history* under the minority language provisions of the Voting Rights Act, with a total of 26 of the 39 cases ever filed by the Division. These have included the first cases ever filed by the Section on behalf of Filipino, Korean, and Vietnamese Americans, and the first two cases ever filed by the Section under Section 4(e) of the Voting Rights Act. On September 20, 2007, the Department reached a settlement agreement with the City of Walnut, California, which requires the city to provide all voting materials and assistance in Chinese and Korean as well as in English and to permit the Justice Department to monitor future elections. This is the first lawsuit ever filed by the Civil Rights Division on behalf of Korean American voters.

The Division also has filed over 75 percent of all cases ever filed under Section 208 of the Voting Rights Act, an important protection against voter suppression through its guarantee of the right of voters who need assistance in casting their ballots to receive that assistance from any person of their choice other than their employer or union officer. The Civil Rights Division has filed seven lawsuits under Section 208 during this Administration, including the first case under the Act on behalf of Haitian Americans. The Division also filed the first case under Section 5 since 1998.

The Civil Rights Division also has been vigorous in its Section 2 enforcement. In the last year, the Civil Rights Division obtained preliminary injunctions against the use of at-large election systems in two cases. There had been no previous comparable preliminary injunctions since 1986 and only four previous such injunctions in the history of the Act. In all, during this Administration, the Civil Rights Division has filed eleven cases under Section 2 and successfully tried additional cases filed in the previous Administration. The Civil Rights Division has filed these eleven Section 2 cases across the country, in Colorado, Florida, Georgia, Massachusetts, Mississippi, New York, Ohio, Pennsylvania, and Tennessee. In addition to challenging discriminatory at-large election systems, the Division also has filed ground-breaking lawsuits in a vigorous campaign against vote suppression. Such lawsuits include *United States v. Long County, Georgia*, where Latino voters were subjected to spurious race-based challenges, and *United States v. City of Boston, Massachusetts*, where ballots were taken from minority voters and marked contrary to the voters' wishes, as well as the many lawsuits under Section 208 filed by the Division, including those noted previously.

The Civil Rights Division has also breathed new life into other statutes it is responsible for enforcing. The Division has filed the first case in decades under the Civil Rights Act of 1960. During this Administration, the Division already has surpassed the number of cases filed in the previous Administration under the Uniformed and Overseas Citizens Absentee Voting Act. The Division has filed a majority of all cases under the National Voter Registration Act (NVRA), including the first Section 7 "agency" cases since 1996. The Division recently filed an NVRA lawsuit in Cibola County, New Mexico, where hundreds of voter registration applications were not processed in a timely fashion, and where Native American voters were removed from the voter lists without the notice required by the list maintenance provisions of the NVRA.

The Cibola County case also involved a claim under the Help America Vote Act (HAVA), as Native American voters were not offered provisional ballots as required under the statute. HAVA is a major statute that has required an extensive commitment of resources by the Division. The Division has filed nine lawsuits under HAVA since it was passed in 2002 and has performed extensive outreach to state and local election offices to encourage voluntary compliance with the Act's complex provisions.

In all, the Civil Rights Division actually has filed substantially more voting cases during this Administration than were filed during the comparable period of the previous Administration.

Kennedy 148 When I asked about the Department's voting rights record at the hearing, you testified that you had reviewed the testimony of Professor Helen Norton at the June 21, 2007 civil rights oversight hearing, and you disagreed with her conclusions. You also stated that you had a detailed conversation with the Assistant Attorney General for Civil Rights about Professor Norton's testimony. This answer was not responsive to my question about voting rights enforcement, because Professor Norton's testimony addressed only the Department's record on job discrimination and did not mention voting cases. Please clarify your testimony on this issue. In particular, when you stated that you and Mr. Kim "talked about the numbers and the cases" and concluded that the testimony at the June 20, 2007 civil rights oversight hearing "was either mistaken or just plain wrong," were you referring to the Department's cases alleging job discrimination or its voting cases? Please explain in detail why you believe the testimony was incorrect. In addition, to the extent that you think testimony at the June 21, 2007 hearing relied on incorrect data about the Department's case filings, please provide the complete and correct data.

ANSWER: With respect, Professor Norton's analysis is misleading. The Civil Rights Division remains diligent in combating employment discrimination on behalf of all Americans, one of the Division's most long-standing obligations. Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Most allegations of employment discrimination are made against private employers. Those claims are investigated and potentially litigated by the Equal Employment Opportunity Commission (EEOC). However, the Civil Rights Division's Employment Litigation Section is responsible for one vital aspect of Title VII enforcement: discrimination by public employers.

Pursuant to Section 707 of Title VII, the Attorney General has authority to bring suit against a State or local government employer where there is reason to believe that a "pattern or practice" of discrimination exists. These cases are factually and legally complex, as well as time-consuming and resource-intensive. In FY 2006, we filed three complaints (as many as filed during the last three years of the previous Administration combined) alleging a pattern or practice of employment discrimination.

In *United States v. City of Virginia Beach* and *United States v. City of Chesapeake*, the Division alleged that the cities had violated Section 707 by screening applicants for entry-level

police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. In *Virginia Beach*, the parties reached a consent decree providing that the City will use the test as one component of its written examination and not as a separate pass/fail screening mechanism with its own cutoff score. On June 15, 2007, the court provisionally entered a consent decree in the *City of Chesapeake* litigation. Under the decree, the City will create a fund to provide back pay to African-American and Hispanic applicants who were denied employment solely because of the City's use of a math test as a pass/fail screening device. The City also will provide priority job offers for African-American and Hispanic applicants who are currently qualified for the entry-level police officer job but were screened out solely because of their performance on the math test. The City will provide retroactive seniority to such hires when they complete the training academy. In addition, the City agreed that, while it will still use scores on the mathematics test in combination with applicants' scores on other tests, it will not prospectively use the mathematics test as a stand alone pass/fail screening device.

We filed or authorized three pattern or practice cases in Fiscal Year 2007. One recent case highlights our efforts. In *United States v. City of New York*, filed on May 21, 2007, the Division alleged that since 1999, the City of New York has engaged in a pattern or practice of discrimination against African-American and Hispanic applicants for the position of entry-level firefighter in the Fire Department of the City of New York (FDNY) in violation of Title VII. Specifically, the complaint alleges that the City's use of two written examinations as pass/fail screening devices and the City's rank-order processing of applicants from its firefighter eligibility lists based on applicants' scores on the written examinations (in combination with scores on a physical performance test) have resulted in disparate impact against African-American and Hispanic applicants and are not job related and consistent with business necessity. The complaint was filed pursuant to Sections 706 and 707 of Title VII, and was expanded to include discrimination against Hispanics as a result of the Division's investigation.

This Administration places a very high priority on developing successful cases. Our results reflect this effort. To date, this Administration has prevailed in or favorably resolved every complaint that it has filed under Section 706. With the sole exception of *United States v. City of Garland*, which was filed in 1998, this Administration has successfully prosecuted or favorably resolved every case it has brought to trial under Section 707.

The Division also has enforcement responsibility for the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA). USERRA was enacted to protect veterans of the armed services when they seek to resume the job they left to serve their country. USERRA enables those who serve their country to return to their civilian positions with the seniority, status, rate of pay, health benefits, and pension benefits they would have received if they had worked continuously for their employer. In Fiscal Year 2006, the Division filed four USERRA complaints in Federal district court and resolved six cases.

During Fiscal Year 2006, we brought the first USERRA class action complaint ever filed by the United States. The original class action complaint, which was filed on behalf of the individual plaintiffs we represent, charges that American Airlines (AA) violated USERRA by denying employment benefits to three pilots and a putative class of other pilots during their military service. Specifically, the complaint alleges that AA conducted an audit of the leave taken for military service by AA pilots in 2001 and, based on the results of the audit, reduced the

employment benefits of its pilots who had taken military leave, but did not reduce the same benefits of its pilots who had taken similar types of non-military leave. Other examples of recent USERRA suits include *Richard White v. S.O.G. Specialty Knives,* in which a reservist's employer terminated him on the very day that the reservist gave notice of being called to active duty. We resolved this case through a consent decree that resulted in a monetary payment to the reservist. In *McCullough v. City of Independence, Missouri*, the Division filed suit on behalf of Wesley McCullough, whose employer allegedly disciplined him for failing to submit "written" orders to obtain military leave. We entered into a consent decree in which the employer agreed to rescind the discipline and provide Mr. McCullough payment for the time he was suspended. The employer also agreed to amend its policies to allow for verbal notice of military service.

As of Fall 2007, we had filed five USERRA complaints in district court and resolved five cases. Additionally, the United States Attorney's Offices had resolved three cases this fiscal year. One of these cases we have resolved in the current fiscal year is *McKeage v. Town of Stewartstown, New Hampshire*. In that case, the Town sent Staff Sergeant Brendon McKeage a letter while he was on active duty in Iraq telling him he no longer had his job with the Town. McKeage had been employed as the Chief of Police for the Town of Stewartstown. When the citizens of Stewartstown learned that their Chief of Police had been terminated while serving his country, they voted to censure the Town for its "outrageous and illegal" conduct. Despite this public censure, the Town still refused to reemploy SSG McKeage in his former position. Once we notified Stewartstown that we intended to sue, the employer decided to settle the case. The settlement terms include a payment to SSG McKeage of $25,000 in back wages.

The Division has proactively sought to provide information to members of the military about their rights under USERRA and other laws. For example, we recently launched a website for service members (www.servicemembers.gov) explaining their rights under USERRA, the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), and the Servicemembers' Civil Relief Act (SCRA).

Kennedy 149 The Department's Voting Section traditionally has maintained a list of all cases filed by the Section since October 1976, which identifies the particular statute or statutes involved in each case. Please provide an up-to-date copy of the Voting Section case list, showing all cases filed by the Voting Section or in which the Section has intervened. If the Department no longer maintains this list, please state when and why it ceased to do so, and please explain how the Civil Rights Division management is able to keep track of the voting section's caseload without this information.

ANSWER: Attached please find a copy of the list of cases filed by the Voting Section since October 1976.

Kennedy 150 At the June 21, 2007 civil rights oversight hearing, the Committee received detailed testimony about the steep decline in the Department's enforcement of Title VII of the Civil Rights Act of 1964. Specifically, through the Civil Rights Division, the Department has filed and resolved substantially fewer Title VII lawsuits compared to the

previous Administration, even though it now has more attorneys. This information is confirmed by information on the Civil Rights Division's website. If you exclude cases that were developed by the Clinton Administration or by a U.S. Attorney's office, according to the Division's website, the Department has filed only 39 Title VII job discrimination cases since 2001. The Section currently has almost 40 attorneys, so it should have a stronger enforcement record. How do you explain the decline in the Department's Title VII enforcement?

ANSWER: Please see the response to question 148, above.

Kennedy 151 Do you have any reason to believe that vigorous enforcement of the nation's laws against race discrimination is less needed today than it was in the late 1990s? If so, please explain.

ANSWER: All of our civil rights laws remains as important today as it was the day the statutes were enacted. The Justice Department remains committed to the vigorous enforcement of our Nation's civil rights laws.

Kennedy 152 Do you disagree with Professor Norton's testimony that the Bush Administration has resolved and filed significantly fewer Title VII cases that the Clinton Administration? Please provide a detailed list of all cases or matters filed or resolved in the Clinton Administration, and a brief description of each. Please also provide a detailed list of all cases or matters filed or resolved by the Bush Administration, and a brief description of each. To the extent that these cases have not been listed on the Division's website, please explain the reasons for that omission.

ANSWER: Please see the attached list of cases. As stated on the Division's website, only a sample of the Section's complaints, court-approved consent decrees and judgments, and out-of-court settlements are included.

Please see the above response to question 148 for further information on the Division's vigorous enforcement of Title VII.

Kennedy 153 In addition to enforcing Title VII with respect to state and local government employers, the Civil Rights Division's Employment Litigation Section also defends the United States and federal agencies in actions challenging the constitutionality of federal civil rights programs and policies. Please provide a copy of the complaint in each case in which the Employment Litigation Section has served as a defendant since January 1, 2005.

ANSWER: The Employment Litigation Section has never served as a defendant in an action challenging the constitutionality of a Federal civil rights program or policy. The Section has, however, served as trial counsel in suits challenging the application or enforcement of Federal

laws that prohibit discrimination or require affirmative action by government contractors or recipients of federal financial assistance. We note that no such complaints have been filed since January 1, 2005.

Kennedy 154 At the June 21, 2007 hearing on civil rights oversight, Professor Norton testified that the cases approved for suit in this Administration "reveal a disquieting shift in enforcement priorities, as [the Section's] docket – now significantly reduced – devotes an even smaller proportion of its resources to job discrimination experienced by African Americans and Latinos." Her statement reflects the information on the Division's official website. Although workers who suffer discrimination on the job deserve a remedy whatever their race, the Department also should focus its Title VII enforcement on the areas of greatest need. According to data maintained by the EEOC, in each year since 2001, approximately eight times as many race discrimination charges have been filed nationwide by African Americans as by whites, although whites make up a far greater proportion of the overall population. In addition, the vast majority of race discrimination charges that the EEOC has referred to your Department have been filed by African Americans. This is a powerful indication that race discrimination against African Americans occurs more frequently in the nation's workplaces than race discrimination against whites. Yet the Civil Rights Division's Employment Litigation Section has filed almost as many cases alleging national origin or race discrimination against whites as against African Americans and Latinos combined. Please explain the reasons for this shift in the Department's Title VII enforcement priorities.

ANSWER: Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. The Civil Rights Division is committed to vigorously enforcing Title VII and combating employment discrimination on behalf of all Americans.

Last year, the Division filed three lawsuits alleging a pattern or practice of employment discrimination. This compares to one filed in FY 1998; one filed in FY 1999; and one filed in FY 2000. The lawsuits filed in 2006 included *United States v. City of Virginia Beach* (E.D. Va.), and *United States v. City of Chesapeake* (E.D. Va.), in which the Division alleged that the defendants had violated Section 707 by screening applicants for entry-level police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. We have filed or authorized three pattern or practice cases thus far in FY 2007. Please see the answer to question 148 for more discussion of all of these cases.

In addition to four pattern or practice cases filed on behalf of African Americans, the Division has filed or authorized seven Section 706 cases on behalf of African-American workers during this Administration. For example, on November 2, 2006, the Division filed a complaint in *United States v. Board of Directors of Tallahassee Community College* (N.D. Fla.), pursuant to Section 706 of Title VII, alleging that the victim was discriminated against on the basis of his race when he was not promoted to a particular position. On July 13, 2004, we filed a complaint in intervention in *Lemons & United States v. Pattonville Fire Protection District* (E.D. Mo.),

pursuant to Section 706 of Title VII, alleging that the victim was harassed on the basis of his race and constructively discharged from his unit.

During this Administration, the Division also has vindicated the rights of Hispanic workers who have been discriminated against on the basis of national origin in violation of Title VII. For example, in addition to filing three pattern or practice cases on behalf of Hispanics, the Division obtained a settlement agreement with the District of Columbia Public Schools that favorably resolved, pre-suit, a Section 706 referral in which the charging party, a Hispanic man, alleged that he was the victim of discrimination on the basis of national origin.

This Administration places a very high priority on developing successful cases. Our results reflect this effort. To date, this Administration has prevailed in or favorably resolved every complaint that it has filed under Section 706. With the sole exception of *United States v. City of Garland*, which was filed in 1998, this Administration has successfully prosecuted or favorably resolved every case it has brought to trial under Section 707.

During the past six years, the Division has filed employment discrimination lawsuits on behalf of African Americans, Hispanic Americans, Native Americans and women, among others. We are fully committed to the vigorous enforcement of Federal law.

Kennedy 155 Has the Civil Rights Division sought to increase the number of race discrimination cases filed on behalf of white males? If so, please explain why that this category of cases merits greater focus than enforcement of discrimination cases against African Americans or Latinos.

ANSWER: Please see the above response to question 154. The Division is committed to enforcing the federal civil rights laws on behalf of all Americans. Former Assistant Attorney General Wan J. Kim made a pledge to take his cases where he found them and to bring any case where he found a recognizable violation of the law based upon the facts that would be sufficient for the Division to prove that violation in court. The Division has been, and will continue to be, committed to honoring this pledge. As the Jackson, Mississippi, Clarion-Ledger editorialized on January 31, 2007, "Discrimination is discrimination – and it's wrong in whatever color it comes. That's the law."

Kennedy 156 According to EEOC data, since 2001, over half of the nearly 300 charges of national origin discrimination that EEOC has referred to the Department after finding reasonable cause to believe discrimination occurred have been filed by Latinos. Yet in this Administration, the Department has not filed a single case of national origin discrimination based on an EEOC charge filed by a Latino. The Section has filed four cases, however, based on EEOC charges alleging race or national origin discrimination against whites. Please explain why you chose to file suit on discrimination charges filed by whites but not on charges filed by Latinos.

ANSWER: Please see the responses to questions 154 and 155, above.

Kennedy 157 The Department's decision to focus on race discrimination cases against the group that appears least likely to suffer race discrimination in the workplace may be interpreted by some as a political message that the Department is not interested in protecting the rights of those most in need of our civil rights laws. What is your response to that concern?

ANSWER: Please see the responses to questions 154 and 155, above.

Kennedy 158 The information included on the Employment Litigation Section's website does not indicate the race of the victim involved in one of the Section's race discrimination cases. Please provide that information with regard to the charging party in United States v. Weimar Independent School District.

ANSWER: The charging party in *United States v. Weimar Independent School District* is African American.

Kennedy 159 The Department's Employment Litigation Section, which is responsible for enforcing Title VII of the Civil Rights Act of 1964, has undergone a large number of personnel changes in the Bush Administration. Please provide: The number of trial attorneys who have left the Section since 2001.

ANSWER: As of January 2008, thirty-seven trial attorneys have left the Employment Litigation Section since 2001.

Kennedy 160 The number of attorney supervisors (i.e., attorneys in the position of Special Litigation Counsel, Deputy Chief, or Chief) who have left the section since 2001.

ANSWER: As of January 2008, eleven attorney supervisors have left the Employment Litigation Section since 2001.

Kennedy 161 The loss of experienced attorneys appears to have undermined the work of the Section. In addition to the overall decline in the Section's caseload, the Section also has filed fewer Title VII cases alleging a pattern or practice of discrimination in this Administration than during the Clinton Administration. Of the approximately 36 attorneys now serving in the Division, how many have ever participated in the trial of a case alleging pattern or practice discrimination under Title VII? If the Department does not regularly track this information, I ask that you obtain it from the Civil Rights Division's Employment Litigation Section.

ANSWER: Please see the above response to question 154 regarding the Section's accomplishments during this Administration. In addition, the average rate of attorney attrition in the Civil Rights Division during this Administration is almost identical (differing by less than 1.5percent) to a comparable period of the prior Administration. During this Administration, the peak attrition rate for attorneys occurred in 2005, when a number of attorneys accepted a retirement package offered to multiple Justice Department components.

Since 1994, only five of the Section's pattern or practice cases have gone to trial – two during the prior Administration and three during this Administration thus far. The Employment Litigation Section does not track the number of attorneys who have participated in pattern or practice case trials.

Kennedy 162 Of the supervisory attorneys currently in the Section (i.e., attorneys in the position of Special Litigation Counsel, Deputy Chief, or Chief), have all of them participated in the trial of a Title VII pattern or practice case? If not, please provide the number of supervisory attorneys who have such experience.

ANSWER: Please see the above response to question 161. Three of the five current supervisory attorneys in the Employment Litigation Section have participated in pattern or practice cases that have gone to trial.

Kennedy 163 On many occasions, I and other members of the Judiciary Committee have expressed concerns about the Department's record in enforcing Title VII. Have you done anything to investigate or address these concerns? If so, please state in detail what you have done.

ANSWER: Please see the responses to questions 148 and 154, above.

Kennedy 164 There have been recent reports that racial and ethnic diversity has declined among attorneys hired to work in parts of the Civil Rights Division. WJLA TV recently reported that only 2 of 50 attorneys in the Criminal Section are African Americans, a significant drop from past years. Because of its mission and prestige, the Civil Rights Division in particular has long attracted a very diverse group of attorney applicants, so these reports are very disturbing. Do you agree that diversity in attorney hiring is an important goal?

ANSWER: Attorneys from an extremely wide variety of backgrounds have been hired to work in the Division since 2001. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. Of course, all of our attorneys, regardless of their racial or ethnic background, are fully committed to the work of the Division.

The Civil Rights Division has hired a diverse group of attorneys from a wide variety of backgrounds. Over the past five fiscal years, 27percent of the new attorney hires in the Civil Rights Division were minorities. This is nearly three times the national average, as reported in a 2004 study by the American Bar Association, which found that minority representation in the legal profession is about 9.7percent. The ABA study also found that nationally, African Americans represent 3.9percent of lawyers, or approximately 1 in 25.

In addition, this Administration has promoted as many minorities to section management positions in the Civil Rights Division in six years as the previous administration did in eight years. Indeed, at the end of the previous Administration, the Civil Rights Division had no minority Section Chiefs. This Administration has since promoted two minority Section Chiefs, including the first Hispanic Section Chief in the Division's fifty year history.

Kennedy 166 Is there any legitimate reason for the low number of African American Attorneys in the Division's Criminal Section? Please examine this issue and give us a specific response explaining the reasons for the lack of diversity in Criminal Section attorneys?

ANSWER: Please see the response to question 164, above.

Kennedy 167 This concern also applies to the Voting Section of the Civil Rights Division. National Public Radio reports that several African American attorneys have left the Section in recent months, and that it now has only 2 African American attorneys out of about 35. How do you explain the decline in the number of African American attorneys in the Voting Section?

ANSWER: Please see the response to question 164, above.

Kennedy 168 Since the Voting Section was created in large part to address race discrimination in voting against African Americans, do you agree that it's important for the Section to have African American attorneys?

ANSWER: Please see the response to question 164, above.

Kennedy 169 Teresa Lynn, a civil rights analyst who retired from the Voting Section last year after three decades, told NPR about her experience. She said that attorneys hired for the Section in recent years seemed to be less committed to civil rights enforcement than their counterparts in earlier years. The Boston Globe found the same problem in the Section in 2003. You said you disagreed with the Globe's findings. How do you explain the change in the backgrounds of these attorneys?

ANSWER: We respectfully disagree with many of the assertions made in the *Boston Globe* article, nor is it clear what methodology was employed in reaching its conclusions. Attorneys from an extremely wide variety of backgrounds have been hired to work in the Division since 2001. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities.

Kennedy 206 In your response received by the Committee on July 22, 2007, to written questions, you stated that "as a general matter, candidates for interim U.S. Attorneys do go through a recommendation process." Please describe the recommendation process for Mr. Schlozman, including the names and titles of persons involved, and any other information that would help us to understand how and why Mr. Schlozman was chosen. In addition, please provide any written documentation related to the recommendations and appointment of Mr. Schlozman as interim U.S. Attorney.

ANSWER: Mr. Schlozman, one of the candidates considered for the position of temporary United States Attorney in the Western District of Missouri, and who was then serving as the Principal Deputy Assistant Attorney General in the Civil Rights Division—was interviewed for the temporary United States Attorney position on March 17, 2006. At that time, such interviews would usually be conducted by members of the Senior Staff, including Michael A. Battle, Director of the Executive Office for United States Attorneys; David Margolis, Associate Deputy Attorney General; and Monica M. Goodling, Counsel to the Attorney General and White House Liaison. The order appointing Mr. Schlozman to be interim United States Attorney was signed on March 23, 2006.

Kennedy 207 In question 158, I asked whether those responsible for selecting Mr. Schlozman as interim U.S. Attorney knew of Mr. Schlozman's role in approving discriminatory voting changes in Texas and Georgia over the virtually unanimous objections of the career staff of the Voting Section. You responded that you did not recall discussions of his qualifications, but expected that "Mr. Schlozman's work in the Civil Rights Division was a factor DOJ staff would consider in its evaluation of his candidacy for an interim U.S. Attorney appointment." Was Mr. Schlozman's work on the Texas and Georgia preclearances a positive factor in the evaluation? If not, why was he nonetheless recommended?

ANSWER: Mr. Schlozman was interviewed by members of the Senior Staff who usually interview prospective United States Attorney candidates and was found suitable for the position. Interviews of candidates for interim United States Attorney typically cover a candidate's current duties at the Department of Justice. No record is available of the deliberations that took place following Mr. Schlozman's interview in March 2006.

Kennedy 210 In response to my question 159, you said that "we did not use the Patriot Act's interim appointment authority for Mr. Schlozman." However, Mr. Schlozman served as an interim U.S. Attorney for over a year, from March of last year to April of this year. Before you received authority to make indefinite interim appointments under the Patriot Act, interim appointments lasted no longer than 120 days. After that, the chief judge of a district court could appoint an interim U.S. Attorney who could serve indefinitely. Mr. Schlozman clearly served more than 120 days. Please explain why you believe you were not exercising the authority you had received under the Patriot Act.

ANSWER: Upon re-review, it appears that the order appointing Mr. Schlozman to be interim United States Attorney was signed on March 23, 2006, 14 days after the President signed the USA PATRIOT Improvement and Reauthorization Act. He therefore was appointed with the PATRIOT Act Authority. We regret the mistake in calculating the relative date of Mr. Schlozman's appointment.

Kennedy 212 In your answers of April 5, 2007, to our written questions following your Jan. 18, 2007, appearance before the Committee, you responded to Senator Schumer's question 354 that "between 1/1/06 and 11/30/06, the FBI opened 38 formal investigations involving alleged federal election law violations related to activity leading up to and surrounding the 11/7/06 election." You added that these investigations concerned allegations of several offenses—"campaign finance violations, ballot fraud, voter intimidation, and voter fraud." Please state how many of the 38 investigations you identified were involved with each of the offenses you listed.

ANSWER: Under the FBI's file classification system, all investigations involving violations of federal election law are maintained under one file classification number. As a result, it is not possible to identify numbers of cases involving various types of alleged activities without conducting a very labor-intensive manual review of all the case files. In addition, when the FBI indicated that there were 38 formal investigations involving "campaign finance violations, ballot fraud, voter intimidation, and voter fraud," these categories were not technical investigative labels, but were instead general descriptions of a substantial majority of the relevant cases in this classification. As with other criminal areas, a large percentage of the 38 investigations (and of all election crime investigations) involves multiple allegations involving a variety of criminal activities. Thus, an attempt to distinguish between artificial categories such as "voter intimidation" and "voter fraud" would not be meaningful, because it would fail to take into account the many cases that involve multiple allegations.

Kennedy 213 Please note how many of the voter fraud investigations involved registration, not votes actually cast. Please also note how many voter fraud investigations concerned individual violations versus larger conspiracies, and the approximate number of votes or registrations those conspiracies affected.

ANSWER: Please see the response to question 212, above.

Kennedy 218 In questions 213, 214, and 215, I asked for basic background information about the attorneys hired to work in the Special Litigation Section of the Civil Rights Division. You said that "the Department does not track this information." Please provide the resumes for attorneys hired into any career position in the Special Litigation Section since January 1, 2001.

ANSWER: On April 11, 2007, the Department provided to this Committee copies of the resumes of all attorneys hired by the Civil Rights Division during this Administration.

Kennedy 220 As you know, I've long been concerned about the Department's commitment to Section 5 of the Voting Rights Act, which requires jurisdictions with a history of voting discrimination to get federal approval before changing their voting laws. In this Administration, there have been repeated reports that the Division's enforcement decisions are based on politics, not law. From the rubber-stamping of Tom DeLay's 2003 Texas redistricting plan to the approval of voter photo identification requirements that disenfranchised minority citizens, the Department has overruled career attorneys and approved discriminatory changes in election rules. In addition to these problems, it appears that the Department has reduced its resources for reviewing requests under Section 5 of the Voting Rights Act. Under the Clinton Administration, the Department typically had about 20 civil rights analysts dedicated to reviewing Section 5 cases. Yet only 12 analysts were left as of January this year, even though the Assistant Attorney General for Civil Rights has said the Department received a record 40 percent increase in requests for approval under Section 5 of the Voting Rights Act. Personnel who usually work on other issues had to assist in reviewing requests. It's no surprise that we have begun hearing that the Department is having trouble processing these submissions within the legal deadline, especially with the large number of submissions from Texas. Do you agree that the Department's commitment to Section 5 should include the resources necessary to review Section 5 submissions within the legal deadline?

ANSWER: Each Section 5 submission is processed on receipt and assigned to one or more analysts, paralegals, or attorneys. These staff members conduct a review of the file and gather information from knowledgeable persons to determine the limited question of whether the change was adopted with a discriminatory purpose or whether it would have a retrogressive effect on minority voters. Members of each affected minority community in the jurisdiction, as well as relevant officials, are contacted.

The large majority of submissions involve routine changes that do not raise issues of discrimination cognizable under Section 5. Such submissions are processed routinely by analysts, paralegals, and reviewing attorneys. Where a change does raise substantive issues, the responsible staff members prepare a memorandum setting forth in neutral fashion the facts and legal issues. This process often involves considerable discussion. The authority to interpose an objection to a change rests with the Assistant Attorney General for Civil Rights.

In FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history. While 7,080 submissions were received in 2006, only 4,121 submissions were

received in 2001, 5,788 in 2002, and 4,750 in 2003. Accordingly, all current staff members, including attorneys, are receiving valuable experience reviewing Section 5 submissions. The Section also has instituted Section 5 and Geographical Information Systems (GIS) training for all attorneys and professional staff. As the census approaches, the Section will continue such training, expand it and will incorporate additional training as warranted.

While four attorneys currently are devoted primarily to Section 5 review, all attorneys, including managers, participate in the review of voting changes under Section 5 as the need arises. In terms of civil rights analysts, in January 2001, the Section had 14 civil rights analysts, compared to 12 in January 2007. As of July 10, 2007, the Voting Section has ten civil rights analysts and two contract personnel engaged in the analysis of Section 5 submissions, and the Section has advertised three civil rights analyst openings. The Section also has become very energetic in training interns and externs to analyze the more routine voting changes.

The Section also has initiated e-Submissions so that governments can submit voting changes on-line. Among other advantages, this will free significant staff time and resources for more effective review of voting changes. In addition, each trial attorney in the Section is required to gain expertise in the laws, demographic patterns, and election-related issues in several States, enabling them to be better prepared to play the major role that Section attorneys traditionally have played in the review of redistricting plans.

In 2003, the Department conducted a deliberate and careful review of every relevant fact relating to the Texas submission of its congressional redistricting under Section 5 of the Voting Rights Act, concluding that there was no retrogression in the overall plan. The legislature offset one lost opportunity district for Latino voters by creating a new district in that region in which Latino voters dependably would be able to elect a representative of their own choice. Indeed, the plan was used during the 2004 elections and resulted in an increase in the number of minority representatives elected to Congress from Texas.

In *League of United Latin American Citizens v. Perry*, 126 S. Ct. 2594 (2006), the Supreme Court agreed with the Department's principal argument that the State did not violate Section 2 by redrawing former congressional district 24. The Court also found no violation of the Constitution or the Voting Rights Act in thirty-one of Texas's thirty-two congressional districts. The Court's decision left the Texas redistricting plan largely intact and left it to the State to determine how to remedy the lone problem identified as to congressional district 23. With respect to district 23, the Supreme Court reversed the decision of the lower court, which had found no violation in the redistricting plan, including district 23. Moreover, the Supreme Court's 5-4 decision produced six separate opinions from six different Justices in 120 pages of discussion.

The Supreme Court's decision in no way calls into question the Department's decision to preclear the Texas redistricting plan under Section 5 of the Voting Rights Act. Indeed, only one Justice suggested that Section 5 had been violated; no other Justice joined him in that portion of his opinion. The majority's decision as to district 23 was founded on a new principle, under Section 2 of the Voting Rights Act, that the creation of an offsetting majority-minority district

may not remedy the loss of a majority-minority district in the same part of the State if the new district is not compact enough to preserve communities of interest. Indeed, this new compactness inquiry issue was not the subject of briefing and was not addressed by the Department.

In August 2005, the Department precleared a Georgia voter identification law, which itself amended an existing voter identification statute that had been precleared by the prior Administration. This preclearance decision followed a careful analysis that lasted several months and considered all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of state photo identification and driver's license cards and the views of minority legislators in Georgia (as well other current and former minority elected officials). The data showed, among other things, that the number of people in Georgia who already possessed valid photo identification greatly exceeded the total number of registered voters and that there was no racial disparity in access to the identification cards. The state subsequently adopted, and in April 2006 the Department precleared, a new form of voter identification that would be available to voters for free at one or more locations in Georgia's 159 counties. On September 6, 2007, the federal district court dismissed the challenge to the Georgia voter ID law noting, among other things, that the plaintiffs had identified no individual who did not have or could not obtain the requisite ID. The court also rejected plaintiffs' data analyses purporting to show problems with the ID law as unreliable and/or irrelevant.

Similarly, Georgia's Supreme Court recently directed that the state case be dismissed for lack of standing. As in the federal case, no plaintiff actually was harmed by the statute.

Kennedy 221 Why have you allowed the number of analysts to drop so sharply?

ANSWER: Please see the response to question 220, above.

Kennedy 222 The problem will only grow worse as the 2010 Census approaches. After each Census, states adjust their election districts, state-wide redistricting efforts, leading to an increase in the number of submissions to the Department. Traditionally, the Department would begin planning for that increase well before the Census. We're still a few years away from that, but you will need to hire new analysts and ensure that they have the experience they need before the flood of new submissions arrives. Have you considered how the Department will handle the increase in submissions after the Census, when it doesn't even have enough personnel now? Please explain how you plan to ensure that the Department will be prepared for the increased submissions under Section 5 after the next Census.

ANSWER: Please see the response to question 220, above.

Kennedy 223 In addition to the loss of personnel, I'm concerned about reports of low morale in the Department's Section 5 Unit. Thirteen of the analysts who review

Section 5 requests have left since 2003 – that's more than are now in the Section. Recently, Teresa Lynn, an African American civil rights analyst who served for 33 years in the Section 5 unit, said she retired because of "fear of retaliation" and "disparate treatment of civil rights analysts based on race." She spoke of low morale among the Section 5 analysts and said the Chief of the Voting Section and the new Deputy Chief of the Section 5 unit were responsible. When she retired, Ms. Lynn sent an email to her colleagues saying she left "with fond memories of the Voting Section I once knew" and was "gladly escaping the plantation it has become." Those are very serious charges from someone who had spent decades in the Department under both Republican and Democratic administrations. Were you aware of these allegations? If not why not? If so, what have you done to get to the bottom of this?

ANSWER: The Department takes very seriously any allegations of disparate treatment based on race by its employees. Not only may an employee file an Equal Employment Opportunity complaint if that employee feels he or she has received disparate treatment based on race, but the Civil Rights Division also recently created an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns.

Former Assistant Attorney General Wan J. Kim worked hard to foster positive relationships in the Division. He made himself and his Deputy Assistant Attorneys General available to career attorneys to hear their concerns. He created the internal Ombudsman and, during his first week as Assistant Attorney General, he established the Division's Professional Development Office, which ensures that the Division's staff members are afforded every opportunity to improve their professional development. The office has devised a week-long orientation program for new Division attorneys and supervises the new attorney mentor program. Its most recent success was a three-day civil rights seminar for attorneys held at the Department's National Advocacy Center.

In addition, the Voting Section has been remarkably productive, achieving some of its highest levels of enforcement during the past year. In fact, the eighteen new lawsuits the section filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding thirty years. In addition, in FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history, and interposed important objections to protect minority voters in Texas and Georgia. With over 7,100 submissions, the Division handled roughly 40percent more submissions in FY 2006 than in a normal year. The Voting Section also brought the first Section 5 enforcement action since 1998. The Voting Section also has begun a major enhancement of the Section 5 review process which, as described in question 220, includes allowing online submission of voting charges, making the process easier, more efficient, and more cost-effective for covered jurisdictions and for the Department.

Kennedy 224 Do you agree that these allegations of race discrimination and poor morale in the Voting Section raise serious concerns that should be addressed? If so, please explain how you will address them.

ANSWER: Please see the response to question 223, above.

Biden 225 I am growing increasingly concerned about the explosion of child pornography being trafficked over the Internet. The latest research shows this threat to our children is continuing to grow and that it is actually trending towards younger victims with images becoming more graphic and brutal. I believe that we must do all that we can to prevent child exploitation and interdict child predators. However, I question whether we have demonstrated the necessary leadership and dedicated the resources necessary to ensure that the law enforcement community can effectively respond to this threat. As you know, effective partnerships are the cornerstone of any law enforcement response, and I believe that the Internet Crimes Against Children ("ICAC") Task Force program is poised to form the backbone of an effective law enforcement response. However, we have not sufficiently invested in this program to ensure its success. In my view, developing strong ICAC task forces throughout the nation is critical because it will ensure a vast network of highly-trained investigators working together to stop child predators. This will help reduce child exploitation in the U.S, and it will allow the FBI and other federal agencies to focus on international cases which are growing exponentially.

In testimony before the U.S. House Energy and Commerce Committee in April, 2006, Flint Waters of the Wyoming Division of Criminal Investigation stated that ICAC Task Force surveillance had identified and logged information on millions of online transactions involving distribution of child pornography on peer-to-peer networks.

Please briefly describe the type or nature of these criminal transactions and provide updated estimates of the number of such crimes (transactions) that have been identified by the ICAC task force network since it began this surveillance.

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 226 What number or approximate percentage of these known crimes (transactions) have involved at least one party within the United States?

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 227 What number or approximate percentage of these known crimes (both domestic and international transactions) have the ICAC task forces been able to investigate to date?

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 228 What number or approximate percentage of these known crimes have the ICAC task forces referred to other law enforcement agencies for investigation?

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 229 Does the ICAC program have the ability to translate these known criminal transactions to an approximate number of computers or computer users? If so, please explain in simple terms how this is done and provide answers to the following questions:

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 230 How many individual users or computers has the ICAC Task Force program identified within the United States being used to engage in criminal activities involving child pornography or online enticement of children?

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 231 How many outside the U.S.?

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 232 What number or approximate percentage of these identified users or computers have the ICAC task forces been able to investigate to date?

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 233 Please provide a detailed breakdown of the number of complaints or case leads coming into the ICAC program, by source, including the ICAC's own surveillance program(s), the CyberTipline, and other sources.

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 234 In addition to the questions above, I would like answers to the following questions. (If these answers are not immediately available, please do not delay providing answers to the other questions.) Total number of known criminal transactions involving child pornography where at least one party was within the U.S., broken down by state.

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 235 Total number of computers identified engaged in child pornography activities within the U.S.- broken down by state.

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 236 The total number of online enticement cases investigated by ICAC task forces, nationally and by state.

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Biden 237 Total number of investigative referrals made from ICAC task forces to federal law enforcement agencies.

ANSWER: The Department provided this information in a separate written response, dated January 24, 2008.

Feinstein 277 The Director of the Information Security Oversight Office in the National Archives wrote to you on January 9 of this year to ask for an interpretation of whether the Office of the Vice President is covered by Executive Order 12958 ("Classified National Security Information"), as amended. What actions has DOJ taken in response to the request that it determine whether the Office of the Vice President needs to comply with the Executive Order?

ANSWER: The January 9, 2007 letter to the Attorney General from the Director of the Information Security Oversight Office (ISOO) of the National Archives and Record Administration requested an opinion addressing whether the Office of the Vice President is an "agency" for purposes of Executive Order 12958, as amended. In a letter dated July 20, 2007, a copy of which is attached, the Department responded to the request as follows:

> On July 12, 2007, the Counsel to the President wrote a letter to Congress stating that "[t]he President has asked me to confirm to you that . . . the Office of the

Vice President . . . is not an 'agency' for purposes of the Order." Letter to the Honorable Sam Brownback, United States Senate, from Fred F. Fielding, Counsel to the President (copy enclosed). That statement on behalf of the President directly resolves the question you presented to the Attorney General. Therefore, the Department of Justice will not be providing an opinion addressing this question.

Feinstein 278 Do you believe the Executive Order applies to the Vice President? If not, why not?

ANSWER: As noted in response to question 277, the statement by the Counsel to the President directly resolves the question whether the Executive Order applies to the Office of the Vice President.

Feinstein 279 Have you, or has anyone at the Department, communicated with the Office of the Vice President or anyone in the White House about this request?

ANSWER: Yes. Representatives of the Department communicated with the Office of the Counsel to the President concerning the question raised about the meaning of Executive Order 12958.

Feinstein 280 Have you, or anyone in the Department, issued any decision, guidance, or memo on this issue?

ANSWER: As noted in response to question 277, the Department has issued a letter informing the Director of ISOO that the statement by the Counsel to the President resolves the question ISOO presented to the Attorney General.

Feinstein 281 When asked about the "gang of eight" briefing and the hospital visit you said it is important "for people to know the context" of what occurred, so please provide the full context, if necessary please submit under separate cover in a classified context. What exactly did you or others in the Administration communicate to Congressional leaders at the March 10, 2004, or related meetings?

ANSWER: As you know, operational details concerning the Terrorist Surveillance Program (TSP) remain highly classified. Throughout the war on terror, the Administration has notified the Congress concerning the classified intelligence activities of the United States through appropriate briefings of the intelligence committees and congressional leadership. The full membership of each intelligence committee has been briefed on the TSP, as have other members of the Congressional leadership. Current and former Administration officials also have testified in closed hearings regarding these matters. We are not able to provide additional details, beyond

those already provided by current and former officials, regarding the meetings you reference at this time.

Feinstein 286 If you will not answer these questions, will the Administration allow the congressional members present at the meeting to answer these questions?

ANSWER: We have sought to be responsive to the questions above. Of course, the Members who participated in the briefings would be subject to restrictions on the disclosure of classified information.

Feingold 289 The Inspector General's Patriot Act reports were limited to investigating citizen complaints and many of the Patriot Act authorities operate entirely in secret. Thus, these reports were highly unlikely to uncover any misuse or abuse of those authorities. The Inspector General confirmed to me that the serious misuse of the NSL authorities that he uncovered would never have come to light if Congress had relied solely on waiting for individual citizens to complain. Do you agree?

ANSWER: The Justice Department, including the FBI, has processes in place to catch abuses and errors. While it is true that not all of the NSL errors were caught, many were, and as a result of the IG's report, the Department has implemented significant new oversight measures. These efforts include the planned implementation of a dedicated Oversight Section within the Department's National Security Division and the establishment of a new Office of Integrity and Compliance within the FBI. The Department will exercise this oversight through a regular process of conducting National Security Reviews of FBI field offices and Headquarters national security units. These reviews are staffed by career Department attorneys with years of law enforcement and intelligence experience from the NSD and the FBI's Office of General Counsel, along with officials from the Department of Justice's Privacy and Civil Liberties Office.

These reviews, which the Division started conducting in April 2007, broadly examine the FBI's national security activities, its compliance with applicable laws, policies, and Attorney General Guidelines, and its use of various national security tools, including NSLs. The reviews are not limited to areas where shortcomings have already been identified; instead, they are intended to enhance compliance across the national security investigative spectrum.

Feingold 292 The Administration sent legislation to Congress in April that, while billed as "modernization" of the Foreign Intelligence Surveillance Act, contains provisions having nothing to do with modernization of FISA. Please answer each of the following questions individually. Why did the Administration decide to include a provision in its proposal that would grant immunity retroactively to individuals who cooperated with the government in certain unidentified intelligence activities?

ANSWER: Private industry partners alleged to have cooperated with the Government to ensure our nation is protected against another attack should not be held liable for any assistance they are

alleged to have provided. Such litigation risks the disclosure of state secrets and could seriously damage our national interests. We believe that it is imperative that Congress provide liability protection to companies that are alleged to have assisted the nation in the conduct of intelligence activities in the wake of the September 11th attacks.

Feingold 293 Why did the Administration decide to include a provision in its proposal that would permit the Attorney General to transfer any pending lawsuits challenging the legality of any "classified communications intelligence activity" to the secret, ex parte FISA Court?

ANSWER: The provision you reference is section 411 of the comprehensive FISA modernization proposal the Director of National Intelligence submitted to Congress in April 2007. Section 411 is designed to protect sensitive national security information and would allow for the transfer of litigation involving sensitive national security information to the FISA Court in specified circumstances. This provision would require a court to transfer a case to the FISA Court if: (1) the case is challenging the legality of a classified communications intelligence activity relating to a foreign threat, or the legality of any such activity is at issue in the case, and (2) the Attorney General files an affidavit under oath that the case should be transferred because further proceedings in the originating court would harm the national security of the United States. By providing for the transfer of such cases to the FISA Court, section 411 ensures that, if needed, judicial review may proceed before the court most familiar with communications intelligence activities and most practiced in safeguarding the type of national security information involved. Section 411 also provides that the decisions of the FISA Court in cases transferred under this provision would be subject to review by the FISA Court of Review and the Supreme Court of the United States.

Feingold 294 You state in your testimony that this FISA proposal includes provisions that "strengthen the privacy protections for U.S. persons in the United States." Please specifically identify each of those provisions, including the section number, and explain how they strengthen privacy protections.

ANSWER: There are many sections in the comprehensive FISA modernization proposal the Director of National Intelligence submitted to Congress in April 2007, working in combination, that would enhance the privacy protections for U.S. persons in the United States. FISA Court and the Government to devote more resources to the preparation and review of applications to conduct surveillance that most directly implicate the privacy interests of persons in the United States. We urge Congress to make that Act permanent and to enact other important reforms to modernize and streamline FISA.

Feingold 295 The DOJ Inspector General issued a report in March 2007 about misuse and abuse of the National Security Letter authorities. During a hearing on that report, the FBI General Counsel told the House Judiciary Committee that she believes one root of the problems laid out in the IG report is that many FBI agents grew up in the

transparent criminal system, where, as she put it, "if they mess up during the course of an investigation, they're going to be cross-examined, they're going to have a federal district judge yelling at them." On the national security side, on the other hand, she explained that actions "are typically taken in secret and they don't have the transparency of the criminal justice system." She suggested that more controls are needed in the less transparent arena of national security investigations than in criminal investigations. According to testimony before the Senate Judiciary Committee, the FBI Director agrees with this assessment. Please answer each of the following questions individually. Do you agree with the FBI Director and the FBI General Counsel?

ANSWER: The FBI Director and FBI General Counsel are correct in stating that additional oversight is needed in the area of national security investigations. At the direction of former Attorney General Gonzales, the National Security Division has been building its capacity and increasing the tempo of its oversight activities and recently announced the initiation of a comprehensive national security oversight program that extends well beyond the Department's traditional, primarily FISA-related oversight role. DOJ attorneys have been given the clear mandate to examine all aspects of the FBI's national security program for compliance with law, regulations, and policies.

To accomplish this expanded mandate, the Department has stood up a dedicated Oversight Section within the National Security Division's Office of Intelligence which will consist of attorneys and staff members specifically dedicated to ensuring that the Department fulfills its national security oversight responsibilities across the board.

This oversight will be exercised through regular National Security Reviews of FBI field offices and Headquarters national security units. These reviews are staffed by career Department attorneys with years of law enforcement and intelligence experience from the National Security Division and the FBI's Office of General Counsel, along with officials from the Department of Justice's Privacy and Civil Liberties Office.

These reviews, which the Division started conducting in April 2007, broadly examine the FBI's national security activities, its compliance with applicable laws, policies, and Attorney General Guidelines, and its use of various national security tools, such as National Security Letters. The reviews are not limited to areas where shortcomings have already been identified; instead, they are intended to enhance compliance across the national security investigative spectrum.

Since establishing this new national security review process in April, the National Security Division already has completed national security investigation reviews in eleven field offices and one headquarters unit. By the end of this year, the Department will have completed a total of 15 reviews in field offices and headquarters units.

The Oversight Section will also play an important role in other areas. It will review all referrals by the FBI to the President's Intelligence Oversight Board, focusing on whether these referrals indicate that a change in policy, training, or oversight mechanisms is required. The Oversight Section will report to the Attorney General semiannually on such referrals and will

inform the Department's Chief Privacy and Civil Liberties Officer of any referral that raises serious civil liberties or privacy issues. In addition, it will provide compliance-related training for National Security Division lawyers and FBI agents and analysts.

Feingold 306 Earlier this month the President issued an Executive Order to govern the CIA's interrogation of detainees. Please answer each of the following questions individually. Does DOJ's analysis of what interrogation techniques are and are not permissible under the statutes and the Constitution apply to the questioning of a U.S. citizen, on U.S. soil, who is thought to be involved in or possess information on a terrorist plot, regardless of the agency or entity conducting the interrogation?

ANSWER: The Executive Order interprets and applies Common Article 3 to alien detainees who are members of al Qaeda, the Taliban, or affiliated entities, and who are detained and interrogated by the CIA outside the United States. *See* Exec. Order No. 13440 § 3(b)(ii). Accordingly, neither the Executive Order nor the CIA program has required the Department to consider how Common Article 3 may apply to U.S. citizens on U.S. soil. As you note, U.S. citizens would be entitled to invoke an array of constitutional and statutory protections, beyond the baseline standard of Common Article 3.

Feingold 307 If there are distinctions based on the nationality or citizenship of the person being interrogated, where in the statutes and Constitution are those distinctions located?

ANSWER: As noted, we have not had occasion to address the question that you raise. Of course, the Department's analysis of these issues would not depend upon the nationality or citizenship of the individual to the extent that the relevant legal provisions, like the anti-torture statute and the War Crimes Act, prohibit specific conduct without regard to nationality or the citizenship.

Feingold 308 FISA requires that the Department issue a report to the Judiciary and Intelligence Committees every six months on its implementation of FISA. By statute, it must include "a summary of significant legal interpretations of [FISA] involving matters before the Foreign Intelligence Surveillance Court," as well as copies of all decisions and opinions of the FISA Court. When the Department submits its report covering the first half of 2007, will it comply fully with that statute?

ANSWER: The provision you reference, 50 U.S.C. § 1871, requires the Department to report semiannually, "in a manner consistent with the protection of the national security," specified information, including "a summary of significant legal interpretations of [FISA] involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review" and "copies of all decisions (not including orders) or opinions" of those courts containing "significant construction or interpretation of the provisions" of FISA.

The Department will issue its next semiannual report at the end of the year, and that report will be consistent with these requirements.

Schumer 336 On June 25th, I wrote you a letter concerning the Vice President's questionable claim that he need not comply with classified material oversight requirements because he is not an entity within the executive branch. In that letter I expressed my concern with the delay in your Office's response to the National Archives' January request for an opinion on that claim. I also expressed my concern over your ability to be impartial in making such a determination. Almost a month later, I have received no response. So, once again, I would like to ask you: Has your office since responded to the National Archives' request as required by Executive Order 12958? If not, why has it taken over six months to do so?

ANSWER: The January 9, 2007, letter to the Attorney General from the Director of the Information Security Oversight Office of the National Archives and Record Administration requested an opinion addressing whether the Office of the Vice President is an "agency" for purposes of Executive Order 12958, as amended. In a letter dated July 20, 2007, a copy of which is attached, the Department responded to the request as follows:

> On July 12, 2007, the Counsel to the President wrote a letter to Congress stating that "[t]he President has asked me to confirm to you that . . . the Office of the Vice President . . . is not an 'agency' for purposes of the Order." Letter to the Honorable Sam Brownback, United States Senate, from Fred F. Fielding, Counsel to the President (copy enclosed). That statement on behalf of the President directly resolves the question you presented to the Attorney General. Therefore, the Department of Justice will not be providing an opinion addressing this question.

Schumer 337 As requested, have you recused yourself from involvement in this process? If not, why not?

ANSWER: Former Attorney General Gonzales did not recuse himself from that matter. We are aware of no basis for him to have recused himself.

Schumer 338 Does the Office of Legal Counsel have an opinion as to whether the Office of the Vice President is part of the Executive Branch? If so, what is that opinion?

ANSWER: The Office of Legal Counsel has written a number of memoranda that contain discussions that may relate to the status of the Vice President or the Office of the Vice President with respect to the Executive Branch and the Legislative Branch. Copies of memoranda relating to your request are attached.

Durbin 344 In your 25-page single-space written testimony submitted to this Committee for last week's hearing, you listed and discussed nine priority issues for the Justice Department. They are important priorities. But I was troubled by the fact that civil rights enforcement was not mentioned at all – not once – in your 25-page testimony. This is disturbing because we have learned about how politicized your Civil Rights Division has been in recent years. And it is troubling because when you came before this Committee for your nomination hearing in January 2005, you testified that your top two priorities would be fighting terrorism and protecting civil rights. Is civil rights enforcement no longer a priority issue for the Department of Justice? If it is, in fact, a priority, why was it not mentioned in your 25-page testimony last week before this committee?

ANSWER: The Civil Rights Division has enforcement responsibility for many antidiscrimination statutes. The Department takes seriously its responsibility to protect the rights secured by each of these laws. During this Administration, the Division has been vigilant and aggressive in its enforcement, outreach, and training efforts across the full breadth of its jurisdiction, including prosecuting criminal civil rights violations, protecting equal access to the ballot box, combating discrimination in employment, housing, and educational settings, ensuring the rights of persons with limited English proficiency, and protecting the rights of institutionalized persons and persons with disabilities.

To enhance the Division's law enforcement efforts in three of its busiest areas, the Attorney General endorsed major initiatives to combat housing discrimination, human trafficking, and post-9/11 backlash. In addition, the Attorney General announced initiatives to investigate and prosecute unsolved civil rights era murder cases and to protect religious liberty.

The Attorney General announced his housing discrimination initiative, "Operation Home Sweet Home", on February 15, 2006. Operation Home Sweet Home seeks to ensure equal access to housing by expanding and targeting the Division's fair housing testing program. In FY 2007, the Division's Housing and Civil Enforcement Section conducted a record high number of fair housing tests in order to expose housing providers who are illegally discriminating against persons seeking to rent or purchase homes. The program is conducted primarily through paired tests, an event in which two individuals – one acting as the "control group" (*e.g.*, white male) and the other as the "test group" (*e.g.*, black male) – pose as prospective buyers or renters of real estate for the purpose of determining whether a housing provider is complying with the fair housing laws. Under the initiative, the Department focuses significantly on outreach by creating a new fair housing website, establishing a telephone tip line and e-mail complaint process, and sending outreach letters to more than 400 public and private fair housing organizations encouraging them to report suspected housing discrimination.

At the outset of this Administration, President Bush identified the eradication of human trafficking as a priority. The President focused federal resources on combating these crimes by creating a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons and by issuing a directive which instructed federal agencies to strengthen their efforts to combat this crime. Trafficking in persons is a form of modern-day slavery. The victims of human trafficking are often lured to this country with the promise that they will enjoy the great gifts of liberty and prosperity. Instead, they find themselves trapped, victims of forced prostitution, or of

domestic labor or migrant farm work under illegal and exploitative circumstances. They are predominantly women and children; many are undocumented immigrants, who lack familiarity with our language and culture. They fear law enforcement because of their illegal status. Their captors often confiscate their passports, limit their access to the outside world, and physically or psychologically coerce them into providing labor or services.

From FY 2001 to FY 2006, the Civil Rights Division and U.S. Attorneys' Offices throughout the Nation prosecuted 360 human trafficking defendants, secured almost 240 convictions and guilty pleas, and opened nearly 650 new investigations. That represents a six-fold increase in the number of human trafficking cases filed in court, quadruple the number of defendants charged, and triple the number of defendants convicted, in comparison to 1995-2000. In FY 2006, the Department obtained a record number of convictions in human trafficking prosecutions. In FY 2007, the Department exceeded that record, obtaining 103 convictions, in addition to charging eighty-nine human trafficking defendants and initiating 183 investigations.

We will seek to build on this success by continuing vigorous investigations and prosecutions. Furthermore, we will continue to coordinate and share intelligence among the forty-two victim-centered law enforcement task forces established across the Nation. These task forces are collaborations among U.S. Attorneys, law enforcement, and victim service agencies. Their activities focus on increasing the identification and rescue of trafficking victims through proactive law enforcement, provision of services to victims, and investigation and prosecution of human trafficking cases.

On January 31, 2007, the Attorney General and the Assistant Attorney General for the Civil Rights Division announced the creation of the new Human Trafficking Prosecution Unit within the Criminal Section. This new Unit is staffed by the Section's most seasoned human trafficking prosecutors, who will work with our partners in federal and state law enforcement to investigate and prosecute the most significant human trafficking crimes, such as multi-jurisdictional sex trafficking cases.

The Department of Justice Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) provides technical assistance and training geared to enhance the capabilities/capacity of our law enforcement partners overseas to prevent transnational (and domestic) trafficking; protect victim witnesses and thereby encourage their cooperation in investigations and prosecutions; and effectively investigate and prosecute trafficking in persons cases. OPDAT also assists with legislative reform and drafting in the area of Trafficking in Persons (TIP) to ensure that a host country's TIP law is victim assistance centered and compliant with the Palermo Protocol of the UN Organized Crime Convention. OPDAT regularly calls upon the expertise of the Department attorneys from the Civil Rights Division, Child Exploitation and Obscenity Section, and the US Attorney's Offices in both the design and execution of TIP assistance programs overseas. In FY 2007 for example, OPDAT conducted 55 programs involving 18 countries (Armenia, Azerbaijan, Bangladesh, Bosnia, Bulgaria, Ghana, Indonesia, Kyrgyzstan, Latvia, Macedonia, Malawi, Nepal, Romania, Russia, Taiwan, Tanzania, Thailand, and Zambia). A mark of the success of the significant training and outreach by OPDAT is Russia's increase in criminal prosecutions of human trafficking cases – ranging from a ten fold increase in the last five years in child pornography prosecutions (more

than 350 investigations last year) to a more than four hundred percent increase in human trafficking investigations in the last four years. It is important to note that OPDAT training and outreach has also resulted in closer cooperation between the United States and foreign law enforcement on a series of sex traveler cases.

After the national tragedy of September 11, 2001, the Assistant Attorney General for the Civil Rights Division directed the Division's National Origin Working Group to work proactively to combat violations of civil rights laws against Arab, Muslim, Sikh, and South-Asian Americans, and those perceived to be members of these groups, through the creation of the Initiative to Combat Post-9/11 Discriminatory Backlash.

Since the terrorist attacks of September 11th, members of these groups, and those perceived to be members of these groups, have been the victims of increased numbers of bias-related assaults, threats, vandalism and arson. Reducing the incidence of such attacks, and ensuring that the perpetrators are brought to justice, is a Civil Rights Division priority. The Division also has made a priority of cases involving discrimination against Arab, Sikh, Muslim, and South-Asian Americans in employment, housing, education, access to public accommodations and facilities, and other areas within the Civil Rights Division's jurisdiction.

The Initiative is combating bias crimes and discrimination by:

- Ensuring that there are efficient and accessible processes in place for individuals to report violations to the Civil Rights Division and making sure that these cases are handled expeditiously.

- Implementing proactive measures to identify cases involving bias crimes and discrimination being prosecuted at the state level that may merit federal action.

- Conducting outreach to affected communities to provide them with information about how to file complaints and the resources available through the Department of Justice and other federal agencies to protect their civil rights.

- Working with other Department of Justice components and other government agencies to ensure accurate referral, effective outreach, and comprehensive provision of services to victims of civil rights violations.

There has been renewed interest in the investigation and prosecution of unsolved civil rights era murder cases. The Criminal Section continues to play a central role in this effort. In January 2007, the Attorney General announced the indictment of James Seale on two counts of kidnapping and one count of conspiracy for his role in the 1964 abduction and murder of Charles Moore and Henry Dee in Franklin County, Mississippi. A federal jury returned guilty verdicts against Seale on all three counts on June 14, 2007. Earlier, in February 2007, the Attorney General and the FBI announced an initiative to identify other unresolved civil rights era murders for possible prosecution to the extent permitted by the available evidence and the limits of federal law.

On February 20, 2007, the Attorney General announced a new initiative, entitled the First Freedom Project, and released a "Report on Enforcement of Laws Protecting Religious Freedom: Fiscal Years 2001 to 2006". The First Freedom Project includes creation of a Department-wide Religious Liberty Task force, a series of regional seminars on federal laws protecting religious liberty to educate community, religious, and civil rights leaders on these rights and how to file complaints with the Department of Justice, and a public education campaign that includes a new website, www.FirstFreedom.gov, speeches and other public appearances, and distribution of literature about the Department's jurisdiction in this area.

In addition to these initiatives, the Division has built on and plans to build on several other recently announced and ongoing innovations pertaining to the rights of persons with disabilities and military service members.

The Division has continued its important work under Project Civic Access, a wide-ranging initiative to help towns and cities across America comply with the Americans with Disabilities Act. The goal of Project Civic Access is to ensure that people with disabilities have an equal opportunity to participate in civic life. As of September 27, 2007, we have reached 155 agreements with 144 communities to make public programs and facilities accessible. Each of these communities has agreed to take specific steps, depending on local circumstances, to make core government functions more accessible to people with disabilities. The agreements have improved access to many aspects of civic life, including courthouses, libraries, parks, sidewalks, and other facilities, and address a wide range of accessibility issues, such as employment, voting, law enforcement activities, domestic violence shelters, and emergency preparedness and response. During the past six years, our agreements under Project Civic Access have improved the lives of more than three million Americans with disabilities.

In October 2006, the Attorney General directed the Civil Rights Division to use the knowledge and experience the Division has gained in its work with state and local governments under Project Civic Access to begin a technical assistance initiative. As a result, the Division is publishing the "ADA Best Practices Tool Kit for State and Local Governments", a document to help state and local governments improve their compliance with ADA requirements. This Tool Kit is being released in several installments. In the Tool Kit, the Division will provide common sense explanations of how the requirements of Title II of the ADA apply to state and local government programs, services, activities, and facilities. The Tool Kit will include checklists that state and local officials can use to conduct assessments of their own agencies to determine if their programs, services, activities, and facilities are in compliance with key ADA requirements.

The first and second installments, released on December 5, 2006, covered "ADA Basics: Statute and Regulations" and "ADA Coordinator, Notice and Grievance Procedure: Administrative Requirements Under Title II of the ADA". The third and fourth installments, issued February 27, 2007, covered "General Effective Communication Requirements Under Title II of the ADA" and "9-1-1 and Emergency Communications Services." The fifth and sixth installments, released May 7, 2007, covered "Website Accessibility Under Title II of the ADA" and "Curb Ramps and Pedestrian Crossings". The seventh installment, released on July 26, 2007, covered "Emergency Management Under Title II of the ADA". These installments, and all subsequent installments, will be available on the Department's ADA Website (www.ada.gov).

While state and local officials are not required to use these technical assistance materials, they are strongly encouraged to do so, since the Tool Kit checklists will help them to identify the types of noncompliance with ADA requirements that the Civil Rights Division has commonly identified during Project Civic Access compliance reviews as well as the specific steps that state and local officials can take to resolve these common compliance problems.

On August 14, 2006, the Former Attorney General Gonzales unveiled www.servicemembers.gov, a website aimed at ensuring that our Nation's troops understand the rights that the Civil Rights Division enforces on their behalf and how to file a complaint in the event that those rights are violated. The website provides information on three statutes: the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Servicemembers Civil Relief Act (SCRA), and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). One example of the Division's work to protect the rights of service-members is *Woodall, McMahon & Madison v. American Airlines*, the first class-action USERRA complaint filed by the United States. The Division will continue its enforcement of those important statutes, and its outreach to educate service members of their rights.

In addition to these newly announced and ongoing priorities, the Division's ten litigating sections have pursued the following priorities from 2002–2007:

- In addition to representing the Department on direct appeal in civil rights cases across the Division, the Appellate Section has focused on identifying appropriate cases for participation as amicus curiae. In particular, the Section has monitored Eleventh Amendment cases and has prepared briefs defending the constitutionality of civil rights statutes in the federal district courts, the Federal courts of appeals, and the United States Supreme Court. This work is vital to the defense of the statutes enforced by the Division, especially Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act.

- The Coordination and Review Section has focused its outreach to train recipients of federal funds on the requirements of Title VI and to educate Federal agencies on their responsibilities under Executive Order 13166. The Section conducts outreach and training to beneficiary groups and organizations that represent them. In addition, the Section uses www.lep.gov as a vehicle for outreach and technical assistance. The Section has played a central role in assisting persons with limited English proficiency (LEP). For example, in March 2007, the Section hosted the Interagency LEP Conference, which was designed to assist Federal agencies, fund recipients, and the community in the quest for reasonable language access. Additionally, the Section has organized and coordinated meetings of the Federal Interagency Working Group on LEP, which functions under Section leadership. Active members of this group represent more than thirty-five Federal agencies.

- The Criminal Section has made a priority of the prosecution of hate crimes, which are acts or threats of violence motivated by a victim's race, color, religion, or national origin that interfere with certain federally protected rights. In fact, Criminal Section Deputy Chief Barbara Bernstein was selected to receive the coveted Helene and Joseph Sherwood Prize for Combating Hate by the Anti-Defamation League (ADL). As one of the select few in law enforcement to

receive the prestigious award, the ADL said that Deputy Chief Bernstein "exemplifies an ongoing commitment, support, and contribution in helping to eliminate hate and prejudice." The ADL also praised the Department for its successful prosecution of *U.S. v. Walker* in which three members of the National Alliance, a white supremacist organization, were charged and convicted with assaulting a Mexican-American bartender in the Salt Lake City bar where he was working and of assaulting an individual of Native-American heritage outside a different bar in Salt Lake City.

In an effort to enhance the Division's ability to identify hate crime incidents, the Section has held regular meetings with officials from the ADL and other members of the Hate Crimes Coalition.

Nearly fifty percent of the criminal civil rights prosecutions brought in FY 2006 involved official misconduct. The Division has also worked closely with the FBI, the United States Attorneys' Offices, and State and local law enforcement to identify and prosecute historical civil rights era crimes.

- In addition to actively investigating and seeking to resolve meritorious complaints of discrimination against persons with disabilities, the Disability Rights Section has continued its efforts under Project Civic Access and has focused on outreach to representatives of the business and disability communities in order to increase voluntary compliance with the Americans with Disabilities Act (ADA). During 2006 and 2007, the Section continued to develop revised ADA regulations that will adopt updated design standards consistent with the revised ADA Accessibility Guidelines published by the Access Board in July 2004. The revised guidelines are the result of a multi-year effort to promote consistency among the many federal and state accessibility requirements. We are now drafting a proposed rule and developing the required regulatory impact analysis.

- The Educational Opportunities Section has aggressively investigated and taken appropriate action with respect to reports of discrimination, including harassment, on the basis of race, sex, religion, and national origin in our Nation's public schools. The Section has also reviewed existing desegregation orders to ensure compliance and seek relief where appropriate. Additionally, the Section has expanded its English Language Learner project by initiating investigations and developed other practice areas such as disability rights.

- The Employment Litigation Section has investigated and prosecuted employers engaging in patterns or practices of discrimination in violation of Section 707 of Title VII of the Civil Rights Act of 1964 and individual acts of discrimination in violation of Section 706 of Title VII. The Section has actively monitored and ensured full compliance with existing consent decrees.

- The Housing and Civil Enforcement Section has worked to ensure nondiscriminatory access to housing, public accommodations, and credit. The Section has maintained its commitment to vigorous enforcement of the Fair Housing Act, the mainstay of our efforts to eliminate housing discrimination in America. Enforcing the prohibitions against credit discrimination in the Fair Housing Act and Equal Credit Opportunity Act is another priority for the Section. The Housing and Civil Enforcement Section has built on its efforts to enforce the

Religious Land Use and Institutionalized Persons Act, opening investigations and initiating litigation when warranted.

- The Special Litigation Section has built on its impressive record of actively protecting the rights of institutionalized persons under the Civil Rights of Institutionalized Persons Act by identifying, investigating, and seeking remedial reform of patterns or practices of unconstitutional conditions in institutions. The Section has monitored consent decrees, settlement agreements, and court orders involving nearly one hundred facilities to ensure compliance with negotiated reform.

Under the police misconduct statutes, the Section has investigated, and, where appropriate, sought systemic reform regarding patterns or practices of constitutional and federal violations involving law enforcement agencies. The Special Litigation Section has prioritized our enforcement of police misconduct consent decrees and other settlement agreements to ensure compliance with negotiated reform by local law enforcement agencies.

- The Voting Section has vigorously enforced each of the statutes for which it is responsible, including the Voting Rights Act, the Help America Vote Act (HAVA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and the National Voter Registration Act (NVRA). The eighteen new lawsuits we filed in Calendar Year (CY) 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding thirty years.

The Division places importance on enforcement of each provision of the Voting Rights Act. Enforcement of Section 2 has been a priority; the Section recently won several contested judgments against at-large election systems in Ohio, Florida, and New York, and has obtained the first two Section 2 preliminary injunctions against such systems in the past twenty-one years. It is also investigating potential election-related discrimination in other jurisdictions. The Division continues to vigorously defend challenges to the constitutionality of Section 5 of the Voting Rights Act as the top priority. The Section is also expanding its pool of local citizens whom it contacts in reviewing Section 5 submissions to include current leadership of African-American, Hispanic, Asian-American, and Arab-American groups and communities. Additionally, our investigations and enforcement of Section 203 and Section 208 continue to be a priority. In this Administration, the Voting Section has filed more than twice as many minority language cases as it filed in the entire previous history of the Act combined, and it has filed four times as many cases under Section 208 as in the Act's history before 2001.

Virtually all of HAVA's requirements became fully enforceable as of January 1, 2006. In advance of this deadline, the Division worked hard to help States achieve timely voluntary compliance. Where that did not appear possible, the Division brought enforcement actions, filing five lawsuits under HAVA in 2006.

The UOCAVA remains a priority of the Section. In CY 2006, the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. The Section has proactively identified and challenged structural impediments to compliance in various States'

laws, such as unrealistic primary and special election schedules. The Section has continued to make expansion of its enforcement of the National Voter Registration Act a priority.

Finally, election monitoring has proved to be an important element of our overall enforcement program and will remain a priority. During CY 2006, the Division deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. On November 7, 2006, more than 800 federal personnel monitored the polls in sixty-nine political subdivisions in twenty-two states. In CY 2006, we sent over 1,500 federal personnel to monitor elections, double the number sent in CY 2000, a presidential election year.

Durbin 348 In light of the allegations of wrongdoing involving Mr. Schlozman, why does the Department of Justice continue to employ him?

ANSWER: Mr. Schlozman is no longer an employee of the Department of Justice.

Durbin 350 Are there any U.S. Attorney's offices in America that have had more U.S. Attorneys – either confirmed, acting, or interim – under the Bush Administration than the Southern District of Illinois?

ANSWER: No.

Durbin 351 In your opinion, have there been any public corruption cases in the Southern District of Illinois that have not been aggressively pursued for lack of that district having a confirmed U.S. Attorney?

ANSWER: No.

Durbin 352 On page 46 of the responses to the questions for the record that you provided on July 6, 2007, in response to a question I asked you (203), you stated that ATF has "begun the process of amending the ATF form 4473 (the firearms transaction record) to provide additional information to purchasers about the definitions of 'adjudicated mentally defective' and 'committed to a mental institution.'" On February 6, 2007, I sent a letter to ATF Acting Director Michael Sullivan requesting the views of ATF on whether it would be feasible and beneficial to law enforcement agencies and gun owners if the ATF form 4473 were modified to include a tear-off section on which the firearm serial number could be written and provided to the purchaser. It is my belief that such a modification to the form 4473 would be helpful to victims of firearm theft and would facilitate crime gun tracing involving stolen guns. I have not yet received a response to this letter. Given that ATF has already "begun the process of amending the ATF form 4473," please advise me of the views of ATF and the Department of Justice on the suggested modification to the form 4473 contained in the letter.

ANSWER: The Department previously responded to you in a letter, dated August 20, 2007. In the response, ATF mentions our publication titled "Personal Firearms Record", P3312.8, which is available to the public on the ATF web site and to Federal Firearms licensees from our distribution center. The record was developed to provide a firearms purchaser an easy to use format to record information needed to report a theft or loss of a firearm to law enforcement officials. While ATF thinks that the P3312.8 is an efficient way for owners to record firearms information, we agree that your suggestion for a tear-off section to Form 4473 is a good idea, and we will consider your suggestion the next time the form is revised.

Durbin 358 Executive Order 12958, issued by President Clinton in 1995, and updated and reissued by President George W. Bush in 2003, prescribes a uniform system for classifying, safeguarding, and declassifying national security information. This Executive Order requires, among other things, that entities in the executive branch that come into possession of classified information file annual reports with the Information Security Oversight Office (ISOO) within the National Archives and allow the ISOO to conduct on-site reviews to ensure procedures are in place and being followed Section 6.2 (b) of the Executive Order states that "(t)he Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration." On January 9, 2007, over six months ago, the Director of the ISOO asked you to render an interpretation on the issue of whether the Office of the Vice President is subject to the requirements of this Executive Order. You are required to provide a response, but you have not yet done so. Please explain why you have not yet responded to this request to render an interpretation. When can the Information Security Oversight Office expect to receive the guidance it is awaiting from you?

ANSWER: The January 9, 2007 letter to the Former Attorney General Gonzales from the Director of ISOO requested an opinion addressing whether the Office of the Vice President is an "agency" for purposes of Executive Order 12958, as amended. In a letter dated July 20, 2007, a copy of which is attached, the Department responded to the request as follows:

> On July 12, 2007, the Counsel to the President wrote a letter to Congress stating that "[t]he President has asked me to confirm to you that . . . the Office of the Vice President . . . is not an 'agency' for purposes of the Order." Letter to the Honorable Sam Brownback, United States Senate, from Fred F. Fielding, Counsel to the President (copy enclosed). That statement on behalf of the President directly resolves the question you presented to the Attorney General. Therefore, the Department of Justice will not be providing an opinion addressing this question.

Grassley 359 As a longtime supporter of the False Claims Act, I am concerned that recent court decisions have limited application of this law. For example, in Rockwell International v. United States, the Supreme Court limited the definition of an "original source" under the FCA. Further, in United States ex. rel Totten v. Bombardier Corp, the

D.C. Circuit Court of Appeals limited the application of the FCA to grantees because they are not government employees under the FCA. In your opinion, were these cases decided incorrectly?

ANSWER: The Department of Justice filed amicus briefs in both cases urging a result opposite to that reached by the court in each case. The Department of Justice has also filed numerous briefs in subsequent cases, with some success, arguing that the *Totten* decision was wrongly decided.

Grassley 360 Will the Rockwell decision limit the number of qui tam whistleblower suits filed?

ANSWER: We do not believe the *Rockwell* decision will adversely impact the number of *qui tam* cases filed under the False Claims Act. While the *Rockwell* decision concluded that the relator in that case did not qualify as an original source, the Supreme Court's reasoning that the public disclosure provision must be applied on a claim-by-claim basis could potentially benefit many relators. For example, in *U.S. ex rel. Boothe v. Suncare*, 2007 WL 2247666 (10th Cir. Aug. 7, 2007), the 10th Circuit reversed a district court's dismissal of a *qui tam* action based on the district court's determination that some of the relator's claims were barred by the public disclosure provision. Relying on the *Rockwell* decision's requirement of a claim-by-claim analysis, the 10th Circuit held that the district court erroneously concluded that the relator's entire action was barred merely because some of the claims had been publicly disclosed.

Grassley 361 Has the Totten decision limited the ability of the Federal government to recover money lost to fraud of abuse by contractors working for government grantees?

ANSWER: As noted, the Department of Justice has filed briefs in various cases since the *Totten* decision was issued arguing successfully that the decision was wrongly decided. For example, the Department filed an amicus brief in the 6th Circuit in *U.S. ex rel. Sanders v. Allison Engine Co., Inc*., 471 F.3d 610 (6th Cir. 2006), *cert. granted*, 128 S. Ct. 491 (2007), a decision that disagreed with *Totten's* interpretation that 31 U.S.C. § 3729(a)(2) contains a presentment requirement. The Supreme Court has granted certiorari in that matter, and the Department recently filed an amicus brief supporting the 6th Circuit's ruling. Additionally, the United States has defeated attempts by defendants to expand *Totten* to require that the false claims be presented *by the defendant*. In *U.S. ex rel. Tyson v. Amerigroup Illinois, Inc*., 488 F.Supp.2d 719 (N.D. Ill. 2007), *appeal filed*, Nos. 07-2111, 07-2113 (7th Cir.), for example, where the United States and the State of Illinois collectively recovered $334.3 million, the district court rejected the defendants' contention that, because the defendant did not present any claims to the United States, *Totten* required dismissal of the Medicaid fraud claims at issue. Due in large part to such efforts, to date no False Claims Act case pursued by the Department since *Totten* has been dismissed on the basis of that decision.

Grassley 362 Have these decisions hampered the ability of DOJ to go after bad actors?

ANSWER: For the reasons stated above, to date no case pursued by the Department of Justice has been precluded by either of these decisions.

Grassley 363 Would the Department support legislative efforts to correct any problems that may have arisen as a result of these decisions?

ANSWER: We have received and are currently reviewing proposed bills S. 2041 and H.R. 4854. We understand that both bills include proposed changes in response to the *Rockwell* and *Totten* decisions. We would be happy to discuss these proposed changes once we complete our review of the proposed legislation.

Grassley 364 On June 7, 2005, then Assistant Attorney General Peter Keisler told the Wall Street Journal that there were as many as 150 pending civil and criminal cases at the Department of Justice related to pharmaceutical fraud involving Medicare and Medicaid. As a senior member of the Judiciary Committee and as the Ranking Member of the Finance Committee, which has oversight authority over both programs, this outstanding caseload is of concern to me. Accordingly, I ask that you provide updated case statistics related to pending False Claims Act cases, including: How many outstanding False Claims Act cases are currently pending under seal with the Department of Justice?

ANSWER: According to current data, the Civil Division, together with the United States Attorneys' Offices, currently have approximately 1,000 *qui tam* cases which are under seal pending the United States' decision on whether to intervene. These cases are in various stages of investigation and include many in which the parties are actively discussing settlement following a partial lifting of the seal. Defendants have an incentive to settle cases before they are unsealed, so they can announce a settlement at the same time the allegations are made public. This process benefits both the United States and relators, even though it may have the effect of prolonging the seal in some cases.

Grassley 365 How many of these cases involve potential false claims to Medicare or Medicaid?

ANSWER: Of the approximately 1,000 *qui tam* cases that are pending under seal, approximately 630 allege health care fraud. Although Medicare and Medicaid are implicated in the overwhelming majority of these cases, the Department's records do not allow us to isolate cases on the basis of specific federal health care programs.

Grassley 366 How many of these cases involve pharmaceutical pricing fraud?

ANSWER: Although the Department has resolved many *qui tam* cases involving pharmaceutical companies since June, 2005, many new cases have also been filed. Accordingly, of the approximately 1000 *qui tam* cases that are pending under seal, the number of cases alleging fraud in connection with the pricing and marketing of pharmaceuticals remains about 150.

Grassley 367 How many of these cases involve military construction contracts?

ANSWER: Of the approximately 1,000 *qui tam* cases that are pending under seal, approximately 230 allege procurement fraud, including approximately 135 cases in which the Department of Defense is the primary agency. The Department's records do not allow us to isolate cases involving military construction contracts.

Grassley 368 How many of these cases involve defense contractors?

ANSWER: As noted above, of the approximately 1,000 *qui tam* cases that are pending under seal, approximately 230 allege procurement fraud, including approximately 135 cases in which the Department of Defense is the primary agency. The Department's records do not identify defendants as "defense contractors" or allow us to isolate data on this basis.

Grassley 369 How many cases have been resolved in the last five years?

ANSWER: According to current data, the Civil Division, together with the United States Attorneys' Offices, have obtained approximately 650 settlements and judgments since fiscal year 2003 — about 500 in *qui tam* cases and 150 in other actions – totaling approximately $10 billion. In some instances, the underlying cases remain open pending appeal or outstanding claims against other defendants. Approximately an additional 1100 *qui tam* cases have been declined or dismissed during that same time period, and numerous non-*qui tam* matters have been completed as well.

Grassley 370 What is the average length of time that an FCA case is filed under seal with the Department?

ANSWER: According to current data, since fiscal year 2004, the average length of time from the Civil Division's receipt of a *qui tam* case until the Department notifies the court of its election is approximately 13 months. That does not mirror exactly the time a *qui tam* case remains under seal because our statistics use the date that the Civil Division receives the complaint, rather than the date the case was filed, and because the date on which a court orders a case unsealed may be days, weeks, or even months after the government notifies the court of its election, particularly in cases where the government declines to intervene. Accordingly, the average time that a *qui tam* case is investigated is more accurately measured by the time between the Civil Division's receipt of the case and the government's election, rather than by the length

of time a case remains under seal. Moreover, the timing of the government's election is influenced by a variety of factors, including the size and complexity of the case, the specificity of the *qui tam* complaint and the evidence the relator brings to the action, the ease of obtaining additional evidence needed to verify the allegations, the existence of related *qui tam* actions that implicate additional procedural and jurisdictional considerations, the existence of related criminal proceedings, and, significantly in cases that show promise, the ability of the parties to resolve the matter before intervention. As mentioned above, the United States often seeks a partial lifting of the seal to explore settlement possibilities before entering into active litigation, which can be prolonged and costly. Defendants have an incentive to settle cases before they are unsealed, so they can announce a settlement at the same time the allegations are made public. That incentive is lost once the case is unsealed. This process benefits both the United States and relators, even though it may have the effect of prolonging the government's election. Keeping these factors in mind, the Department's record of investigating *qui tam* cases is a good one.

Grassley 371 What can the Department do to speed up the resolution of these cases and, at the same time, obtain the full amount due and owed the Federal government as a result of the fraud? What, if any, consideration has been given to establishing a FCA support group designed to lend resources to high profile large scale fraud cases in an effort to resolve them in a timely fashion?

ANSWER: With respect to the first part of your question, please see the answer below to Question Number 375. With respect to the second part of your question, it is not clear what is meant by "a FCA support group." However, the Department's Civil Division already has a section of approximately 75 attorneys and additional support staff devoted to litigating False Claims Act cases. The section is headed by an SES Director, two Deputy Directors and other experienced supervisors, and is closely monitored and supervised by the Assistant Attorney General and a Deputy Assistant Attorney General. The attorneys in the section have the flexibility to handle fraud matters wherever they arise, and routinely assist U.S. Attorney's Offices in investigating and litigating False Claims Act cases. Large-scale fraud cases are staffed to ensure that the investigation and any ensuing litigation are handled efficiently and effectively. In addition, in the past fiscal year, additional resources for the U.S. Attorney's Offices and the Civil Division were made available by the Department to support health care fraud civil enforcement efforts.

Grassley 372 Please provide an estimate of the total potential recovery of all the current FCA cases pending against the pharmaceutical industry (including both sealed and non-sealed cases).

ANSWER: It would be inappropriate for the Department to speculate about potential recoveries in cases under investigation. Until the facts, allegations, and theories are fully developed and tested against any defenses the defendants may have, any estimate would be speculative, and would not provide a valid measure of potential recoveries.

Grassley 373 Please provide an estimate of the total potential recover of all the current FCA cases pending against the defense industry (including both sealed and non-sealed cases).

ANSWER: Please see the preceding answer.

Grassley 374 Are there any legislative recommendations the Department has for improving the False Claims Act?

ANSWER: As noted, we have received and are currently reviewing proposed bills S. 2041 and H.R. 4854, and would be happy to discuss the proposed legislation once our review is completed.

Grassley 375 What, if anything, can Congress do to strengthen the hand of the Civil Division and the U.S. Attorney's offices in prosecuting and resolving outstanding FCA cases?

ANSWER: The major sources of funds for the Department's False Claims Act enforcement efforts include the Health Care Fraud and Abuse Control account ("HCFAC") and the Three Percent Fund. The HCFAC was established by the Health Insurance Portability and Accountability Act of 1996. The Three Percent Fund was established as part of the FY 1994 appropriation for the Departments of Commerce, Justice, and State. The FY 1994 appropriation allowed the Attorney General to use up to three percent of all amounts recovered by the Department's civil debt collection activities. False Claims Act litigation comprises the vast majority of the recoveries contributing to the Three Percent Fund.

The Department's base budget for the Civil Division is devoted almost exclusively to defensive litigation – cases that require representation to ensure that the government does not lose hundreds of billions of dollars in adverse judgments and settlements. As the number of defensive cases has outpaced the availability of appropriated funds, funding for affirmative cases has increasingly relied on non-appropriated sources such as the HCFAC and the Three Percent Fund. Over the last several years, the amounts available from these sources have failed to keep pace with the increasing costs of salaries and benefits, and other costs associated with the Department's fraud enforcement efforts. The HCFAC account is subject to a cap that has been frozen, and Three Percent Fund resources fluctuate in accordance with the level of recoveries which, while very substantial overall, can vary significantly from year to year.

Thus, a significant way that Congress can strengthen the Department's ability to vigorously pursue fraud cases is to raise the cap on the HCFAC account. We encourage Congress to support the Administration's efforts to increase funding in this important enforcement area.

Grassley 376 Does DOJ need additional resources for prosecuting and resolving pending FCA cases?

ANSWER: Please see the preceding answer.

Grassley 377 What has the Department done to work with states who are seeking to enact a state false claims act under section 6032 of the Deficit Reduction Act of 2005 (DRA)?

ANSWER: We have coordinated closely with and advised the Inspector General of the Department of Health and Human Services as he renders formal guidance to states that endeavor to fulfill the mandate of the Deficit Reduction Act (DRA) and craft state false claims acts that are "at least as effective" as the federal False Claims Act "in rewarding and facilitating *qui tam* actions." This guidance typically takes the form of a letter from the Inspector General to a state in response to the state's request for a formal opinion on whether the state's statute qualifies under the terms of the DRA. We have exercised great care to assure that potential *qui tam* relators are accorded at least the same rights and incentives under proposed state laws as they are under the Federal law.

Grassley 378 What, if any, guidance has the Department provided in relation to section 6033 of the DRA, which requires employee FCA education for any government Medicaid contractor that receives more than $5 million annually from the Medicaid program?

ANSWER: At the request of the Centers for Medicare and Medicaid Services (CMS), the Department drafted language that ultimately was provided by CMS to Medicaid contractors receiving more than $5 million annually from the Medicaid program to educate their employees concerning the False Claims Act, as required under the Deficit Reduction Act. In addition, Department attorneys speaking at various health care conferences have reminded audiences of the DRA mandate to such Medicaid contractors to educate their employees about the provisions of the False Claims Act.

Grassley 379 The Federal False Claims Act was originally passed to deal with fraud and war profiteering. President Lincoln signed the FCA into law back in 1863 to prevent contractors from ripping off Union troops during the Civil War. That is why the FCA is referred to as Lincoln's Law. On June 20, 2007, The Boston Globe printed an article titled, Justice Department Opts out of Whistle-blower Suits: Cases Allege Fraud in Iraq Contracts. This article noted that the Department of Justice has declined to intervene in 10 False Claims Act whistleblower lawsuits that have raised allegations of fraud, waste, and abuse in contracts supporting our troops and providing for the construction of Iraq. Further, the article states that the Department has only reached two civil settlements with contractors in Iraq totaling $6.1 million. Given that Congress has appropriated hundreds of billions of dollars to fund our troops, support contractors, as well as reconstruction projects, I find it hard to believe that only $6.1 million has been lost to fraud or abuse by government contractors. In our own country that isn't at war, the general fraud rate for

the Medicaid program is around 3percent to 5percent, so I would imagine 5, 10, or even 15percent wouldn't be far off from the actual amount of fraud, but I'll leave the numbers to the experts. Attorney General Gonzales, how many False Claims Act cases alleging fraud in Iraq has the Department joined since 2003?

ANSWER: The Department has intervened in and is litigating one *qui tam* case involving the manufacture of flares used in Iraq and Afghanistan. In addition, we intervened in three *qui tam* cases for purposes of settlement. It is incorrect that the Department has reached only two civil settlements for $6.1 million. We have reached five False Claims Act settlements in connection with the war in Iraq resulting in the government recovering $16 million. We have additional cases under investigation, including matters in which criminal proceedings have been instigated.

Grassley 380 Is this article accurate in stating that the Department has declined intervention in 10 FCA cases alleging contracting fraud in Iraq?

ANSWER: The current figure is 12.

Grassley 381 Why has the Department declined intervention?

ANSWER: The United States declines intervention in *qui tam* cases for a number of reasons. We do not wish to affect in any way relators' rights going forward in declined cases, and therefore, as a matter of practice, we do not comment on our reasons for declining particular cases.

Grassley 382 Does the declination of intervention signal an unwillingness to pursue Iraq contracting fraud cases?

ANSWER: No. These cases are being aggressively pursued and if the investigations reveal wrongdoing, we take appropriate enforcement action, just as in any other case.

Grassley 383 How many other Iraq fraud contracting cases does the Department currently have under seal?

ANSWER: There are currently about 30 *qui tam* cases under investigation and under seal.

Grassley 386 I continue to await responses from the FBI on a number of issues, some of them months overdue. As the Department has oversight authority over the FBI, I ask that you ensure the prompt and expeditious delivery of all information requested. Often times when I inquire with the FBI about my requests, I'm informed that they have passed it along to the Department for approval. Are there currently any outstanding requests of mine pending approval at the Department level?

ANSWER: The Department is working to complete our responses and will provide them to the Committee expeditiously.

Grassley 387 If so why are they delayed and when can I expect them?

ANSWER: The Department is working to complete our responses and will provide them to the Committee expeditiously.

Grassley 388 I asked FBI Director Mueller this same question at a FBI Oversight Hearing in March, I am still waiting for a response. Former FBI agent Jane Turner recently won a $565,000 verdict from a federal jury in Minnesota. The jury found that her supervisors had made false and misleading statements in her performance reviews in retaliation for her for filing an Equal Employment Opportunity claim. I wrote to FBI Director Mueller earlier this year asking what steps the FBI is going to take to discipline the supervisors responsible for the retaliation. However, all I got back was a letter saying that the FBI doesn't comment on personnel matters. Mr. Mueller said he won't tolerate retaliation, but here was a case where a jury found retaliation. The jury found that FBI supervisors retaliated against Agent Turner, why can't the FBI tell us whether they are taking any action to consider holding accountable the people who retaliated?

ANSWER: The jury found that two of Jane Turner's former supervisors in Minneapolis retaliated against her for her complaints of discrimination. One of them, former Supervisory Senior Resident Agent (SSRA) Craig R. Welken, retired from the FBI in 2001 and the other, former ASAC James H. Burrus, Jr., retired on May 1, 2007.

Some media accounts have incorrectly identified James Casey as one of the FBI supervisors who retaliated against Ms. Turner. Mr. Casey was not assigned to the Minneapolis Division and his only involvement arose from his participation in the October 1999 inspection of the Minneapolis Division, which included the Minot Resident Agency (RA), Ms. Turner's office of assignment. That inspection resulted in Ms. Turner's "loss of effectiveness" transfer from the Minot RA back to the Minneapolis headquarters office, which the jury specifically found did not constitute retaliation.

Grassley 389 I understand the FBI may appeal the decision. Will the Department represent the FBI? Is this a wise use of FBI and Department resources?

ANSWER: The FBI, in conjunction with DOJ's Civil Division is currently evaluating an appeal of the verdict. As explained in the FBI's post-trial motions filed with the court, the jury disregarded both facts to which the parties had stipulated and the unrebutted testimony of one of the government's witnesses. In light of the jury's clear disregard of the evidence, the government believes the jury's award of lost wages and damages is unsupported by the facts and the law. After careful consideration by DOJ, the judgment was not appealed. In light of the jury's verdict, DOJ determined that an appeal was not in the best interests of the United States.

Grassley 390 Another issue I have requests outstanding for is the FBI investigation into the anthrax attacks of 2001. I was pleased the FBI provided a briefing to Senators, but I still have concerns and questions that have gone unanswered. I have learned from depositions in the lawsuit that Stephen Hatfill filed against the FBI, that FBI Director Mueller denied the lead investigator's request to polygraph FBI agents. The lead investigator said he wanted to do that in order to get to the bottom of who in the FBI was leaking information about the case to the press. I also learned that instead, Director Mueller ordered the three squads working on the case not to talk to each other – to put up stovepipes to prevent sharing information. Why wouldn't Mueller allow the investigators to do what they felt was necessary to find out who at the FBI was leaking?

ANSWER: The FBI Director has a clear policy against the leaking of confidential law enforcement information, and his communications with those involved in the anthrax investigation were consistent with this policy. As indicated in the Director's deposition, he believes that generally the use of polygraph examinations is productive in investigations involving a narrow universe of individuals to be examined. That was not the case regarding the anthrax investigation leaks, where the universe of possible leak sources included the FBI, the U.S. Postal Service, Congress, and others. More central to this particular case, though, is that the leak investigation was handled by DOJ's OPR, not by the anthrax investigation team. In fact, we presume DOJ's OPR would have objected to outside activities that might impact their investigation.

Grassley 391 Did the FBI take any other steps to find out who was responsible? For example, were the telephone records of agents with access to the information examined to find out if they had been talking to the reporters who published sensitive information? If not, why not?

ANSWER: The FBI cooperated fully with the investigation by DOJ's OPR. FBI defers to DOJ's OPR with respect to the acquisition of telephone records and other investigative steps.

Grassley 392 Rick Lambert, the former lead investigator, testified that putting up walls between the investigators working different aspects of the case risked keeping the FBI from "connecting the dots" like before 9/11. Given his strong concerns, why did Director Mueller overrule him and direct that he "compartmentalize" the case?

ANSWER: It is critical that investigators have access to all relevant information when they are seeking to identify relationships among various facts. Particularly since the attacks of September 11, 2001, the FBI has placed great emphasis on information sharing, and has instituted numerous mechanisms to ensure that we "share by rule and withhold by exception." One "exception" (meaning, one circumstance in which information sharing is not appropriate) is when such sharing would not benefit the investigation at issue, such sharing may adversely affect that investigation (such as by encouraging or contributing to information leaks), and the absence of such sharing is not likely to adversely affect other investigations. This was such a case.

Grassley 393 Also in the deposition transcripts in the Hatfill lawsuit, there is an indication that the FBI did some kind of background records check on constituents who wrote to their member of Congress about the case and whose letter had been referred to the FBI for comment by the Member of Congress. Does the Department routinely do these records checks on citizens who contact their elected representatives to inquire about an FBI matter?

ANSWER: According to the referenced transcript, the deposition witness indicates that when we receive constituent and similar inquiries the FBI queries "ACS." Although the witness indicates that Automated Case Support (ACS) is "the system that the FBI employs and generates peoples' criminal background history," this is not the case. The FBI's ACS system contains FBI-generated documents, including investigative information and other FBI documents uploaded pursuant to FBI policy. While ACS is queried by those familiar with its contents and uses to address the substance of an inquiry (typically by obtaining either substantive case information or the identity of a subject-matter expert who can assist in responding to the inquiry), FBI practice is not to use ACS to obtain information regarding the person making the inquiry, such as a constituent.

Grassley 394 Were records checks performed on all constituent mail referred to the FBI, or only on those involving the Amerithrax investigation? Were records checks performed only on authors of letters critical of the FBI or supportive of Stephen Hatfill?

ANSWER: ACS queries are conducted for the purpose of obtaining substantive information to respond to constituent inquiries, not to obtain information about the constituents themselves. This is the case regardless of whether the inquiry concerns the anthrax investigation or otherwise.

Grassley 395 Are Members of Congress given any notice that referring a constituent letter to the FBI may result in an FBI records check on their constituent?

ANSWER: Referring a constituent letter to the FBI does not result in an FBI records check on the constituent.

Grassley 396 On January 23, 2006, I wrote to FBI Director Mueller regarding the Office of Professional Responsibility (OPR) and a discrepancy in disciplinary sanctions between rank-and-file agents and supervisors. Specifically, I noted the case of Special Agent Cecilia Woods who was retaliated against after becoming suspicious about her supervisors affair with an FBI informant. Ms. Woods was given 24 days of suspension for unauthorized disclosures to her attorney and an acquaintance, which was 10 more than her supervisor who was having an affair with an informant. I, have repeatedly asked for documents in the matter and was informed on March 8, 2006, by the FBI that "the FBI a

party in a pending administrative proceeding relating to the allegations raised by Ms. Woods. Given that, and considering the confidentiality of the administrative process, it would be inappropriate for us to comment further" It is my understanding that recently the pending administrative proceeding was closed, however, I have not received any new documents of information. Will you personally ensure that the FBI is responsive to my requests regarding Cecilia Woods now that the pending administrative proceeding is closed?

ANSWER: We are not certain to what March 8, 2006, response the question refers, but the FBI did respond to a Question for the Record (QFR) based on the May 2, 2006, hearing using language similar to that quoted above. We are now able to provide a substantive response to that QFR, which was: "Have any of those conclusions been re-examined in light of her former supervisor's deposition testimony in her EEOC case, in which Woods alleges he admitted to sexual activity with an individual who was a paid informant and a foreign national?"

The FBI's Office of Professional Responsibility (OPR) reviewed this matter. Ms. Woods' supervisor did not admit to engaging in sexual activity with an informant during his deposition in her EEOC case. The supervisor admitted to engaging in extramarital affairs with three Panamanian nationals, none of whom was the informant. OPR's inquiry of the supervisor substantiated that he had engaged in a sexual relationship with a Panamanian national. After the closure of the OPR case, the FBI's Security Division, as part of a security reinvestigation, conducted a polygraph examination of the supervisor, during which he admitted having sex with two additional Panamanian nationals. After revealing his affairs with these three women, the supervisor was polygraphed on the question of whether he had engaged in sexual relations with any other foreign nationals. His negative response to this question was found to be not indicative of deception**.**

Grassley 397 On March 19, 2007, I wrote to FBI Director Mueller regarding the Justice Department Inspector General's report, "A Review of the Federal Bureau of Investigation's Use of National Security Letters." In this letter I focused upon the page 86, which had a subtitle, "Using 'Exigent Letters' rather than ECPA National Security Letters." This section described how FBI headquarters division known as the Communications Analysis Unit (CAU) obtained information using 739 so-called "exigent letters". Accordingly, I requested all unclassified e-mails related to the exigent letters issued by the CAU. To date, I have not received a response to this request, despite having sent a letter, and asked Director Mueller in person on March 27, 2007. Further, this request was joined at the hearing by Chairman Leahy. Will you personally ensure that the FBI will immediately respond to this request and provide this information to me expeditiously?

ANSWER: The Department is working to complete our response and will provide it to the Committee expeditiously.

Grassley 402 In March of 2007, The Inspector General issued a progress report on the development of the Integrated Wireless Network in the Department of Justice. The report exposed the inadequacies of DOJ's communication systems, which currently operate on technology that is more than a decade old and has very little functionality. Even more disturbing is the fact that most agencies within DOJ operate on different frequencies. As a result, there is little to no interoperability between communication systems. This lack of interoperability could be problematic in the event of another terrorist attack or natural disaster that requires a coordinated emergency response by DOJ. What progress has been made on the development of an Integrated Wireless Network since the Inspector General's report in March of 2007?

ANSWER: The Department continues to advance the Integrated Wireless Network (IWN) work which began in the Pacific Northwest. The IWN is operational from Blaine, WA (US-Canadian Border) moving south to the Portland, OR metropolitan area along the Interstate 5 (I-5) Corridor and 23 sites on the Olympia Peninsula. The final Washington/Oregon system (which will be fully operational by July 2008) will provide interoperable communications coverage over 200,000 square miles from the Canadian to the Northern California Border. The system supports 800 users represented by the following:

- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Drug Enforcement Administration
- Federal Bureau of Investigation
- US Attorney Portland
- United States Marshals Service
- Treasury Inspector General Tax Administration
- Internal Revenue Service, Criminal Investigations
- Immigration and Customs Enforcement
- Federal Emergency Management Agency
- United States Coast Guard
- Social Security Administration, Office of the Inspector General
- NOAA Office for Law Enforcement

When complete, the system will support 1000 or more Federal law enforcement personnel in Washington/Oregon and will enable interoperability to key State and Local Public Safety Agencies such as:

- King County, WA
- Pierce County, WA
- Port of Seattle, WA
- Snohomish County, WA
- Washington State Patrol
- City of Portland, OR
- Oregon State Police
- Multnomah County

The Department is also working to ensure sufficient coverage and capacity for the 2008 Olympic Trials in Eugene, OR as well as support for the 2010 Olympics in Vancouver, Canada.

In 2008 the Department will complete its High-Risk metropolitan Areas Interoperability Assistance Project "25 Cities". The 25 Cities Project was developed at the request of the House/Senate CJS Appropriations Subcommittee staff in 2003. The project provides Federal law enforcement/homeland security agencies with the ability to inter-connect and also communicate with key local authorities (*e.g.*, fire police, emergency medical services) in 25 high-risk metropolitan areas. Several cities (New York, Denver, Atlanta) are undergoing expansion and/or enhancements to increase capabilities as requested by partner agencies in those cities. With the Presidential elections fast approaching and the Democratic and Republican National Conventions planned for Summer of 2008, the Wireless Management Office, at the request of the Department's components, has initiated a solution for Minneapolis and St. Paul, MN while simultaneously providing enhancements in Denver, CO to ensure reliable radio coverage and daily interoperability operations as required.

Several cities have reported positive communication improvements during national events and emergencies: Super Bowl 2006-Detroit, MI; Super Bowl 2005-Jacksonville, FL; National Labor Relations Board office hostage incident (2006)-Phoenix, AZ; Multi-jurisdictional pursuits on Atlanta, GA area interstates.

High-Risk Metropolitan Areas Interoperability Assistance Project "25 Cities"

Atlanta, GA	***Miami, FL***
Baltimore, MD	***Minneapolis/St. Paul, MN***
Boston, MA	***New Orleans, LA***
Charlotte, NC	***New York, NY***
Chicago, IL	***Philadelphia, PA***
Dallas, TX	***Phoenix, AZ***
Denver, CO	***Portland, OR***
Detroit, MI	***San Diego, CA***
Hampton Roads, VA	***San Francisco, CA***
Honolulu, HI	***Seattle, WA***
Houston, TX	***St. Louis, MO***
Jacksonville, FL	***Tampa, FL***
Los Angeles, CA	***Washington, DC***

Since the March 2007 OIG Report, the Department has completed a competitive acquisition process in order to identify a lead IWN Systems Integrator. General Dynamics was notified in April 2007 of the down-select decision and a subsequent Task Order was awarded in August 2007. Initial tasks include standing up a Project Management Office and developing the national IWN Architecture, Implementation Plan and Cost Model. The Department is positioned to execute on the IWN Program across the country, provided that adequate funding can be obtained to move beyond the pilot stage. Simultaneously, the Department is working with its law enforcement components to implement an interim strategy to mitigate the inadequacies of the existing legacy systems until the IWN is deployed to critical areas around the country.

In addition, the Department sponsored a two-day Wireless Summit which was held on September 17th and 18th. At his meeting attended by all DOJ components, the parties refined the overall strategy and priorities for the IWN program. All areas including management, operations, contracts, technology and integration were covered. The PMO is in the process of documenting the results and validating the path forward for the program.

Grassley 403 Has the Department of Justice reached an agreement with the Department of Homeland Security and the Department of the Treasury on a unified program approach to the Integrated Wireless Network?

ANSWER: Yes, the Department has negotiated a new MOU with DHS and Treasury. The three Departments remain committed to the objectives of an integrated wireless environment across the three agencies, including: (1) effective interoperability amongst Federal law enforcement/homeland security agents; (2) interoperability between the Federal agencies and the

State and local agencies with which we partner; (3) interagency leveraging of Federal investments in communications infrastructure; and, (4) support for and endorsement of standards-based technologies that stimulate improved interoperability, functionality and market competition. The DOJ Deputy Attorney General and DHS Deputy Secretary have both signed a new MOU outlining those commitments. The MOU is presently being staffed for the Treasury Deputy Secretary's signature.

Nonetheless, the DOJ and DHS do have different perspectives on the requirements and strategies for fulfilling them and the best means to provide tactical wireless communications for our respective field agents and officers. These perspectives are driven by the subtle but important differences between the missions, and the methods and areas of operation for each Department. The new MOU recommits the Departments to the objectives stated above, while providing each with the flexibility needed to continue operations in the field. The DOJ strategy is to deploy a network that consists of a combination of trunked, conventional, and transportable land mobile radios which will be integrated with 3G and 4G commercial wireless communications that are augmented to meet DOJ security, reliability and functional requirements. This hybrid approach will allow the Department to meet component communication needs in a flexible and cost effective way that leverages all aspects of the continuously evolving wireless industry, and also maintain interoperability and compatibility with our federal partners through the use of standards based technologies.

A copy of the text from the almost final MOU is attached to provide an indication of the level of cooperation that has been agreed upon by the three Departments.

Grassley 404 If not, does the Department of Justice plan to move forward with an Integrated Wireless Network program as a single department program? Why or why not?

ANSWER: The Department of Justice plans to move forward on IWN, as it is a critical need for our law enforcement personnel. The older systems are beyond their useful life and must be upgraded and/or replaced. If adequate funding for IWN is provided, the plan is to increase functionality beyond the current capabilities of analog radio systems to improve the communication (and interoperability) that is deployed to the users across the country.