

Transcript of House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies Hearing on Proposed Fiscal 2012 Appropriations for the Justice Department

Hearing Held on March 1, 2011

WOLF:

Good morning. The hearing will come -- come to order.

I want to welcome you, Mr. Attorney General. And you're testifying today on your fiscal year 2012 budget request, independent rescissions, and scorekeeping adjustments. You're seeking new discretionary budget authority of \$28.4 billion, an increase of \$336 million, or 1.2 percent above F.Y. '10 and current C.R. levels.

Your budget request for F.Y. '12 is in large part driven by rapidly growing requirements in your detention and incarceration accounts. You're requesting program increases of \$461 million just to provide the necessary capacity for federal prisoners and to secure housing of detainees in the custody of the U.S. Marshall Service.

There are smaller yet important increases requested in the area of national security. We'll have some questions on that.

As in the case of last year, it was unclear what direction you're going to take in attempting or not to carry out the president's executive order related to the closure of Guantanamo Bay.

Congress has not provided any of the resources requested in the past for these purposes, and the F.Y. '12 request does not include new requests for prosecutions or for acquisition of a detention facility in the U.S.

We'll also have some questions about gangs and other issues like that.

But before we go to your testimony, I want to recognize the minority -- ranking minority member, Mr. Fattah, for any comments he might make.

FATTAH:

Let me thank you, Chairman Wolf, for scheduling this very important hearing. And I want to thank the attorney general for his appearance and participation this morning.

And moreover, I want to thank the attorney general for the extraordinary leadership that's being provided by the department. And we see it in the everyday headlines that showcase both major arrests in terms of Medicare fraud, organized crime, gang prevention.

But the work of the department is obviously vital to our country, and we appreciate your appearance today. And look forward to you addressing the appropriation needs of the department, because, obviously, given the national security duties relative to many of the agencies in the department, it is -- it is critically important that you have the resources you need to carry out your duties.

Thank you.

WOLF:

Thank you, Mr. Fattah.

Mr. Rogers was going to be here to make a statement, and I think he's at the Republican conference. So when he comes, we may break -- break for that.

With that, Mr. Attorney General, we welcome you and look forward to hearing your testimony. And your full statement will appear in the record.

HOLDER:

Good morning, Chairman Wolf, Ranking Member Fattah, and distinguished members of the subcommittee. And thank you for the opportunity to discuss the president's fiscal year 2012 budget for the Department of Justice and to provide an update on the department's progress as well as the department's priorities.

Today, I come to you on behalf of my colleagues, more than 117,000 dedicated men and women who serve our nation's Justice Department in positions and offices all around the world. Above all, I come to you on behalf of my fellow citizens.

As our nation's chief law enforcement officer, protecting the safety of the American people is my most important obligation. At every level of the department, this is our primary focus.

As you know, in recent years, our nation has confronted some of the most significant terrorist threats in the homeland since the September 11th attacks. And the Justice Department has played a vital role in combating these threats.

Since 9/11, there have been hundreds of defendants convicted of terrorism or terrorism-related violations in federal court. And during 2009 and 2010, the Justice Department charged more defendants in federal court with the most serious terror related offenses than in any similar period since September the 11th.

Just last week, in Chairman Wolf's district, Zachary Chesser, a resident of Northern Virginia and a United States citizen, was sentenced to 25 years in prison for attempting to provide material support to the terrorist organization al-Shabaab, communicating threats against Americans, and encouraging violent jihadists to impede and obstruct the work of law enforcement.

Also last week, FBI agents arrested an individual in Texas for attempted use of a weapon of mass destruction. Thanks to the around-the-clock work of hundreds of FBI agents, analysts, and federal prosecutors, this alleged plot was thwarted.

Now, beyond our critical national security efforts, the department has made, I believe, extraordinary progress in fulfilling the pledge that I made before this subcommittee nearly two years ago: that we would restore integrity and transparency at every level of our work and that under my leadership every decision made and every policy implemented would be based on the facts, the law, and the best interests of the American people, regardless of political pressures or consequences.

I'm also proud to report that the department has taken meaningful steps to safeguard civil rights in our work places and housing markets and voting booths and in border areas; to protect our environment; and to bring our nation's fight against financial and health care fraud to unprecedented levels.

In fact, in the last year, the department has announced the largest financial and health care fraud take-downs on record. And in fiscal year 2010, the department's Civil Division secured the highest level of health care fraud recoveries in history, \$2.5 billion, as well as the second largest annual recovery of civil fraud claims.

Our Criminal Division saw similar success. In fiscal year 2010, the Criminal Division participated in efforts including joint enforcement actions with our U.S. Attorneys' Offices throughout the country that secured more than \$3 billion in judgments and in settlements.

In addition to our work to secure these recoveries, we have made strategic investments and we have taken historic actions to combat gangs and both national and international organized crime networks. We have harnessed the new tools and authorities that Congress made available to us to investigate and to prosecute the -- prosecute hate crimes.

And we have responded to and must continue to respond to the recent nationwide surge of law enforcement shootings by ensuring that law enforcement officers have the tools, the training, and the protective equipment that they need and deserve. This is a particular concern to me. This is a very, very real concern of mine.

That is why today, overall, I'm here to ask for your support of the president's fiscal year 2012 budget for the Department of Justice. Among the priorities identified in this budget are strengthening national security; preventing and combating crime; maintaining safe prison and detention facilities; supporting effective intervention and reentry programs; and assisting our state, local, and tribal law enforcement partners.

The budget proposal also places a premium on achieving new savings and efficiencies. And it also reflects hard choices, such as program reductions that we have made in order to focus our resources on our highest priority programs, to respond to current fiscal realities, and to act as sound stewards of taxpayer dollars.

The fiscal year 2011 continuing resolution has presented significant budget challenges for the department. Given that the current cost of operations and staffing is considerably higher than it was last year, I have announced financial restrictions that I consider difficult but necessary, including ordering a temporary hiring freeze and curtailing non-essential spending. My hope is that these measures will pre-empt more severe measures in the future.

But even with these directives in place, I submit to you that the department's fiscal year 2012 budget request, which itself reflects many tough decisions, is essential to our national security and law enforcement work, among other priorities that matter deeply to the American people.

With these investments and with your support and steadfast partnership, I'm really confident that we can continue to build on our past successes and make good on our core promises of ensuring safety, opportunity, and justice for all.

Thank you.

WOLF:

Thank you very much.

And I understand from your staff that a member of your family could have a health care problem. If at any time you feel necessary to leave, that would be totally appropriate. What we would do is just recess the hearing, and we would reconvene in a month or two, or whatever would fit into your schedule.

So I do want you to know -- you know, as a family with five kids and grandkids and -- you know, family is number one. So if you feel at any time, just tell us and we will -- we will recess the hearing.

HOLDER:

I appreciate that, Mr. Chairman.

WOLF:

The Freedom of Information Act -- I briefly discussed this, but I want it just to be on the record. A review of recent responses to freedom of information requests by the department conducted by former Civil Rights Division Attorney General -- Attorney J. Christian Adams showed that political and ideological factors may have influenced how quickly responses were provided.

He provides a list of information from the department's Freedom of Information logs, including the requester and how long the department took to comply. Fred McBride from the ACLU, redistricting coordinator, got same-day service. Kristen Clarke, NAACP Legal Defense Fund, who sought the dismissal of the new Black Panther party case, same-day service. Jerry Seper of the Washington Times, six months. Jed Babbin of Human Events, six months.

In May of 2009, I made a Freedom of Information request pertaining to your efforts to secretly release a number of Guantanamo Bay detainees and resettle them into Northern Virginia. The department failed to provide the information I requested -- after many, many months, never even responded.

The Freedom of Information Act requires the department to respond to a request within 20 days and to provide the requested documents within a reasonable time frame afterward. Why did Mr. Adams find that no conservative or no Republican or no one on the other side had received a reply in the time period prescribed by law?

HOLDER:

Well, I'm not sure what research Mr. Adams has done. I've looked into the issues that were raised in, I guess, a blog or an article or something that he wrote. As best I can determine, there is no ideological component with regard to the response times that the Justice Department makes to these requests.

More complex requests take more time. Requests that are relatively simple in nature can be answered faster. But I can assure you that there is no ideological component with regard to how we respond to FOIA requests.

WOLF:

I have never even received an answer.

HOLDER:

Well, I'll certainly look into anything that you have submitted that is outstanding. We try to respond to letters, to FOIA requests.

We have tried to make a part -- as part of this transparency effort that I talk about in my opening statement, we've tried to be very responsive when it comes to FOIA requests, whoever submits them. We have metrics that we use to gauge our success in that effort. And I think we have done pretty well reducing our FOIA backlog.

To the extent there are still issues, I'd be more than glad to work with you on those. But our -- our hope is to try to be responsive to requests that we get.

WOLF:

Could you get back to us by the end of the week?

HOLDER:

I will endeavor to work on this as quickly as we can and try to delineate those things that are outstanding.

I'd say that in -- you know, in preparation for the hearing, one of the things I asked about was where we stood with regard to responses to letters, I guess, that you had sent.

We talked about this, I guess, a little before the hearing. And I was told by the folks in the department -- we only have, I guess, at this point, two outstanding letters with regard -- responses with -- to letters that you have sent us.

WOLF:

The last letter was 11 months in answering. And it came in in anticipation of the hearing. Eleven months is not a very good time for the department.

Well, we'll wait until the end of the week. And short of that, I think we're going to ask for an I.G. to look at it. Because I think you have an obligation, certainly, to treat Freedom of Information requests fairly. And so we'll see how we go by the end of the week.

Last Wednesday, you announced that you and the president have concluded that Section 3 of the Defense of Marriage Act that's applied to the same-sex couples under state law is unconstitutional. As a result, the Justice Department no longer intends to defend the law against two ongoing challenges.

When an administration makes a determination that a duly enacted overwhelmingly supported statute -- I think it passed 360 to something here in the Congress -- is unconstitutional, Congress has a reason to be concerned. After all, the Justice Department has a duty to defend the constitutionality of the laws of the United States and has a long history of doing so.

This does not mean that Justice officials must believe in the wisdom of the law or its policy implications, only that there are good faith and reasonable arguments to be made in defense. It is, in short, a very low bar.

That is the approach taken by former Solicitor General Ted Olson in robustly defending a campaign finance reform law that Citizen Olson, a conservative Republican, would surely have rejected. The Defense of Marriage Act was passed in 1996 by a vote of 342 to 67 in the House.

The very fact that this law passed the House and the Senate and was signed into law by the president provides a strong presumption that the law is constitutional. In addition, I believe almost 40 states have passed a similar law.

According to CRS, the Department of Justice is legally obligated to defend all acts of Congress where reasonable and good faith argument can be made that the act is constitutional. I realize reasonable in this case is defined by DOJ. But the fact that DOJ has defended this act previously -- Section 3, in particular -- fatally undermines your assertion that no reasonable arguments can be made in its defense.

Do you contend that your previous arguments in defense of this act were not made in good faith?

HOLDER:

No. The situation that we face is a different one. The previous arguments that we've made in support of the act occurred in jurisdictions where there was an existing standard, the rational basis standard, a more permissive standard. Applying that standard, the feeling in the department was that we could, in fact, defend the constitutionality of the statute.

Two cases at issue exist in the 2nd Circuit, which does not have, I think, a standard with regard to these cases. We then had to make the determination what standard should apply.

We looked in the department. I made a recommendation to the president that given the history of discrimination that gays and lesbians have endured in our nation's history and for other reasons that a heightened scrutiny standard was appropriate.

Applying the heightened scrutiny standard as opposed to the rational basis standard, we made the determination that the statute could not pass constitutional muster. And the president instructed me to not defend the -- not defend the statute on that basis after I made a recommendation to him that, in fact, we did not think that it could pass constitutional muster under a heightened scrutiny standard.

WOLF:

Your decision to abandon your duty to defend this law arose in proceedings and circuits where no controlling legal precedents exist. Considering the fact that DOJ has vigorously defending the law in the past, can you see why this would be viewed as a case of political opportunism?

HOLDER:

Well, I -- you know, I can't assess why -- what other people would -- how other people would view this. I can tell you that what we did was apply the facts and the law in a neutral and detached way and made the determination that the announcement that I made was an appropriate one.

It was not a decision that I took lightly. We take very seriously our responsibility to defend statutes that Congress has passed. We have defended the very statute that we are talking about in those circuits where there was existing law and where we thought the statute could pass constitutional muster on that -- that lower -- lower standard.

It is not -- it's unusual, but it occasionally happens that the department will refuse to defend a statute that Congress has passed. There are a number of instances where that has occurred in the past.

In, I guess, 1990, now Chief Justice Roberts declined to defend a statute that Congress had passed in the case of *Metro Broadcasting v. the FCC*. So it is not unheard of. It is -- it's unusual, though.

WOLF:

The Washington Post editorial board pointed out in an editorial the Justice Department is institutionally tasked with defending duly enacted congressional legislation. This does not mean that Justice Department officials must believe in the wisdom of the law or its policy implications, only that there are good faith and reasonable arguments to be made in its defense. It is, in short, a very low bar. That is the approach, as I mentioned earlier.

The Obama administration's tactic, it says, "could come back to haunt it. What would the president say, for example, if a conservative Republican administration in the future attempted to sabotage the Obama health care initiative by refusing to defend it against unconstitutional attacks?"

Are there -- are there other laws down there that you find difficult to make a reasonable defense on that we should expect?

HOLDER:

I -- again, we take seriously the obligation that we have. We have sent letters to Congress in the past. During this -- of course, in this administration, I've signed each one of those. I think on maybe 10 occasions, where for a variety of reasons, some technical, we have declined to defend a statute that Congress has passed.

We, again, will look at these on case-by-case basis, mindful of the historical -- historic obligation that we have and that we have followed to defend statutes that Congress has passed. We've shown no unwillingness to do that, and this is irrespective of what we think about the wisdom of the statutes that Congress has passed.

WOLF:

In the past, DOJ has encouraged Congress to engage attorneys in the defense of acts that the Justice Department would not defend. Do you encourage Congress to do that in this case?

HOLDER:

Well, we did what I think was a responsible thing, which was to announce our position well in advance of the deadlines that were -- had been set by the court that is involved so that Congress could make its own determination as to how it wants to proceed.

WOLF:

Well, I -- I think it's highly unusual for the Justice Department to pick and choose on something that's passed the Congress by a vote of over 360 votes, signed by the president, by a Democratic president, by President Clinton. There are similar laws in 40 different states. It almost looks like a political decision more than anything else that I can say. But...

HOLDER:

Well, I will say that, you know, I think the world's legal landscape has changed in the 15 years since Congress passed DOMA. The Supreme Court has ruled that laws criminalizing private homosexual conduct are, in fact, unconstitutional. Congress has repealed the military's "don't ask/don't tell" act (sic). Several lower courts have ruled DOMA itself to be unconstitutional.

So I think that we are -- the landscape has changed fairly fundamentally. And when one also looks at the historic discrimination the gays and lesbians have been subjected to, I think the decision that the president made -- and, again, I'm not hiding -- upon my recommendation, I think, is appropriate.

WOLF:

Well, I think it's inappropriate, and I think it's a bad decision. But we'll see how history treats it.

Your budget request states that defending national security from both internal and external threats remains the department's highest priority. Yet, the funding increases for national security programs are fairly modest, especially when compared to the increases for prisons, \$461 million, and for cops hiring, \$302 million.

The increases in national security programs are \$128.6 million and are almost all in the FBI's budget. This is less than half the amount you sought for such increases in the F.Y. '11 budget, none of which have been funded.

What are the biggest gaps in fulfilling the department's national security mission, and how does this budget address those gaps?

HOLDER:

Well, I think, you know, one of the things that we need to do is to make sure that we have the intelligence capabilities that we need, that we have bodies in order to do the very important work that has been set upon us. We have to have a very robust FBI.

The FBI is really at the heart of our counterterrorism efforts. And it is for that reason that we have requested additional money there.

We looked at -- in formulating this budget, we looked at what -- and given the lean budget times that we have, we have tried to formulate a budget that will respond to the needs and responsibilities that we have, while at the same time being mindful of the fact that we are not in a situation where, frankly, we were just a couple of years ago. And I think the budget that we have submitted will allow us to fulfill our national security responsibilities in addition to the other things that you had mentioned.

WOLF:

I'm going to ask a couple on Guantanamo. But, Mr. Fattah, I'll be going to you -- so you can know.

You have sought funding in previous years to prosecute Guantanamo detainees in U.S. courts and to acquire and fit out U.S. prison space for the detention and incarceration. The Congress has not provided for funding, and there is no request for any such activities in your F.Y. '12 request.

Can you update the committee on exactly what plans are and what budget requirements are, if any, for activities related to the department's responsibilities under the executive orders on Guantanamo?

HOLDER:

Well, it is still the intention of the administration to close Guantanamo. Guantanamo serves as a recruiting tool for Al Qaida. All the intelligence tells us that. It has served as a wedge between the United States and some of its traditional allies.

Countless numbers of people who are steeped in these issues, Republicans as well as Democrats, have indicated that the closure of Guantanamo will help us in our fight against those who have sworn to do harm to the American people and American interests around the world.

We want to close Guantanamo. We also have indicated that we will make decisions about how we want to do this. We have to deal with congressional statutes, restrictions, that have been put in place -- unwisely so, I think, as I indicated in a letter that I sent to Congress about those restrictions. The president in a signing statement indicated that he thought they were unwise and that he would work to have them repealed. I agree with the president's statement.

So we have to deal, however, with -- with that reality in making determinations as we structure the budget request that we send up to you.

WOLF:

I think you're -- just for the record, I want to make sure it's answered. The thought that Guantanamo Bay is a recruitment tool -- (inaudible) I hear from the administration. The first bombing of the World Trade Center took place before Guantanamo Bay was there. The bombing of the Tanzania American embassy took place -- the Kenya -
- Khobar Towers, USS Cole.

And I don't know how many Republicans or Democrats, quite frankly -- because even in the previous Congress, there was no will -- which was a Democratic Congress -- to really close Guantanamo. And most members strongly disagree with the administration and you on moving Khalid Sheikh Mohammed to -- to New York City.

So what -- what are the plans? What are -- you've been quoted on previous occasions to say -- what are the plans now? What should someone expect with regard to Guantanamo and with Khalid Sheikh Mohammed?

HOLDER:

Well, as I said, we are going to work to try to close Guantanamo. We put together a task force that included law enforcement personnel, people from the intelligence community, lawyers, to look at the 242 people who were in Guantanamo when this administration took office. I think, count now, is about 170 or so. We have categorized each of those people, put them into appropriate buckets, I will call them, in an attempt to close Guantanamo.

Again, this is -- you know, I start my day at 8:30 every morning with a briefing about the threat stream for the past 24 hours. It's a compilation of all that the intelligence community has found.

And I'm not revealing anything to say this. But you see on a -- you know, not every day, but I think on a fairly consistent basis, indications that the existence of Guantanamo is something that Al Qaida uses in its recruiting efforts. It is simply a fact.

Now, you're right. Those incidents that you talked about occurred before -- before, I guess, the existence of Guantanamo. But Guantanamo, fairly or unfairly, exists as a -- as a thing that is used against us by -- by those who have sworn to harm us and who have in the past demonstrated the capacity, a capability to harm us. And it is for that reason that we feel as strongly as we do and we are as determined as we are to close that facility.

WOLF:

Do you think it will be closed by the end of the president's first term?

HOLDER:

I don't know. We will do all that we can. We have to, obviously, work with Congress. Congress has put barriers in place to what I think is what we should be doing, and so we'll have to try to work through those restrictions and work with our allies to try to come up with a way in which we can -- which we can do that.

WOLF:

I'm concerned about terrorist recidivism among those transferred from Guantanamo back to their home countries or to third countries. Your head of legislative affairs just recently -- again, this is another indication -- recently replied to my letter of last March -- that's 11 months -- about these concerns.

In the intervening 11 months, the situation has gotten worse. In December, the DNI released an assessment that 150 former Gitmo detainees are confirmed or suspected of reengaging in terrorist or insurgent activities.

That's 25 percent of all those released, and a substantial increase over previous reports. The number of confirmed recidivists increased from 27 to 81. Presumably, these transfers were only done when adequate security measures were pledged by the receiving government.

What is the department doing to make sure that these governments can now live up to the supervision, particularly in light of what's taking place in some of those governments around the country -- around the world?

HOLDER:

Well, with regard to that recidivism, I mean, that's obviously something that we take very seriously. And those people who go back to the fight -- I guess that's the expression that's used -- are people who we will, you know, hunt down and bring to justice.

WOLF:

Have any Americans been killed by anyone who's gone back to the fight, as you say?

HOLDER:

I'm not aware of that. I don't know.

WOLF:

Wouldn't that be something to find out, though, if we had somebody and released somebody, and he then killed somebody? The administration released several back to Afghanistan.

To have somebody from Guantanamo Bay who's been down there serving with Khalid Sheikh Mohammed to be released back to Afghanistan, and the administration was -- were -- you were releasing people back to Yemen -- only after a number of people raised the issue, but people were saying they're concerned.

And so I guess -- could you check for the record to see if any who have been released, have been captured or have been picked up have been involved with regard to the death of any Americans?

HOLDER:

Well, I mean, as one looks at the -- the rate of recidivism, I think -- there's an interesting statistic, at least to me. With regard to those that have been released during the time of the Obama administration -- we have a recidivism rate of about 7 percent. That compares to a rate of about 25 percent under the previous administration.

I think that's a function of the fact that we've been very careful in how we made determinations as to how people at Guantanamo should be treated.

And the numbers with regard to those who have been released during this administration -- we're talking about the possibility -- and I guess of the 67 people who have been transferred, there are two that have been confirmed -- two - - and then three who are suspected of reengaging. That's three possibles, two confirmed out of the 67. As I said, that comes to about -- about 7 -- about 7 percent.

Again, any kind of recidivism is serious and something that we -- that we take seriously.

I'd also note that since 2009, there has been a congressional restriction -- or obligation that we have had to run by Congress the people who, in fact, were going to be released from Guantanamo. That has been done in every case in which this administration has released anybody from Guantanamo. And we've never heard an objection from anybody in the Congress about that.

WOLF:

Mr. Attorney General, I have objected, number one. And, number two, I offered an amendment which was rejected - - we hope to offer it again -- to make those releases public so the public knows. They're all top secret, secure.

We take a look at every one that's done. But most members of Congress don't know who's being released, when they're being released. So you haven't heard anything because there's been no disclosure and dialogue. The amendment that I had would have made it public to release.

So I guess I'm going to go to Mr. Fattah. The last question is, can we expect any additional transfers in the near future?

HOLDER:

There are, you know, congressional restrictions that we have in place. We still are endeavoring to close Guantanamo, and we will try to continue those efforts. But we will also be mindful of the obligations that we have under existing congressional restrictions and communicate whatever we have to to Congress.

WOLF:

OK.

Mr. Fattah?

FATTAH:

Thank you, Mr. Chairman. And, obviously, a wide area of issues have been covered, but why don't we start where you left off on Guantanamo.

Former Speaker Newt Gingrich appeared before a panel discussion here in the Congress almost a decade ago, after 9/11. And we were having this discussion about the United States and our -- our ideals as a nation, as a country that operates under the rule of law.

And the chairman would recall that under President Bush, the first President Bush -- I think the chairman even joined in -- there were complaints lodged against the -- against China for arresting people with no charges being made public and no trial. And so there were no charges, there was no trial. And we said that China was operating in a way in which it was in violation of international law and under the guise of a country operating under the rule of law.

The biggest concern about Guantanamo is that our own country -- and I go back to Speaker Gingrich; I asked him this question. I said, "Given post 9/11, given Guantanamo, you know, how do we talk about the rule of law in international company?" You know, how do we say it's OK now to arrest someone without charges, with secret evidence, hold them indefinitely, and say that that's a permissible act given our criticisms of China and criticism of other countries acting in this way?

So I'm less concerned about Al Qaida using it as a recruitment tool. I'm more concerned about our own justification for how we take someone, arrest them, and don't make the -- the basis of the arrest known, don't allow them to have an attorney, don't try them at any point, and hold them indefinitely at Guantanamo, and how we then say as a nation that we're operating under the law.

So my -- my concern is a little bit different from the chairman, and I think that it -- it takes away our ability. When you saw President Bush, Sr., you know, aggressively attack China for doing this -- I wonder what we would do today, given our own actions.

But I do think it's of note that the chairman makes an important point that people have been released who have returned to activities that are of concern to us. They've been released under the previous administration with complete silence by those on the other side of the aisle in the House who now selectively want to attack this administration, even though the rate of recidivism, as you point out, is drastically different, and Congress has approved of these releases.

So I think that there are politics in this, and I think that we should try to get politics, you know, away from this question of national security. Let's actually focus on what's important to our country.

And in that regard, I want to go to the chairman's original point, where you -- in your budget request, the FBI is -- a significant part of their responsibilities is in the area of national security. And I want to know, given the short-term C.R., given the budget request for next year, where you see the -- the -- the level of -- you know, of agents in terms of -- particularly given the fact that over 40 percent of their responsibilities are in the area of national security, and it was a desire of the Congress not to -- not to have cuts in the area of national security where any of these would be impacted.

HOLDER:

I'm very concerned about the ability to run the department in a way that's consistent with the obligations that we have if this C.R. were to continue. We have responsibilities on the national security front that we have addressed in the 2012 budget.

Even though there are increases that are, frankly, not as large as I'd like them to be, there are, nevertheless, increases. We have tried, as I said, to come up with a budget that deals with the fiscal reality that we confront.

I'm particularly worried about the bureau prisons and the responsibilities that we have there with regard to the intake that comes our way because prosecutors are doing what we expect them to do, agents are doing what we expect them to do. And at the current levels that we have in the continuing resolution, we're going to run into a wall at some point.

But to get more particularly to the question that you have asked, I'm also worried that with regard to the hiring that I think we need to do to stay in front of this national -- these national security issues that are the responsibility of the department, we have to get beyond this continuing resolution.

You know, we have tried to make -- I tried to take into account the resolution, the reality of it, the continuing resolution, and put in place a hiring freeze and done other things. But that can only tide us over for -- for so long.

So I would hope that through my testimony, through the interaction that, hopefully, the administration will be having with members of this committee and Congress as a whole that we will have a resolution of the budget issues that -- that now divide us so that we will have the monies that we need to protect the American people.

FATTAH:

The Defense of Marriage Act -- any time that the -- in a court of law that we are arguing that someone's rights should be restricted in our country, you know, the basis of the scrutiny of the court is an important one.

So the -- the point that this should be handled under heightened scrutiny, I think, at least for myself -- and I believe for -- a majority of the American people -- they would agree that any time we're going to trample on someone's rights or restrict them, it should take the -- a very high level of scrutiny by the court.

And I think that the -- the -- when we have my colleagues quoting The Washington Post editorial, which is not a normal thing for members who sometimes are on the opposite side of the administration, you can obviously see that there is a great deal of interest in this matter.

But it apparently is the case that there have been times in the past where the department -- the past meaning outside of this administration -- where the department has not went into court with arguments that they cannot believe in as a -- as constitutionally legitimate in previous administrations.

So -- and I want to make sure that we enter those for the record, and we will, Mr. Chairman.

But the -- the point on the administration's decision, as I would understand it -- the administration has issued that they will still require upholding to the letter of the law, but you will not allow your attorneys to go into court and argue something that, on its face, doesn't meet the scrutiny that would be required.

Is that where the administration is on this?

HOLDER:

Yeah, and I think that's actually a very important distinction. We will not defend the constitutionality of the statute, but until the statute has either been changed by Congress or there is a definitive judicial interpretation of it or ruling with regard to it, we will continue to enforce the law, because it is a law that does exist on the books.

So we will enforce the statute, but we will not defend its constitutionality.

FATTAH:

Thank you.

Could you talk a little bit about the work of the department in the area of combating human trafficking?

HOLDER:

This is something that is of great interest, not only to the department, but to this administration as a whole. We have made this a priority.

We have an administration-wide effort to deal with the problem of human -- human trafficking. We have put that -- we have made budget requests in that regard.

When one looks at the problems that exist, not only in this nation, but around the world, it seems to me that this is something that we have to make a priority. You have those people who are at greatest risk of being taken advantage of -- unfortunately, young people especially.

And it is something that I have really tried to focus on at the department, but also in conjunction with my colleagues in other executive branch agencies. The secretary of state leads our efforts on the international -- on the international side.

FATTAH:

I referenced in my opening statement your recent activities regarding Medicare fraud and organized crime. If you could, comment on the department's recent efforts and successes in that regard and what appropriations requests in your F.Y. '12 relative to would be important in continuing those efforts.

HOLDER:

Well, we've been, I think, particularly successful when it comes to the efforts that the fraud -- our fight against fraud efforts, as I've indicated in my opening statement, when it comes to health care fraud and other fraud related recoveries that we've made under the False Claims Act. We have recovered billions of dollars for the American people.

This is something that I think is a problem that -- frankly, with additional resources, I think we can increase the amount of money that we get back for the American people, and we've made budget requests in that regard. When it comes to organized crime, this is something that continues to be an issue that has to be focused on by the Department of Justice.

I was in New York, I think about four or five weeks or so ago, to announce a major take-down that we did of organized crime figures, the largest single take-down of organized crime figures in the history of this nation.

And it shows the breadth of organized crime activity from those things that seem relatively small in scale to things that are more -- that are larger and are more traditionally seen to be control of -- you know, or the attempts to control, the docks and union activity, things of that nature.

So organized crime continues to be something that we have to -- that we have to focus on. There's a wide range of things that the Department of Justice has on its plate -- on its plate beyond that which is relatively new, which is the national security side. And these -- what I've come to call these traditional functions are things that I've tried to focus on, give attention to, and make sure that we have adequate resources to -- to try to combat those things.

FATTAH:

Thank you. And I will catch up on the next round.

Thank you, Mr. Chairman.

WOLF:

Mr. Culberson?

CULBERSON:

(OFF-MIKE)

WOLF:

Mr. Bonner?

BONNER:

Thank you, Mr. Chairman.

General, it's good to have you back here. I send greetings to your wife, who is a citizen of my hometown. We're proud of her.

HOLDER:

Is that right? From Mobile?

BONNER:

Yes, sir.

HOLDER:

All right.

BONNER:

In a minute, I want to go to some questions specific to the Gulf Coast Claims Facility, the process set up by the administration. But I'd like to pick up on the line of questioning that the chairman and the ranking member had, first about DOMA.

Since it appears that the department is not planning to defend DOMA, and since, as you know, we're operating in a continuing resolution, trying to finish the budgeting process for this fiscal year, could you give us any idea of how much money would be saved by the department in not defending this, even though there's strong disagreement from many in Congress of this position? And would any of those monies be available in terms of returning to the -- to the process?

Since you won't be defending it, those are monies that will not be spent by the department. Would you have any idea how much money that would be?

HOLDER:

I'm not sure we save any money, frankly. The people who would be defending the statute, were we to do that, are career employees of the Department of Justice who will -- will not be spending their time doing that. They will be spending their time doing other things. I'm not sure that I see any savings as a result of the decision that -- that I announced with the president.

BONNER:

And then as a follow-up to Guantanamo -- again, that was an original line of questioning -- a few days ago, the CIA director said that if we were to capture Osama bin Laden that it would very likely -- he would very likely end up in Guantanamo.

Is there a conflict within the administration that the CIA director would make that statement, and yet you, in answering to Chairman Wolf, continue to advocate a position that it's the administration's view that the -- that Guantanamo should be closed?

HOLDER:

Well, I think the administration speaks with one voice. It's true that Director Panetta did indicate that in his testimony. He issued a statement later that evening that was consistent with what the director of national intelligence said at the hearing with -- with Director Panetta.

And I think the administration's position is this is something that we have thought about, that we have tried to work on, prepare for. And were bin Laden to come into our possession, the national security team would consider its obligations and make a decision as to how he would be treated.

BONNER:

As I said earlier, I want to switch gears to something that's parochial for me but really is important for the whole country. Because as you know -- I think you were certainly involved in it; that was the impression -- back when the president announced last year in response to the worst environmental oil spill in American history: the creation of the Gulf Coast Claims Facility and his naming through an agreement worked with BP and the administration -- and, again, it was our understanding that the Justice Department was heavily involved in this -- the appointment of Mr. Ken Feinberg to be the administrator of this.

In the opinion of this member, who represents Mobile, Alabama, and the coastal counties of my state, the GCCF has been a dismal failure. Despite continued and direct engagement with Mr. Feinberg to address the systematic shortcomings of his organization, there appears to be no improvement on the horizon. And consistency and transparency remain problematic.

Let me give you a quick example. Based on the GCCF's own web page, last week, I -- there are two coastal counties, as you know, in my home state, Mobile and Baldwin Counties. Last week, based on their own numbers, they processed four claims.

Unfortunately, based on their own numbers, there are 93,000 claims that remain unprocessed. At this rate, it will take 450 years -- I don't think any of us will be here -- to process all these claims. And that's assuming there are no new claims that are filed.

Now, the president said in creating this -- again, with the support of the administration -- that this administration was going to stand by the people of the Gulf Coast.

Can you -- first of all, I want to give a shout-out to Tom Perrelli. He is the only person in this administration that I have confidence in that's going to put pressure on Mr. Feinberg and on BP to fulfill the promise that both the company and the administrator that this administration helped create made, and that was to make the Gulf Coast whole.

So I want to give a shout-out to Mr. Perrelli. And please let him know how much we appreciate his work.

But can you give us any insight in terms of what the Justice Department's role is in making sure that this -- that this creation is going to fulfill the promise that the president of the United States made to the American people?

HOLDER:

Well, I share the concerns that you have about the impact that the oil spill had on the Gulf Coast. I went down there shortly after -- in fact, went to Mobile and looked at some of the reconstruction efforts that were at that point under way, or the rehabilitation efforts that were under way.

The Justice Department does not operate or have any statutory responsibility for the GCCF, although I will say for the record -- and I thank you for the kind words you said about Tom Perrelli. He is the associate attorney general at the Department of Justice and has spent a great deal of time pushing to have claims paid more quickly.

We have tried to monitor the activity of the GCCF, its performance. As of January 27th -- I'm looking at the numbers I have here -- there were about 480,000 claims filed with the GCCF. About 170,000 of those have been paid, totaling, I guess, a little over \$3 billion.

We have expressed our concerns about the pace at which -- Tom has -- again, as you've indicated, has taken a lead for the department. We've expressed the concerns that we do not think these are being processed as quickly as they can. And we have tried to apply -- I'm not sure I'd call it pressure, but expressed the concerns that we have in a way that is consistent with the responsibilities that we have.

We don't have any formal relationship with GCCF. But Tom has used his time, his skills, to try to speed up the pace at which people who are very deserving, whose lives have been very negatively impacted -- you have to go.

You have to be there to see -- I was -- it's one thing to read about this. It's a whole different deal to go down there and to actually see people who run, you know, hotels, restaurants.

I was really struck by the fact that when I was there, it was warm -- it was apparently in the height of tourist season, and we went into a restaurant -- and my wife will kill me for this, but I don't remember; it was outside of Mobile, a beach there. And we were the only ones in the restaurant.

And I talked to the owner of the restaurant, and I said, you know -- and he said this was, you know, totally atypical; that on a day like this at that time of year they would have had a full restaurant. And the only people in that restaurant at that time were the people traveling with me.

I made a pledge to the people there that I was going to come back a year from my visit and to see where we stood with regard to what the -- how the claims process was going and what it is -- how we had -- to show them that, you know, A, that we cared, and, B, that we wanted to make sure that we did as much as we could to make sure that this process worked for them. And I will go back on that one year...

BONNER:

Well, please let me know when that is. I'd love to go to lunch with you.

HOLDER:

Sure, sure.

BONNER:

I believe, ultimately, that the department will have to issue a ruling that defines exactly what OPA requires of BP. You may not have a direct oversight of the GCCF -- although it begs the question, if you don't, who does. Because, clearly, it's a monster that's been created by this administration with the promise of making the people whole.

And, again, the thought that we might have to go 450 years before the last claim is determined, whether it's legitimate or not -- because our people will not be able to wait that, obviously.

What do you think will trigger a requirement for DOJ to issue a ruling on OPA, and are you preparing to make such a ruling at that time?

HOLDER:

I'm not sure I understand in the question the OPA, the...

BONNER:

The Oil Pollution Act of 1990 that passed that -- that holds the company responsible, and there will be substantial fines.

HOLDER:

Yeah. Well, the -- we have under way -- we have filed a civil lawsuit, I think, at least a couple of months or so ago. We are actively pursuing that matter in an attempt to get -- gain money from the people and the companies who we think were responsible for the spill.

There is, as I indicated -- I guess when I was in New Orleans -- an ongoing criminal investigation as well. So the department is operating on both -- on both levels, both with regard to the civil enforcement powers that we have and also with regard to the criminal investigative powers that we have to hold responsible those companies, those people, who were responsible for the worst natural disaster in this nation's history.

We are being aggressive in that regard. We are pushing to make sure that we resolve this as quickly as we can. I think under, again, Mr. Perrelli's direction on the -- on the civil side, you know, we've put together this fund that BP has contributed to and from which claims can be processed.

But beyond that, we are using our civil enforcement powers to sue to gain additional monies from the responsible parties. What we have made clear, and what I will pledge again today, is that the American taxpayers are not going to have to pay a dime for the cleanup or a dime for making whole the people who have suffered in the region that you represent.

BONNER:

Just one final question, Mr. Chairman. And I have some others that I will submit for the record.

Not to blindside you on this, because you've had a lot of issues to touch base on. But do you have a response to the federal judge in New Orleans' ruling that Mr. Feinberg is not an independent administrator as he was originally presented to the American people; that he would be, and, in fact, that he is executing his responsibilities on behalf of his employer, British Petroleum, rather than in a manner that's in the best interest of the victims?

HOLDER:

Well, there -- I mean, the way this has been set up, he is -- you know, he's paid by, I guess, BP or he works for BP. But the emphasis that we have placed -- Tom Perrelli has placed is on trying to make this claims process work.

Our hope is that however the GCCF is constructed that we think that it potentially can work, should work better, should -- you know, the 450-year time period that you have indicated is obviously unacceptable. Something substantially -- substantially shorter than that is -- I mean, way, way shorter than that is something that we have to be looking at.

And we will try to, you know, assist to the extent that we can in helping there by applying pressure where we can, by using our lawsuits on -- in the other way -- but to try to get money to people as quickly -- as quickly as we can.

And to the extent we find issues with regard to how the GCCF is working, we will do what we can. We will certainly identify them and try to work to rectify them.

BONNER:

Thank you.

Mr. Chairman, the reason I asked that -- and, again, I acknowledged up front that this is parochial to me because I'm on the Gulf Coast. But why it's important to our friends in Pennsylvania or California or Georgia or wherever, or

Kansas, is if you go from Key West in Florida all the way to Brownsville, Texas, and you look at the economies of the five Gulf Coast states, you're looking at over \$2.8 trillion of GDP impact to this country.

You know, last year we were all worried about what was happening in Greece, which was about a \$350 billion impact on the global economy. The five Gulf Coast states, by a rough estimate, is \$2.8 trillion, and we were devastated by this oil spill last year.

And we continue to be devastated, and that's why I raised the questioning today, asking for the department to do everything it can. It's very unusual for a conservative Republican member to be asking any Justice Department, this Justice Department or any other, to intervene here.

But we've got to hold the people who did this accountable. And we've got to make sure that the -- the claims facility that was set up by the Justice Department and the administration to make those people whole -- we've got to make sure they're doing a better job.

And with that, thank you.

HOLDER:

The only thing I would disagree with you, Mr. Bonner -- the questions that you've asked are not parochial ones. And I think that the statistics you just used about the trillions of dollars of impact -- it's a national issue.

This is not something that -- it affects maybe most directly the people on the Gulf Coast. But the reality is this is a national issue, and that's why it requires a national response. And I can assure you that the Justice Department, Tom Perrelli and others, will stay focused on this issue.

WOLF:

Mr. Honda?

HONDA:

Thank you, Mr. Chairman.

And welcome, Mr. Holder. I want to thank you for your testimony here today, and I really do appreciate your attention and dedication to the many important civil rights and justice issues that we face today.

I wanted to ask you something about the budget dance that we seem to go through every year, and it's the proper funding for the State Criminal Alien Assistance Program, more commonly known as SCAAP. As you know, border states like California are disproportionately affected by this.

And I notice for the 2012 request, the funding for SCAAP has been reduced greatly, and now I understand some of this programmatic shifting is going on. But at some point, we, as a country, need to come to a solution on this issue that goes beyond just partial reimbursement.

And to this I ask do you have any suggestions or ideas on what Congress could do to permanently address this issue?

HOLDER:

Well, we have requested -- I think it's \$136 million for SCAAP. As we all know, that goes for the incarceration costs for inmates who do not have legal immigration status.

And so I think one of the things that we could do -- the Congress could do, working, I think, with the administration as well, is to look at the whole question of illegal immigration and to try to address that in a -- in a comprehensive -- in a comprehensive way. I think that would have an impact on the monies that we spend with regard to -- with regard to SCAAP.

I mean, we have tried to make sure that this money is spent wisely. I've seen the inspector general report that indicates that, you know, some high percentage of people -- I think it was 58 percent or so of people were not necessarily -- were not identified as -- as people who were illegal immigrants, and their status was some -- it was not totally -- totally known. And so that's something I think that has to be -- has to be worked on.

The money that we are asking for this year is less than we sought last year. Again, that's just a tough decision, tough budgetary decision, that we -- that we've had to make.

We are of the view that this is, in fact, a national obligation, and the states need to be reimbursed for the monies they expend in this regard. And the only reason that we are seeking less money than we did last year is strictly on the basis of the budgetary constraints that we have.

HONDA:

I don't disagree with you about the efficacy of having a comprehensive immigration reform package that would include law enforcement and border protection and things like that. And it seems to me that over the past few years, we have been approaching this whole issue (inaudible) and spending a lot of money that doesn't seem to have a return on the kind of investment that we're seeking.

And you know that California has large needs for Indian country justice programs, and I consider refunding components of Public Law 106559 of vital importance. And I know that in this 2012 request, the DOJ has created a new discretionary set-aside to fund all tribal assistance programs rather than separate appropriations.

How -- how will this change affect the civil and criminal legal assistance programs, and particularly ensuring that current funding levels remain?

HOLDER:

Well, what we have tried to do is actually prioritize the work that we have done with regard to tribal lands. It is something that I hope will be a legacy of this administration, that we have taken seriously the responsibilities that we have on tribal lands; that we have recognized the unique needs or the unique problems that are faced there.

I think we have in our budget funds that will go toward supporting what is certainly a desire on my part and I know on the part of the president as well to have as a legacy the fact that we are taking very seriously our responsibilities in that regard.

We have over \$420 million in the budget. We're going to work with you to make sure that that money is spent in an appropriate way.

But I really want to emphasize that this is something that is a high priority for this administration. I met in the Roosevelt Room with the president and with a number of tribal leaders. I'm going to a listening conference in Minnesota. Tom Perrelli has taken this on as a particular -- a particular priority of his.

When one looks at the problems that women face on tribal lands with regard to violence that they are subjected to, when one looks at the rates of substance abuse -- there are a whole host of issues that have to be dealt with. There is not sufficient law enforcement resources there.

And the monies that we are asking for for tribal issues, I think, goes a long way to backing up the promises that we've made and the obligations that we think that we have.

HONDA:

I appreciate the attention or the sense of -- the sense that you have regarding the Indian country, because I think that that's an area where we at times turn a blind eye to. And I think that it's -- as terms -- in terms of our relationship to sovereign nations, it's an obligation that we need to fulfill.

Another issue I'd like to bring to your attention, Mr. Holder, is gun rights and gun control. And as an avid outdoors person myself, I support the Second Amendment, but I also support reasonable changes to existing law that makes it easier to track criminals purchasing weapons.

One of the biggest gun issues facing California is, of course, the sales of the so-called "long guns" and drug and criminal violence at the border. And I know that there's a public comment period through the ATF on new reporting standards on long guns.

But I would like to know what steps the department is taking to improve the situation. And what more can be done to put reasonable safeguards in place?

HOLDER:

Well, ATF currently has a proposal that has been made with regard to the purchase of long guns. It is, I think, a reasonable -- a reasonable proposal that would require firearms dealers to report any instance where a person buys two long guns within a five-day period that is above .22 caliber, that is semi- automatic, and it has a detachable magazine.

The concern is obviously with the possibility that people are buying these as straw purchasers and that a lot of these weapons has -- a lot of these weapons end up in Mexico. The proposal that ATF has made only applies to four states that border Mexico, but we think we'll really have a -- could have a substantial impact on the flow of guns that go into Mexico.

I am greatly concerned that some of these weapons that find their way into Mexico might be used against the agents from this nation who are down there fighting with their Mexican counterparts against the cartels. That gives me very great concern.

I think it is a responsible thing to do. I think it is respectful of the Second Amendment. It is something that we require gun -- gun dealers to do with regard to the sale of pistols.

And it seems to me that asking dealers along the border with regard to long guns, and given the limited circumstances under which I said we'd do this, I think that that is appropriate. I think it would go a long way to helping us deal with this -- with this issue.

HONDA:

I understand there's quite a few statistics that we have at hand relative to the number of firearms that are confiscated across the border that can be traced to the United States and to several different kinds of activities that we have here that are not unlawful but should have greater oversight and scrutiny. And if those statistics are available, I'd be very interested in receiving them.

A few weeks ago, Congress passed an extension to a few provisions, key provisions, in the Patriot Act. And I've opposed (inaudible) since the inception, as I strongly believe they cross the line in terms of civil and privacy acts of our citizens.

I understand the need to keep our country safe from harm. But as a country, we need to -- better than to pass laws that give broad powers to (inaudible). We need to do better than that.

Many have called for hearings on this issues and a pragmatic approach to this issue. And I'd like very much to hear from -- your thoughts on how we can bridge a gap between protecting the rights of Americans while giving the tools needed to protect us.

And I think that that's probably an area that's come to fore because of the change in technology and the kinds of things that we understand technically as to what's going to be important and how to go about doing that.

HOLDER:

Well, we do support the renewal of those three authorities, the business records provision, the lone wolf provision, and the roving wiretap provision. But the administration also supports increased civil liberties protections.

I think, in particular, that a good balance is struck by the bill that Senator Leahy introduced that supports the extension of those authorities but also dials in civil liberties protections. These, I think, are necessary tools for us to have in order to fight the threat that confronts our nation.

We think that we can do this in such a way that with appropriate supervision within the executive branch. And working with the Foreign Intelligence Surveillance Court, we can make sure that these tools are used in a way that is effective but also is consistent with the values that have made this nation great.

The concerns you express, I think, are legitimate ones. We may end up in a different place, but the concerns you have, I think, are legitimate. And as I said, I think Senator Leahy's bill really strikes a good balance.

HONDA:

Mr. Holder, what would be the critical steps that need to be pronounced and clear in order for us to be able to execute some of the provisions that law enforcement may have that may at question by some other members of Congress that -- the concerns that we have in terms of privacy? What -- what are some clear steps that need to be in place?

HOLDER:

Well, I mean, I think that as we use, you know, these provisions and other provisions of the Patriot Act, we have to be mindful of the privacy interests that American citizens have. We have to make sure that we act in a way that's consistent.

We have to make sure that we don't overreach. We can't let the threat that we face make us turn our backs on that which has defined this country and made us the great nation that it is.

And that is sometimes -- that's a balance that, you know, you have to strike, but it's something that we should always be mindful of. And I think that if we keep that in our minds, those of us who have to enforce these laws and take advantage of these tools -- if we keep those kinds of thoughts in our minds, we will be -- we will act in an appropriate way.

The -- we want to work with Congress, I think, as well, though, to make sure that -- and oversight, for instance, is something that, you know, makes a great deal of sense when it comes to the use of the Patriot Act.

Generally, these three provisions, in particular -- interaction with Congress about how these tools are being used, an airing of concerns that people have, responses from those of us in government who are using -- using these statutes. I mean, that kind of interaction, I think, makes a great deal of sense and will make sure that there is, as I said, no overreaching by those of us in the executive branch.

HONDA:

One last question, Mr. Chairman.

One of the things that seem to concern -- well, it concerns me -- is the decision that a person would make, whether it's executive or otherwise, to move forward without going through the legal process of securing permission to wiretap or to tap into the Internet in the name of national security.

Is, in fact -- does that case -- does that condition exist in the current law? And, if so, are there requirements of that person to report in a timely manner that action to somebody like the judiciary arm?

HOLDER:

Well, all the surveillance activities that the Department of Justice and other intelligence agencies are involved in are done pursuant to statute and with the approval of the FISA court or, I guess, an Article 3 court if we're talking about just regular wiretapping so that there's a statutory basis for those surveillance activities that we engage in. And then there is judicial approval of the requests that -- that we make so that there is supervision of these activities.

There can be things done on an emergency basis at the direction of the attorney general, but even those have to ultimately be submitted to the -- to the FISA (inaudible) have to be submitted to the FISA court for -- for approval. So there's always judicial supervision of the things that we do.

HONDA:

But the term "ultimately reporting back" -- is there a time definite that needs to be observed?

HOLDER:

Yeah. I think it's -- I think it's 72 hours. I mean, we're not talking about some extended period of time. I'd have to look. But those things that I have done on an emergency basis, we try to report within the time frame. But I'd have to check and get back to you on that, but I think we're talking about two to three days within which we have to report back to the FISA court.

HONDA:

Thank you very much.

Thank you, Mr. Chairman.

WOLF:

Mr. Rogers?

ROGERS:

Thank you, Mr. Chairman, for yielding. I apologize for being late.

General Holder, welcome to the committee.

HOLDER:

Good morning.

ROGERS:

I want to focus your mind with me on a problem of an epidemic that is sweeping this country, and that's prescription drug abuse and methamphetamine abuse. Today, two people at least will die in Kentucky from overdoses, 82 a month.

My state perhaps is ground zero for prescription drug abuse, but it's everywhere. It's not just there. It is sinister. Nationwide, in the last decade, we've seen a 400 percent increase in those reporting abuse of prescription pain relievers with about 7,000 new abusers every day -- 7,000 new abusers every day.

There is a mechanism that we're fighting it in Kentucky and other states, and that's, as you well know, the prescription drug monitor programs in Kentucky. It's called KASPER, where doctors and pharmacists can check in the central computer in the state to see if a person applying -- presenting a prescription has been doctor shopping or has filled it in another location.

Thirty-eight states now have -- have responded to a Department of Justice grant program that helps them set up a system in their state. Thirty-eight states now have that system; 10 more have applied for those grants, including Florida -- which I'll come to in a minute.

And KASPER works. We've seen a dramatic decline and a dramatic increase in prosecutions of fake doctors and pharmacists and -- pharmacists and the like. Other states have reported the same.

And yet in your budget request, zero. This is a program that's been in place for -- in fact, it was started by this subcommittee, Mr. Chairman, under your leadership. It's been in place for maybe, what, 10 years or so?

We've seen the number of states with authorized or operational programs triple from 15 to 45, an increase of almost -- 2,600 percent increase in the number of prescription reports. And yet, for whatever reason, you did not request any funds to continue that program which has proven itself countrywide. Why?

HOLDER:

Well, the president's fiscal year budget, the budget we've submitted, does propose to use \$3 million of OJP's proposed research, evaluation, and statistics to set aside a fund for a limited number of prescription drug monitoring pilots in conjunction with an evaluation.

So the information I have is that nearly every state has decided to implement a prescription drug monitoring program, and it had an opportunity to apply for those funds.

This is -- the problem that you talk about is, indeed, a serious one. It is one that is nationwide in scope, though I think you're right -- there are particular areas in the country that have had -- have had to deal with this issue in a more concentrated way.

The fact that we have moved in the way that we have with regard to our budget is no indication that we are not mindful of the problem or less serious...

ROGERS:

Zeroing out the program that is the only thing going that's getting at prescription drug abuse -- zeroing that out tells me you're not serious about solving this problem. Now, \$3 million and an ill-defined request that you've made for a pilot and evaluation -- these aren't pilots. These are operational.

Ask your state police. Ask your U.S. Attorneys. They will all tell you this is the only weapon we have (inaudible) prescription drug abuse.

HOLDER:

I would respectfully disagree in that regard. We have our enforcement efforts that we take with regard to the prosecution of people who engage in the sale or misuse of these products. Those kinds of efforts will -- will -- will continue.

So it's not -- this is not the only tool that we have. And, again, as I said, this is a problem that we take very seriously.

ROGERS:

Well, the head of ONDCP in the White House, Gil Kerlikowske -- I spent last week with him in Kentucky; he was there three or four days talking about this problem. And he says that this is a valuable weapon in fighting this cause.

I didn't discuss with him the fact that you had not requested any funds for it. I didn't want to embarrass him in public. But the ONDCP director is -- is seriously -- problems -- has serious problems with your budget request.

Now, that gets me to Florida. There's a thing called a Flamingo Express, the Flamingo Road. Broward County, Florida, is where practically all of the prescription medicines that are illegally obtained come from.

Ninety-eight of the top 100 prescribers of oxycodone -- 98 out of 100 top ones come from Broward County, Florida. They dispense over 19 million dosages of this drug, which is about 89 percent of the total dispensed by the entire country.

These are pill mills. These are drive-throughs. You drive through like a Burger King with a truck load, a van load of people from Kentucky or Tennessee or Ohio or any other state, particularly on the eastern seaboard. You load your van up. You take them to Broward County. You drive them through the drive-through, and you come back with a ton of prescription medicines that you then foist off on innocent children and other people. And two of them in Kentucky die every day.

Now, don't tell me that you're enforcing the law.

What do you say about that?

HOLDER:

Well, the budget request that we have made includes \$322 million funding for, I guess, 1,497 positions at the DEA's diversion control program. That is an increase of, I guess, \$2.2 million in base adjustments. There are 124 positions, including 50 special agents, 50 diversion investigators, nine intelligence analysts, and \$30.8 million to support regulatory and enforcement activities of the diversion control program.

I think that's an indication that we take this issue seriously. It's one that we are trying to address, which is not to say that it is not -- we have not been -- state -- our state and local partners have not been as successful as we might have wanted to be.

Our efforts need to be continuing ones. The toll that these medicines take on the lives of people and the impact they have in certain areas is substantial. And we are using the tools that we have. We have sought additional tools in the budget to try to deal with -- with the issue that you've raised.

ROGERS:

Well, it's not working so far. And these are interstate. This is an interstate problem. This is in your ball park.

Individual states are doing what they can. But how can Kentucky, for example, prosecute somebody in Broward County, Florida? They don't -- they can't do that. That's only in your bailiwick. That's why we have a national government.

It is an absolute disgrace that's killing people every day. Not only do dealers and addicts in my region make those frequent bus and van trips down there, but several budget airlines have recently instituted direct flights from Charleston or Huntington, West Virginia, to south Florida. An airline has seen it profitable to ship these people down there, buy their drugs, and ship them back.

I'm ashamed. You know what they call that? They call it the OxyContin Express. And you're seriously not dealing with the problem.

And then in Florida, there's an extra special problem. Florida, under a previous administration, applied for a grant, a PDMP grant, like 38 other states have done, and it was granted. And DOJ and this grant program that you didn't fund has given them \$800,000 to start a KASPER-like program in Florida, where it's most desperately needed; which would help us prosecute those crook doctors that are running these pill mills with drive-through service.

And the state legislature authorized the program. But for some problem, it didn't get done until now.

Then a new governor takes over, and he not only announces he's not going to fund the program, he's going to try to repeal the law in Florida that authorized the program.

What do you think about that? The attorney general of Florida says it's crazy. What do you think, General?

HOLDER:

Well, I mean, we have to certainly work with our state and local partners. This is something that is a primary responsibility, because of the Internet -- interstate component of this -- that the federal government clearly has a role to play.

We also have to work with our state and local partners, because there's a local component to this as well, a state component to this as well. It's only when we work together that we will be effective in trying to deal with the transportation of these drugs.

And, also, we have to come up with ways in which we deal with, you know, prevention aspects so that people don't start to use these drugs. And we also have to have treatment money as well to deal with people who, unfortunately, use these drugs and become addicted to them and, as a result, continue to use and fund the activities that you're talking about.

ROGERS:

Well, there's certain things the state of Florida can do. There's certain things they can't do. And what they can't do is do the interstate prosecutions.

I know just last week, a part of -- a thing called Operation Pill Nation -- DEA arrested 22 people, seized over \$2.5 million in assets during a take-down of rogue pain clinics in Florida. They -- those arrests had resulted after 340 undercover buys of prescription drugs from over 60 doctors and more than 40 pill mills. And I congratulate DEA for that.

But it's a drop in the bucket, General. Why can't we build up the forces, the DOJ forces in Florida, to get at this problem that's poisoning the rest of the country, particularly the eastern seaboard and the Appalachian states where I hail from?

I'd like to see you beef up the forces there, not in headquarters, but in the field. Make those buys. Get rid of these doctors who are poisoning the country and killing people every day.

What do you think?

HOLDER:

Well, I think that, you know, we -- the additional resources that we're talking about are not all going to headquarters. I mean, I think the fact that you talk about a successful DEA operation is an indication of how seriously this is taken by this Justice Department, by the DEA, which is a part of this Justice Department.

We recognize the seriousness of the problem. And I think that -- you know, the operation that you talk about is an indication, as I said before, that we not only have the program that (inaudible) but also -- we also have our enforcement arm that is, I think, in some ways, you know, as important, if not more important, than anything else that we are going to do to hold accountable those people who would deal in these drugs, put them in jail, and use that as a deterrent for others who might...

ROGERS:

Let me ask you a specific...

HOLDER:

... have an inclination to do so.

ROGERS:

... make a specific request. Would you consider sending extra investigators, either through DEA or the U.S. Attorney's Office or both or any other of the federal law enforcement agencies -- would you consider shipping extra manpower to Florida to help shut down these drive-through pain clinics that are poisoning the country?

HOLDER:

Well, we will identify the places where we can best deploy our resources to be most effective in dealing with the issue that you have raised and the other issues, narcotic-related issues, that we have around the country.

We have to work with our state and local partners. DEA can't do it alone. But we try to deploy our resources in a way that we are most effective.

And I realize that what you're talking about is, in fact, beyond a regional problem; it is a national one. And that is why it has gotten the attention of the DEA in the way that you have previously described.

ROGERS:

Well, there's a high intensity drug trafficking area there. It's a HIDA -- you know, a HIDA operation, which is the supposed best way to marry up federal, state, and local law enforcement in one operation. Can we beef it up and put more assets into the HIDA that covers that region in order to go after these people?

HOLDER:

Well, I think we're always looking at the existence of these HIDAs and to see which ones are effective, which ones need more resources, which ones are not being particularly effective. And so that kind of review is something that we do on an ongoing basis.

ROGERS:

You didn't answer my question.

HOLDER:

Well, I'm answering as best I can.

ROGERS:

Would you look at beefing up that HIDA?

HOLDER:

We do that with regard to all of them and try to make the determination as to where we can use our resources the best.

ROGERS:

Question: Will you look at that one?

HOLDER:

We will look at that one, as I do -- we look at all of them, but I will look at that one. But I'm -- you know, I'm not -- I don't want to...

ROGERS:

Do you not recognize that the problem is in Broward County, Florida? It's not in Denver. It's not in Miami. It's not in New York. It's in Broward County, Florida. Do you want me to spell that for you?

HOLDER:

Well, you know, the problem that you've described is not one that is only in Broward County. There are parts of West Virginia that have been decimated by the use...

ROGERS:

Ninety-eight of the 100 prescribers...

HOLDER:

... of these drugs. And we have to deal with this on a...

ROGERS:

... of oxycodone are from Florida.

HOLDER:

... national basis.

ROGERS:

Ninety-eight out of 100. Eighty-nine percent of all of oxycodone is dispensed by those in Broward County, Florida. If I ever saw a target, this one has got an X all over it. Why can't you see that?

HOLDER:

I think what I've indicated is that, as part of what we do, we will look at that HIDA and see if it's effective, see if there are additional resources that are needed, as we do with regard to all of them.

The responsibility that we have is national in scope, and we try to make sure that we deploy our resources in a way that deals with these issues...

ROGERS:

All right. I'm asking you...

HOLDER:

... in the most effective way.

ROGERS:

... will you look at that and get back to this committee in two weeks?

HOLDER:

I will do the best that we can. We will look at this and try to get back to you with a response as quickly as we can.

ROGERS:

And would you tell us what you can and can't do in Broward County, Florida, on this problem and tell this committee, with the chairman, in two weeks?

HOLDER:

We'll do the best that we can in the review that we'll -- we will conduct, and try to be as responsive as we can be. You know, the -- when you say things -- what we can do and what we can't do -- these are issues that -- you know, if I had the ability to come up with a solution within two weeks, of course, I would share it and implement it.

But the issues that we're dealing with are ones that are, you know, long-standing and difficult. They're difficult. And we'll do the best that we can. We'll be as responsive as we can.

But we are serious about this issue. We're dead serious about this issue. I understand the consequences of what it is that you are talking about. This is a national problem.

ROGERS:

Well, my time is up.

HONDA:

Mr. Chairman, would the...

ROGERS:

But I'm going to...

HONDA:

... gentleman yield?

ROGERS:

I'm going to stay with you. I'm going to keep after you on this, because my people are dying, and I can't sit here and let that happen.

HONDA:

Will the gentleman yield?

HOLDER:

Well, one thing I'd say, you know, they're not your people. They're my people. These are American citizens. And we are doing the best that we can in as many places as we can to deal with the drug issues in whatever form they exist.

I have seen lives ruined. I've sent people to jail, as a judge, who have dealt in these substances. I've tried to deal with this on the treatment side, on the prevention side.

This is something that has decimated, you know, parts of -- of our country. And we are trying to deal with this in as serious and productive a way as -- as we can. So they are your people, but they are also my people.

HONDA:

Will the gentleman yield?

ROGERS:

Yeah, I yield.

HONDA:

Thank you, Mr. Chairman.

You know, I share your concern, and I share your passion for the needs (ph) that our local folks face, because they are, in fact, lives that we feel responsible for.

And in California, we have a variety of counties that are methamphetamine farms where these drugs are being manufactured.

I understand the need for interdisciplinary/interagency cooperation. That's why I brought up the issue of SCAAP and the border issues and things that plague us locally, but it's a national issue too.

And yet we have this great demand that we expect from our agencies. In today's testimony, I heard the gentleman talk about the cuts they had to make and then shifting priorities around within that constraint.

If this committee or subcommittee is willing to put forward any kind of resources that would enhance or build upon whatever resources -- additional resources the department needs, I'd be willing to stand shoulder-to-shoulder and request this, because it's really...

(CROSSTALK)

ROGERS:

Well, reclaiming my time -- reclaiming my time. I'm afraid I've imposed too much time from the chairman already, so I yield back.

Thank you, Mr. Chairman.

WOLF:

Before I recognize Mr. Schiff, let me just say I agree with Mr. Rogers. We had a hearing here about seven or eight years ago, and there was a young -- young man -- I can still remember he was with his father. His father was a minister. And he had -- he had a blue suit coat on. I can still see it.

(UNKNOWN)

(OFF-MIKE)

WOLF:

Yes, it (inaudible). He was sitting in the back. And his dad had said his son was -- he had been addicted to OxyContin. And I remember seeing Mr. Rogers on the floor a couple of months later, and I said, "How is the young man doing?" And he said he died; he overdosed.

And there's New York Times piece here -- I think Mr. Rogers makes a very good point. You know where this is. I mean, I -- you know, I say you could've said "Sure, Mr. Rogers. I'm going to" -- I mean, if I were in your job ought to say, "Boy, I'm going to have a team down there tomorrow. If I can deal and save one person, I'm going to do it, because that's why I'm the attorney general," or, "That's why I'm here. And Mr. Rogers, they're your people, they're my -- they're our people."

But you could have just said, "Yes, I'm going to have a team go down there." Maybe you can't do it; maybe you can.

But you can look -- let me read (inaudible) what the New York Times said: "More than 20,000 people die of prescription drug overdoses," including an estimated seven in day Florida."

I mean, you're a father. Can't you feel the pain and the suffering and the agony?

And I can still see that young boy that's so -- you know, we'll try to put the money back in and do -- but you could have said, "Yeah, we're going to look at this thing." Maybe you can; maybe you can't.

But he's laying it out. And if you read this -- and we'll share this with you. It is in several locations. It says here, "Addicts driving cars with out-of-state plates camp out most nights and wait for clinics to open at 10 am. When they go in these clinics, there is a gun in there." He said, "How many times have you gone into your doctor's office and there's an armed guard outside?"

I mean, if any member here had a problem in a district and came to me and said, "Hey, Wolf, can you help us?" I (inaudible) say yes, anything we can do to try to help."

And if you can save a young person for not being -- but they know where it is. It's Broward County. They're flying down there. There have been articles in the paper.

And the West Virginia thing, you're accurate. The senator from West Virginia is concerned because they're going from West Virginia down -- down there.

So just -- you know, just send somebody down there and look at it and take a look. And if you can beef the thing up. And if it's happening in Mr. Honda's district, do the same thing. And (inaudible) in Mr. Fattah's district, do the same thing. Anytime we can sort of deal with -- help, people, I think we ought to do it.

And so with that, I just hope you can tell Mr. Rogers -- because I still remember that young man -- he's gone now -- and the pain and the suffering and the agony his dad must feel.

And if there're 20,000 -- according to the New York Times 20,000 die a year of prescription drug overdoses. And this is kind of the center, kind of the summum bonum of all that's going on, let's get down there and see what we can do. And don't wait two weeks to come back. Tell us tomorrow. Tell us by the end of the week.

With that...

HOLDER:

Let me -- let me just say...

(CROSSTALK)

HOLDER:

I mean, the -- this is something that I have had personal experience with. I sat as a judge in the D.C. Superior Court, and I saw the impact of drugs. And I've seen lives ruined. I have seen futures destroyed. I've seen what should be the future of this city, Washington, D.C., sent away, incarcerated for selling drugs, ruined because of the use of them.

As attorney general, I would hope that in the limited time that I have, I will use all the tools that I can to fight drug abuse in whatever form. To the extent that it exists -- there is a particular problem in Florida as a supplier of prescription drugs, of course I'm going to focus on that. Of course, we'll send resources down there. And that is one of the reasons why I'm here, to ask for the resources to do the kinds of things that I know DEA agents are capable of. It's one of the reasons we have in our budget the request for -- for those funds.

This is something -- you're not talking to a bureaucrat here. You're talking to a father of three kids. You're talking about a former judge. You're talking about a person who has been in law enforcement all my life, and have seen the impact not only of prescription drugs, but of crack, powder cocaine, heroin. We have to deal with this problem in all of its forms so that we can make this nation as productive as it can be so we give futures to the children of this nation, all the children of this nation.

I don't mean to imply that, you know, this is not something that -- you know, because Mr. Rogers has raised it, I'm not taking it seriously. Of course, I'm going to take it seriously. Of course, we're going to try to review what's going on with that HIDA down there.

I feel this pain. I've seen this.

FATTAH:

Let me just interject before we go to Congressman Schiff, because there's probably not another member who's been more passionate and focused on this than Chairman Rogers. And we live in a different culture here, Mr. Attorney General, when the chairman of the appropriations committee asks the question that obviously the answer is yes to any of us.

You have a different responsibility. You're the attorney general of the United States of America. So I don't want anyone to misconstrue here, you know, you have to exercise the -- the authority of your office fairly across the country on a whole range of priorities.

And so, you know, I understand the chairman's passion. I also know with a certainty that not only can you spell it, you know, you know how to find it on a map.

But there's also a reality, when we put a burden on the department, when we cut funds, when we require a reduction in funds, that there are going to be limitations. And we had to get out some of the redundancy.

Now, Health and Human Services has a similar program to the one that the chairman has referred to, which is in the president's budget from a multi-million-dollar appropriation to do similar work. But I think the one in Justice might be a better way to go, and maybe we can find some way to look at eliminating the redundancy and funding this one versus the other one.

But I think it's improper to ask the attorney general to somehow skewer the operations of his office. In terms of focus, he's focusing on the entire country. That's his job.

We as members of Congress have parochial responsibilities. I know for a fact that when Philadelphia had a problem, I went to the chairman, Chairman Wolf, and he arranged for a considerable amount of resources to be focused on the problem there.

We live in this type of environment in which we respond to members' concerns and so on. But the -- a member of the president's Cabinet has a different responsibility, and I just want to make sure that we're clear about it and that we understand that there are differing roles here.

And I thank the chairman for giving me a moment.

WOLF:

Well, you can -- but, you know, if I were the attorney general and somebody asked me to go into their district to look and see -- and I thought I could save one person, I would do it, in spite of the fact that you can look at this in an analytical, global way: "And you're a good person. I understand. We'll help you in prison." We'll do all of that.

Frankly, I haven't been happy with how -- how lack of action you've taken on prison rape. I mean, Bobby Scott and I have the bill and we're pushing and pushing. And you're sort of taking this global, analytical -- but if I were the attorney general -- or if I could go down and help one region, whether it be in north Philadelphia, north -- in Northern Virginia or in that area, I would do it. Maybe you don't see that role there, but I would -- I would do it. And I think -- and I would hope you can.

And if any member along here or on what other side of the aisle has something like this that you could just kind of help their district -- forget Republican and Democrat, but just help people. Because that's what government's all about, helping people individually to make a difference.

With that, Mr. Schiff.

SCHIFF:

Thanks, Mr. Chairman.

And welcome, Mr. Attorney General.

I just want to say at the outset, as someone who worked in the department for six years, how much I appreciate the job you're doing. And how I think we've really turned the department around from some difficult days that the department went through.

And I appreciate the thoughtfulness you bring to the job and your sincerity and your commitment to fulfilling your responsibilities. I think you're doing a magnificent job.

HOLDER:

Thank you.

SCHIFF:

I also want to compliment one of the task forces that was established -- I think it was a multi-agency task force between the Justice Department and the Defense Department and other agencies -- with respect to the Gitmo situation; that did painstaking work at looking at each of the detainees, gathering as much information, seeking further information where it was needed to try to make intelligent decisions about how each detainee ought to be handled -- whether a detainee could be repatriated, whether the detainee should be tried in Article 3 court, whether a detainee should be brought before a military commission or what not.

It was painstaking work and involved a lot of difficult decision making, but I think they did a remarkable job.

And their work will probably never be known, at least unless there's a problem. And -- but I want to express my appreciation for the hard work they've put into it.

And I hope that we can support the work the administration is doing to try to resolve each and every case of the detainees at Guantanamo in a sensible way without imposing funding restrictions here that will impede their ability to do that.

I don't envy the difficulty of the job you have to do in the best of circumstances, but even more so under the rather difficult financial situation we're in right now. I think the conversation we've been having over the last half-an-hour with respect to prescription medication will, unfortunately, be played out across many departments because we simply don't have the resources we'd like to give every problem the attention it deserves.

And I think we're seeing already in the budget fights an effort to rob Peter to pay Paul.

And as much as there is a problem that has to be addressed with respect to prescription drugs, as you point out, there's problems that have to be addressed with respect to crack cocaine, powder cocaine, heroin, whole panoply of drug abuse problems throughout the country.

As my colleague, Mr. Honda, pointed out, it's methamphetamines -- we're the world producer of methamphetamine in California. And I don't -- I don't envy the task of trying to address all those problems and prioritize and -- in a year of declining budgets.

I want to raise one of these subsets of potentially declining budget and ask you what the impact will be, and that's the area of DNA.

Let me say, first, congratulations for eliminating the offender backlog, which had been a subject of discussion and -- and concern for years and years, and it's finally done. We don't have an offender backlog, and that's -- at the federal level. That's phenomenal. A lot of states and municipalities are still struggling with that, but I'm glad the federal government has led the way in terms of its own backlog.

There remains, though, a casework backlog, and the OAG report indicates some of the periods in the case log backlog.

What I wanted to ask you about was, I think the budget request is \$110 million, or thereabouts, for DNA. Traditionally, this committee has plussed up what the administration has asked for to \$150 million or \$160 million. I don't know whether that's going to be possible given the budget situation.

If we can't -- if the most we're able to do is meet what you've asked for, will that be enough, number one, to avoid a future backlog in the offenders samples? And will it be enough to continue to make progress in reducing the casework backlog?

HOLDER:

You know, those are all -- those are all good questions.

The FBI's DNA database program cleared its backlog, I guess, of over 312,000 samples in September of 2010. We've had to make hard choices about our budget request in fiscal year 2012. We're actually asking for, according to my numbers, \$137 million for DNA programs in fiscal year 2012, which is a 27 percent decrease from what we -- from the fiscal year 2011 C.R. level.

And that represents, you know, a very difficult choice -- a very difficult choice given the usefulness of DNA not only in closing cases and in finding the guilty, but also in absolving people, clearing people who might otherwise be charged with -- with crimes. We will do the best we can with the limited resources -- more limited resources that we have.

But we understand that DNA is a vital tool. And, you know, we want to have a 21st century criminal justice system, and I think in many ways DNA is the foundation for an effective 21st century criminal justice system. And so we'll do the best that we can with the -- with the resources that we have, understanding that in these tough budgetary times we don't have all the money here that, frankly, I would like to have.

SCHIFF:

Well, if you could keep our committee informed as we go along through the year whether you start to develop another backlog in defender area and also what progress you're making in terms of the casework backlog. That'll help us understand whether we're devoting the right amount of resources to the problem.

And I realize that the DNA may be the showcase for a broader problem in forensics generally as the state labs that do ballistics and do fingerprint analysis are aging along with the people who do the work. And the DNA problems may be the sort of canary in the coal mine of the need to make a new investment in the infrastructure of forensics in the country.

One thing I think it would be useful for the department to do -- and this was also highlighted by the OAG report, and that is in trying to evaluate how the states and municipalities are doing with their backlogs. There's no common definition of what a backlog is. And my own experience, in Los Angeles, with the L.A. County and L.A. City backlogs, is you can easily play with the numbers by defining away your backlog.

And so I think it would be helpful if the federal government can develop a sort of best practices definition so that we can compare state-to-state, municipality-to-municipality and make sure that we're all talking about the same thing. I think that will help keep our local (ph) jurisdictions honest in terms of where they really are with their backlog problems.

To me, it's just devastating when we see a situation like we've seen in Los Angeles, where you have a multi multi-year backlog, when you finally take the kits off the shelf and analyze them -- rape kits, for example -- you find the people that you take off the street who've committed subsequent rapes to the -- in the interim while that kit has sat on the shelf. And those are all victims that were -- didn't have to be victims.

The other -- the other DNA point I wanted to raise with you is familial DNA. California recently solved the Grim Sleeper case. We had run the sample, the offender's sample, got no hits. Tried -- law enforcement tried everything else and finally resorted to familial DNA. And the state of California is one of only two states that has a protocol for doing a familial DNA search.

The familial DNA search turned up the son of the suspect, and that led us to the suspect. Without the use of that familial DNA search, that serial murderer would still be on the street.

The federal government doesn't have a policy that permits familial DNA searches of the national database. And we were lucky in the Grim Sleeper case that the son, who came up -- who was a hit in the system, lived in the same state, in California. Had he lived somewhere else, we would not have had a match and the Grim Sleeper would still be at large.

So I would love to see the federal government have legislation on this (inaudible) I will pursue at your office. But I'd love to see the federal government adopt an appropriate policy, where, as a last case resort, the federal government can do a national database familial search and also establish requirements for states that want to make -- take advantage of that capability to have protocols in place to make sure that's not abused and privacy rights are respected. But I'd love to hear your thoughts on that subject.

HOLDER:

Well, I think it would be very interesting to see exactly what California has put in place. As you indicate, that very serious case was, in fact, solved because of the use of familial DNA. And it is something that I think we certainly should -- want to examine on the federal level, being mindful of, you know, the privacy concerns that have to be a part of that.

And I would be very interested to see how California balanced -- balanced that and see whether or not that's something that we could use on the federal level.

But I would be interested in working with, you know, this committee and other members of Congress in examining that and potentially working on legislation that would allow (inaudible) if legislation is needed; there may be some administrative thing, I don't know. But if there are ways in which we can increase our use of familial DNA.

SCHIFF:

Let me turn to one last topic, if I could. This was raised by my colleague, Mr. Honda, and that is the problem with the extensive numbers of American weapons going into Mexico and being used in drug crimes.

We have been, rightfully, frustrated by our neighbors to the south with all of the drugs that are exported from those countries and imported in the United States. They have a justifiable frustration with the flow of weapons now leaving our country and going into theirs that are being used to kill their law enforcement, they're being used to kill innocent people on the street, and are creating an environment of just -- almost complete lawlessness south of our border.

I was pleased to hear your support for what ATF has proposed. I think the adding the requirement of a reportable multiple long gun sales makes sense and will be helpful.

But even that will be of limited value, and I wonder if you could share some of your thoughts on the difficulty of investigating and prosecuting these cases of gun sales south of the border -- which are against the law. It's not -- we're not talking about criminalizing something here that's not already a crime.

Why are these cases so tough? And is there anything that can be done to very substantially change the dynamics, to make a very substantial dent in this problem?

HOLDER:

Well, one of the problems that we have is that people have, you know, their Second Amendment rights here in the United States and can legitimately, lawfully buy weapons. And that's fine. The concern we have are for those people

who act as straw purchasers and who buy weapons in their own names but then transfer them -- sell them to people illegally for use in Mexico.

And that's one of the reasons why this ATF proposal, I think, is a -- is a good one. These are cases that are difficult to investigate because the sale on its face can appear to be a legitimate one. We don't know what the ultimate destination of that weapon might be.

And to the extent that we can look for multiple sales within a relatively short period of time and along the border, those border states, I think we are focusing our attention in an appropriate way, respectful of the constitutional rights that American citizens have to purchase and to hold weapons while at the same time trying to meet the obligations that we have to our -- I think, our very valiant Mexican neighbors who have lost substantial numbers of people in this fight against the cartels.

You know, I have to tell you, the concern that I have is that with the increased number of DEA agents that we have in Mexico, ATF agents, FBI agents, I am concerned that the weapons that are illegally brought into Mexico and purchased in the United States will ultimately be trained on them. And that is a tragedy that I hope that we can -- that we can avoid.

(UNKNOWN)

If the gentleman would yield for a second.

The department earlier today, just in a few hours, has made some arrests in the death of a U.S. agent, ICE agent who was killed. The gun was purchased in the United States, in Texas, and apparently, at least by the arrest, allegedly by an American citizen who was working in conjunction with Mexican cartels that make these purchases.

So the wisdom of what the ATF is trying to do, I think, is borne out in this instance. And your fear about American law enforcement being the victims of these guns is also a bit borne out, unfortunately.

SCHIFF (?):

Mr. Attorney General, do you have any sense for what proportion of the weapons that are being used -- the weapons of American origin that are being used in Mexico by the cartels are the results of straw purchasers as opposed to either theft or acquisition -- in other words, is the vast majority of these weapons lawfully acquired by American citizens, then unlawfully sold or smuggled out of the country?

HOLDER:

I don't know what the percentage is. I've seen a variety of numbers used in that regard. I'm not really comfortable with quoting those numbers because I'm not sure what the methodology was used. But I think we can safely say that a substantial number of the weapons that we find in Mexico were lawfully purchased in the United States through the use of straw purchasers. And that is one of the reasons why I said before, this ATF proposal makes a great deal of sense.

SCHIFF:

Thank you, Mr. Chairman.

WOLF:

Austria?

AUSTRIA:

Thank you, Mr. Chairman.

And thank you, Attorney General, for your service to our country and for being here today.

I know it's been a long morning, so I will try to keep my comments relatively short. But let me -- I want to thank Chairman Rogers for bringing up a very important issue. Because I can tell you, you know, when I talk to my sheriffs and my county prosecutors, one of the biggest drains on their budget is the prescription drugs and the meth labs. And I think we need to hear more about the department's efforts as far as enforcement and also meth lab cleanup.

So I know there's a considerable amount of time that's already been spent on that today, and I appreciate that. But I also want to let you know, in Ohio we're hearing the exact same thing from our -- from our locals.

But Mr. Attorney General, I'd like to ask you about the Office of Justice Programs, OJP. The president's budget request for OJP is 22.1 percent below the F.Y. 2011 amount. And it appears that most of the savings comes from the elimination of different programs, different projects; and I understand that some of these may be congressional projects.

But with that, I would think it would lower the burden on OJP to administer and provide oversight to these grants. But there's a 30 percent increase for salaries and expenses to OJP.

And my question is, why is there a substantial increase of OJP's salaries and expenses when the administrative and oversight burdens for OJP will be reduced?

HOLDER:

Well, I think that what we have proposed is a budget that, unfortunately, reduces monies in some areas, increases it in others. We have, for instance, increased the amount of money that we seek for COPS grants, I think, from about \$298 million to \$600 million. So there are different places where there is going to be an increase in funds sought, decreases in other areas.

We want to make sure that we administer these funds in an efficient way, in an appropriate way, and the numbers that we have sent up with regard to the administrative costs, I think, is consistent with that desire.

AUSTRIA:

But it -- but it seems to me, if you have less administrative and oversight -- less projects out there and those type of burdens on OJP that the administrative causes would be -- would move parallel to that.

HOLDER:

Well, I think it's a question of not only the amount of money that is involved, but the number of projects that we might be -- we might be trying to administer, even if the number, the amount of money goes down, the number of projects that we might be ultimately supervising could be the same.

You know, as I said, COPS money goes up. That is still a program, but it has additional funds in it. We might have another program that continues to exist, although the money allotted for it this year goes down. So it's in some ways difficult, I think, to draw a direct connection between the amount of money that goes to a particular component within the Department of Justice and what is the appropriate administrative amount.

AUSTRIA:

Let me move on to another subject, Mr. Attorney General. I understand that this budget request includes a request for operating the maximum security Thompson facility in Illinois.

And I also understand that it became -- the government -- or understand that because the government is currently operating under a C.R., which we expect throughout the remainder of F.Y. 2011, the federal government does not own the Thompson facility.

If the department is not able to purchase the Thompson facility in F.Y. 2011, how do you plan to do so in 2012? Will the purchase and operation timeline just slip back a year?

And the other part of the question is, can you assure this committee that if purchased by the federal government that the Thompson facility will not house detainees being currently held in Guantanamo Bay, or what is the plan there if you do intend to house them?

HOLDER:

Well, the money that we have in the 2012 budget is -- I'm not sure how it's characterized, but it's money to, I guess, start up the running of the Thompson facility. The hope would be that in the 2011 resolution that ultimately is reached we would have the money allotted that we had in the budget for the purchase of the Thompson facility.

We'll actually save money. Thompson is something that is needed by the Bureau of Prisons to house maximum security prisoners. That's a big need that BOP has. We can get that facility, put it into operation and save the taxpayers money because it is an existing facility as opposed to one that we would have to construct. And that's why you have money in the 2012 budget -- I think it's \$60 million or something like that -- for operational expenses.

But the monies that we need to purchase it is actually in the 2011 request. And it is, as I said -- is our hope that we will be able to use that 2011 money to acquire Thompson for the need that we have.

AUSTRIA:

Are there any plans with Gitmo as far as detainees there for future use with the Thompson facility?

HOLDER:

No. There -- there are no present intentions. We have these congressional restrictions with regard to the movement of people from Guantanamo, you know, to the United States or to any facilities within the United States. Our need for that facility is, as I've indicated, to house maximum security prisoners that are -- we have overcrowding with regard to that category of prisoners in the Bureau of Prisons now.

AUSTRIA:

And one last question. I know Chairman Wolf has already asked you about the department's recent decision not to defend the Defense of Marriage Act. And I agree with the chairman's concerns on this. And, you know, my -- by taking this position, in my opinion, the Department of Justice is no longer fulfilling a usual role of defending federal statutes.

And it raises a question -- and it seems to me to be a considerable power grab by the executive branch. And if this practice continues, the legislative branch will have no choice but to start disbanding (ph) federal statute ourselves. And we're actually looking at ways now -- how to respond to that, whether it be through legislative branch attorneys or whatever means that might be.

And I know there's suggestions that whatever dollars are being used right now by the Department of Justice to be moved to whatever area, whether it be the legislative branch attorneys, to defend the Congress' statute.

You know, what are your thoughts on that? Because it seems like we're going down an area now because of the decision that was made that's opening up different areas of the -- and I just want to get your clarification as far as your position on that.

HOLDER:

Sure. What we did, I think, is correct for the reasons that I detailed before. But it's something that is exceedingly rare. We understand the obligation that we have to advance reasonable arguments in defense of statutes that Congress has passed. As I've indicated, there has been on the part of other administrations, other Departments of Justice decision made not to -- not to defend statutes Congress has passed. But that is something that happens rarely.

We have -- I have here, I guess, a list of 13 cases in which that has occurred outside of this administration. Our intent is to continue to defend wherever we can and with reasonable arguments statutes that Congress passes. The decision that -- the recommendations that I made and the decision that the president made with regard to DOMA is something that is -- I think is unique.

AUSTRIA:

I mean, has there been any internal dissent from career Department of Justice attorneys regarding, you know, this shift in policy towards DOMA? And if so, can you give us some details on that?

HOLDER:

Well, I generally don't share internal Justice Department conversations, but I can say that we certainly had a fulsome conversation about this decision. All sides were heard. The recommendation was ultimately mine to the -- to the president, and the president made his decision, having been fully briefed on both the pros and cons of the potential decision.

AUSTRIA:

Thank you, Mr. Attorney General.

And thank you, Mr. Chairman.

HOLDER:

Thank you.

WOLF:

Mr. Culberson?

CULBERSON:

Thank you, Mr. Chairman.

Mr. Attorney General, I appreciate you appearing before us today. And the time that I've got (inaudible) in this first round of questioning, I wanted to zero in on the -- on the right of the people of this country to vote.

You know it's enshrined, of course, in the 15th Amendment that the right of citizens of the United States to vote shall not be denied or abridged by the United States.

And in fact, when the first civil rights -- the very first Civil Rights Act to have been passed to the United States was the 1957 Voting Rights Act. And in going back over and thinking about your testimony today, I went back to my library and pulled out the, you know, wonderful Robert Caro series on Lyndon Johnson, which I highly recommend anybody. It's a -- it's a fascinating series of books.

And it points out that when Johnson was majority leader, he discovered that the one area that the southern senators who had been consistently filibustering the passage of any civil rights legislation by Congress for 82 years. There had been this block of southern Democrat senators filibustering civil rights being granted by statute to minorities in the south that -- Johnson found one -- one gap that even the southern senators would be willing to permit, and that was the right to vote.

Because in Johnson's estimate, in the field of voting rights, quoting Phillip Caro (sic) , "Even most outspoken of white supremacists had a sense of -- that there was something wrong in denying the right to vote."

"When the right to vote came up," he says, "the tone of voice of the southern senators was somewhat less defiant, sometimes, in fact, almost ashamed."

So Johnson zeroed in on that and recognized the majority leader, the one area where he could pass the voting rights - - excuse me, the Civil Rights Act would be to ensure by statute the right to vote and to ensure that that right was guaranteed by a right to trial by jury.

Johnson realized if he was somehow able to get that part of the voting -- of the Civil Rights Act out of the bill, he'd be able to pass the 1957 Civil Rights Act and limit it to a single right, voting, and to guarantee jury trials to defendants in voting rights cases. And it was really his proudest achievement.

And I also went back and discovered another -- in another part of my library, the very first Newsweek magazine introducing Lyndon Johnson to the nation after the assassination of President Kennedy. In his first speech to Congress, the new president gave his greatest emphasis to the most controversial measures: the civil rights bill and the tax cut.

So the -- and, of course, the attorney general is given the responsibility to enforce the Voting Rights Act, to enforce all of the laws that protect rights of Americans to vote.

And what I wanted to zero in on is the absolutely incredible and deeply disturbing evidence in the -- that the Department of Justice has been applying different standards to different groups of people in the enforcement of -- of the Voting Rights Act, and particular in the Black Panther case.

And Mr. Chairman, I'd like to, if I could, offer just as -- put in the record the report of the U.S. Commission of Civil Rights -- the interim report that the entered on the -- the U.S. Department of Justice in the New Black Panther party litigation. I'd like to make it a part of the record, if I could, sir.

WOLF:

(OFF-MIKE)

CULBERSON:

Thank you.

It's -- and we won't -- in the brief time that I've got, Mr. Attorney General, I won't have a tremendous amount of time to go through it. But I'd like to ask you, sir, if you would -- and I'll follow-up with your office in more detail -- respond to the -- there's apparently still a number of subpoenas, interrogatories, requests for production that you've not complied yet with the Commission on Civil Rights, essentially.

Have you fully complied yet with all the requests of the Civil Rights Commission in this case?

HOLDER:

This is unfair, Mr. Culberson. You've got an iPad up there. You know, they wouldn't let me bring mine. You've got yours. That's not...

(CROSSTALK)

CULBERSON:

They wouldn't let you? Oh, sure you can. Absolutely.

WOLF:

For the record, nobody asked. If you had asked, you could brought your own.

HOLDER:

I was only kidding.

WOLF (?):

Oh, OK.

HOLDER:

Sure. I was only kidding.

(LAUGHTER)

I'm a big iPad fan. I'm looking forward to tomorrow...

(CROSSTALK)

CULBERSON:

Yes, chairman's getting one, I think.

WOLF (?):

You're welcome to come next time with (inaudible).

HOLDER:

Yes. I'm sorry. With regard to the request that the commissioner's made, we have submitted, I think, 4,000 or 5,000 pages of testimony. We made available the assistant attorney general for the Civil Rights Division, who testified. We offered, I guess, toward the end of the time in which the -- before the report was issued a couple of other witnesses that they requested.

CULBERSON:

Have you fully complied yet with all of their requests? The report they issued says you have not.

And it's really distressing. A -- they have -- despite the subpoena, according (ph) from the report, on page 41: "Despite the subpoena issue to the DOJ, you have not," Mr. Attorney General, "turned over the direct evidence regarding your management level, communications and decision making about the National Black Panther party litigation." You haven't complied yet.

HOLDER:

Well, we've turned over all of the information that we thought was appropriate with regard to the requests that were made, and I think we did cooperate fully with the -- with the commission.

CULBERSON:

Well, I know that Mr. Wolf has also sent a letter with Lamar Smith last year. And Mr. Chairman, I'd like to work with you and your staff.

And I hope, Mr. Attorney General, that you'll be responsive to the chairman in supplying the committee and the commission with the evidence that they -- that they need in order to find out whether or not -- for example, as Mr. Coates had testified, that there's -- there are career people in the Department of Justice who feel strongly, it's not the voting section's job to protect white voters. The environment there is that you better tow the line of traditional civil rights ideas or you better keep quiet about it because you will not advance, you will not receive awards, and you will be ostracized. I mean, that's deeply distressing.

And no matter who the attorney general is, whether it's under the Bush administration, the Reagan administration, the Clinton administration or the Obama administration, you've got an absolute obligation to enforce all of the laws of the -- and certainly the Constitution, the 15th Amendment, the Voting Rights Act in a way that's absolutely impartial regardless of -- of who the defendants are.

The nature of the charges, the commission found, paints a picture of a Civil Rights Division in the DOJ at war with its core mission of guaranteeing equal protection of the laws for all Americans.

During the Bush administration, the press reported ideological conflicts within the division. If the testimony before the Civil Rights Commission is true, the current conflicts extend beyond policy differences to encompass allegations of inappropriately selective enforcement of the law, harassment of dissenting employees, and alliances with outside groups at odds with the rule of law.

How do you respond to that? That's a devastating indictment. No matter who the attorney general is and no matter who the president of the United States is, that's a devastating indictment.

How do you respond to that?

HOLDER:

I want to assure you and the American people that the Justice Department under my leadership and as part of the Obama administration enforces all of the laws without regard to the race, ethnicity or political persuasion of anybody who might be involved in a particular matter.

The Civil Rights Division, under my leadership, under Tom Perez's leadership, I think, has done a good job in making determinations about how it uses its resources. But those resource allocations are not made on the basis of the race of the complainant, the ethnicity of the complainant, the political persuasion of the complainant.

CULBERSON:

But in particular, in this case, in the Black Panther case, it's just -- I don't know how you can say that. And it's just not accurate.

Because the voting rights section of the Department of Justice under the Bush administration had already -- was preparing to file a permanent injunction. The defendants in this case -- I mean, they had them on video tape. The whole country saw these thugs with -- one guy with a billy club intimidating voters and running them off from the polling place in -- in Philadelphia. And the defendants had even admitted liability.

The DOJ, under President Bush, had a permanent injunction lined up. They were prepared to file. The judge was prepared to enter it. And as soon as the Obama administration came in, you withdrew -- you withdrew that, settled

for significantly less -- you withdrew the permanent injunction. You got a temporary injunction against one of the guys -- I think the guy with the billy club. And is -- it simply doesn't square with the facts.

You've got -- the United States Commission on Civil Rights has investigated this carefully and determined that, A, you're not compliant with their subpoenas or requests for documents. You didn't respond to Chairman Wolf when he was in the minority, along with Mr. -- Chairman Smith, who's now chairman of the Judiciary Committee.

The department is, I hope, going to comply with Mr. Wolf's request for information.

I mean, Mr. Coates, who explained his -- I think explained it very well when he said that, "Imagine if a -- if a couple of Ku Klux Klansman had stood outside a polling place in uniform" -- I mean, these Black Panther guys are in some kind of a uniform -- and the Ku Klux Klansman had intimidated voters. One guy was carrying a billy club, wearing his -- his white hood, I mean can you -- the Department of Justice would have been all over those guys.

There's no difference between those two cases other than the type of uniform and the type of voters that they're harassing.

Your -- your job is to enforce the law without regard to race. Clearly, in this Black Panther case, you -- you settled -- you basically reversed course, which is the first time Mr. Coates had ever seen that happen. In his 13 years with the department he'd never seen an administration reverse course in pursuing one of these civil rights courses.

And what's most disturbing -- what is disturbing enough about the Black Panther case -- but what -- what I'm driving at, sir, and I -- and I hope that you'll be responsive to Mr. Wolf and Chairman Smith, is this case reveals a pattern in the department of refusing to enforce the law if -- if white voters are being harassed; or in the case of Pima County, the Civil Rights Commission points out that you didn't pursue a case of harassing Hispanic voters.

HOLDER:

Well, as I said, the way in which this Department of Justice conducts itself -- conducts itself is to enforce the voting rights laws and all the laws without regard to the characteristics that you...

(CROSSTALK)

CULBERSON:

But that doesn't square with reality. I mean, how do you respond to the Pima County case and the Black Panther case and the evidence that Mr. Coates, and I believe Mr. Adams was -- Mr. Adams actually resigned. You had a senior official at DOJ resign because one of -- one of your division chiefs, Mr. Perez, I believe, had given, in Mr. Adams's opinion, false and inaccurate testimony before -- Mr. Adams resigned because the assistant attorney general had given inaccurate testimony to the commission.

What I'm driving at, sir -- and just the generalities aren't sufficient. And we're going to drive -- we're going to really pursue this. This is not acceptable.

We would -- these statutes -- I mean, this is the greatest achievement. Lyndon Johnson considered the Voting Rights Act of 1957 his greatest achievement. He considered the Voting Rights Act of 1964 the signature achievement of President Kennedy.

These laws lie at the heart of what makes this the greatest nation in the history of the world, that our -- we're never going to deny anybody the right to vote or deny anybody the rights or privileges (inaudible) the Constitution based on their race.

Yet, there's clearly evidence, overwhelming evidence that your Department of Justice refuses to protect the rights of anybody other than African-Americans to vote.

FATTAH:

Chairman -- if the gentleman would yield?

CULBERSON:

That's just in -- and that's the evidence before the commission.

HOLDER:

Well, I would disagree very vehemently with the notion that there's overwhelming evidence that that is in fact true.

CULBERSON:

Well, could you prove the commission wrong, please? That's what I'm driving at.

FATTAH:

The chairman (inaudible) the gentleman would yield, I'd like to enter into the record -- it might be helpful to illuminate on this issue.

This is by the Republican vice chair of the Civil Rights Commission, and she submitted this for the record. Vice Chair Thernstrom: "I cannot support the majority report on this investigation. This investigation lacked political and intellectual integrity from the outset and has been consistently undermined by the imbalance between the gravity of the allegations and the strength of the evidence available to support such charges."

I'd like to enter this into the record.

CULBERSON:

Sure.

If I could, reclaiming my time today...

(CROSSTALK)

FATTAH:

... where the gentleman placed the report.

CULBERSON:

Sure. We'll put it in the record.

FATTAH:

And the attorney general has asked -- has been asked this question and answered it four times, and I have the ranking member of the full committee.

CULBERSON:

Understand.

FATTAH:

And I'd like him to be...

CULBERSON:

If I could, reclaiming my time.

(CROSSTALK)

CULBERSON:

But I just would ask, Mr. Attorney General, if he could help us disprove these allegations.

(UNKNOWN)

(OFF-MIKE)

CULBERSON:

That's my concern, is that the evidence -- and Mr. Fattah -- sure, Mr. Fattah, absolutely. Put it in the record. And I...

(CROSSTALK)

FATTAH:

I don't want to cut him off. I just don't want him to ask and have answered the same question four times.

CULBERSON:

But he's just not answering it, my problem is. And again...

(CROSSTALK)

FATTAH:

(inaudible) answer that you're going to receive, I think, from the attorney general. And we should...

(CROSSTALK)

FATTAH:

... move on.

(CROSSTALK)

WOLF (?):

Gentlemen, I have not cut anyone off, and hope for the rest of this Congress...

(CROSSTALK)

FATTAH:

I would never ask that you cut anyone off.

WOLF (?):

... never cut anyone off. So I think we owe Mr. Culberson the opportunity to ask the line of questions.

I -- I hope I never have to test the gavel for the next two years. I think every member who cares deeply about an issue ought to be able to talk about whatever they want to.

FATTAH:

I totally agree, and we can ask any question we want. And we have to accept the answers that we're given.

CULBERSON:

And -- and absolutely. I'm -- and forgive me, Mr. Attorney General, my time's limited. And forgive me for interrupting you, sir, but really your answers are very vague and general, and -- and not responsive to what I'm driving at.

And that is, I'm asking you specifically, would you help Mr. Wolf, Mr. Fattah and myself, and my good friend Adam Schiff, who I know cares about this deeply, as all members of the committee do, to disprove these very serious allegations of the Civil Rights Commission in their report?

HOLDER:

As I've -- well, let me just say, I think I've answered very directly the question that you've asked. And let me be very clear: This Department of Justice does not enforce the laws in a race-conscious way. Any allegation that has been lodged (ph) in that regard is simply false.

Now, I think that directly answers the question that you have put to me.

CULBERSON:

OK. And you'll help us prove that with documents, responses, interrogatories that the commission sent, and you have not answered? You'll answer all of those for our committee?

HOLDER:

If the budget committee is going to be doing the oversight, I guess, sure, we will respond.

CULBERSON:

Well, sure we do oversight. That means not just the Authorizing Committee, but we have a very important oversight role. That's why Mr. Rogers' questions are so important. We're not just -- this isn't just the funding committee. We're not just the money committee. We're a key part of oversight.

HOLDER:

Sure. Whatever the committee in Congress, whether it's Judiciary, this committee, we will certainly respond and work with you in dealing with the issues that are of concern to you. Be more than glad to do that. Because I'm confident that a neutral and detached examination of the record will substantiate what I have just said in as clear and direct a fashion as I -- as I can.

CULBERSON:

I hope so. Thank you very much.

WOLF:

Mr. Dicks?

DICKS:

Thank you, Mr. Chairman. I congratulate you on becoming Mister -- the chairman of the committee and Mr. Fattah as the ranking member.

Mr. Attorney General, we're glad to have you here today. And I think my questions are going to be a little less contentious, I hope.

A number of...

HOLDER:

So do I.

DICKS:

A number of big cuts would fall on the Department of Justice. \$581 million from -- this is from H.R. 1, the bill that we passed two weeks ago. A number of big cuts fall in the Department of Justice. \$581 million from state and local enforcement assistance; \$191 million from the Office of Juvenile Justice; and the wholesale elimination of the National Drug Intelligence Center and the Weed and Seed program, just to name a few.

Even with the House vote to restore funding for the COPS Hiring Program, these cuts will surely lead to loss in jobs -- more than 3,800 by some estimates -- at a time when the nation can ill afford the additional unemployment. Can you discuss these cuts and -- and your view of what would be the impact of them?

HOLDER:

Yes. I think that -- I mean, I understand the concerns that we all have about the budgetary constraints that we -- that we have. And what we have tried to do is responsibly come up with a budget request that is mindful of the fiscal issues that our nation has to deal with while also trying to make sure that the Justice Department has the capacity to do the things that the American people expect of it.

Some of the cuts that have been proposed and that you delineated, I think, go too far and will hurt the department in its ability to be a good partner to our state and local counterparts. That's a very important -- very, very important component -- part of our -- of our job.

DICKS:

And just to add to that point, at the same time, the states are under the enormous pressure. And I think all the states are going to have to cut something like \$125 billion from their budgets, and they have to do it. So this is going to have a double effect on the state and local governments.

HOLDER:

Yes, that is exactly the point I was going to make, that given the problems that our state and local partners have and to the extent that we can help on the federal side -- (inaudible) not our responsibility to balance the state budgets. I understand that.

On the other hand, to the extent that we can help the law enforcement capabilities of our state and local partners and do it in a responsible way -- and that's what I think we have laid out in our 2012 budget -- I think we should try to do that.

DICKS:

Additional troubling is that these specific cuts are targeted at the criminal justice sector, meaning that we will have fewer police officers, prosecutors and other public safety personnel working to keep our constituents safe.

It also means that there will be significantly fewer resources available for youth mentoring, after school programs, programs to prevent domestic abuse, programs in which I know you have a personal interest. And all of the time, when state and local -- as I mentioned, state and local governments are making severe cuts to their own budgets.

Funding for many of these very important programs is disappearing before our eyes, and that will have very serious effects on all of our districts.

So I hope that, you know, you can work with the leaders of -- on both sides of Capitol Hill that on -- to try to make sure that when we get the final product here, that we have something that the department can live with that won't have a negative effect on law enforcement.

HOLDER:

No, I would hope that we have that ability. And I think this -- you know, this hearing today we're having I think is a good exchange, but, hopefully, will just be the beginning of a process that will allow us to talk about our views of how we should construct this budget, obviously listening to the thoughts that the members of this committee have and come up with a budget at the end of the day that will best serve the American people.

We don't claim to have all of the answers, and what we want to do is to have an interaction what this committee (inaudible) as I said, at the end of the day, produces a good budget for my department.

DICKS:

Thank you. Thank you, Mr. Chairman.

WOLF:

Thank you, Mr. Dicks.

Prison rape. I, along with Bobby Scott in the House, with Senator Kennedy and Senator Sessions in the Senate, passed the prison rape bill, which I think is very important. The fact is, I hope to spend a little time on prisons and prison reforms, but I want to begin with regard to this.

Congress affirmed its duty to protect incarcerated individuals, and I've been disappointed that the department has been very slow in acting from (ph) sexual abuse when it enacted Prison Rape Elimination Act.

Since then, the National Prison Rape Elimination Commission has studied the causes of sexual abuse in confinement, developed standards for the reduction of this crime, and set in motion the process once considered impossible -- the elimination of prison rape.

On January 24, the DOJ published the long-awaited proposed rules outlining national standards to prevent, detect and respond to prison rape. When do you expect the regulation to be finalized?

HOLDER:

The rule is out for comment now. I would hope that this would be finalized by the latter part of this year, given all of the administrative things that have to happen, the regulatory process that has to -- that has to go through.

WOLF:

I have a letter from somebody who I know you know very well, Judge Walton, who -- and I'll just read portion of it. And perhaps you can answer as I get to that. He said, "I write in my capacity as former chairman of the National Prison Rape Elimination." I assume you both served as judges together.

HOLDER:

Yeah, we served together on the Superior Court.

WOLF:

Yes.

"We are aware of the upcoming House Appropriations Subcommittee hearing," et cetera, et cetera. "We offer the following short list of pre-related items for your consideration. Note that our collective concern is predicated on more than mere suspicion that interested parties have pressured the attorney general's PREA working group to alter the commission's standards.

"The attorney general apparently supports changing the commission's standards, which in our view will weaken inmate protection and diminish institutional safeguards.

"More importantly, the Department of Justice is currently using cost estimates that are unknown, unavailable. Everyone, especially the commission, needs to know the basis of the additional cost calculations and the subsequent analysis, which has not been made public.

"Please inquire when this vital information will be released."

When will you be releasing the information (inaudible) time for the commission?

HOLDER:

Releasing the information?

WOLF:

Information with regard to cost.

Because he goes on to say, "It is essential that the data be available on an expedited basis for the commission and others who are presently preparing comments due on April 4.

"If the data cannot be properly released, please ask the attorney general if the comment period will be extended to ensure an opportunity to review the crucial data before submitting comments."

HOLDER:

OK, well, I will certainly look into that. And to the extent that information has not been made available that would help in the formulation of good comments, I will do all that I can to make sure that information is -- is made available.

I have to -- I just have to look into that.

WOLF:

OK.

He went on to say, "Please inquire if the attorney general agrees with the commission that regular and independent audits are a bulwark against adverse court decisions and public criticism."

Do you agree with that?

HOLDER:

I certainly think there has to be some kind of monitoring of this to make sure that, in fact, the aims of the regulations that ultimately are adopted are, in fact, taking place. So yes, I think...

WOLF:

Who would you see to monitor that?

HOLDER:

Excuse me...

WOLF:

Who would you have monitor that?

HOLDER:

Well, these are things that will have to happen. I mean, we'll have to work our way through that. I don't know how -- what the process might be, but my thought is that some kind of monitoring of the progress that's been made...

WOLF:

But there needs to be -- I think the department's been late in this. During this period of time, many women have been raped in the prisons.

We raised this with you last time you came before the committee. This is important. This is one of those individuals -- but this is the responsibility of the attorney general.

And I thought this was one issue that you would embrace and be enthusiastic in working with the Congress to kind of deal with the issue. I mean, I'm almost surprised that it's almost been like pulling teeth you almost can't get out.

I'd like to ask that the I.G. audit this, because if you have the corrections people auditing themselves, you will not be sure that it's really being done. What is your position with regard to asking the I.G. to audit it every year for the first three years and in three years thereafter?

HOLDER:

Well, I would say that, first off, the passion that you have for this, I think, is laudable, and the reality is that this is something that we have taken very seriously at the Department of Justice, something that I have taken very seriously at the Department of Justice.

The commission had five years to do its work. There were a number of extensions that the commission had. We got one year once the commission submitted its report to us to try to get a final rule done. We missed that deadline. We're probably going to be about 18 -- it's going to take about 18, maybe 20 months in order to do that. The commission had five years, as I said, to do -- to do its work.

The passion that you have is shared by the people who worked on it at the Department of Justice. This is something that we are trying to eliminate. We want to do it in such a way that we put in place a regulation that will stand the test of time and ultimately will be effective in stopping this -- these heinous practices that subject people to physical abuse. And that is what we have tried to do.

And also been mindful of the restrictions that were placed on us about cost, that cannot be...

(CROSSTALK)

WOLF:

Who will audit -- the question here is who will audit whatever is done or not done? Who will you view as auditing to make sure that the act is carried out appropriately? Who do you see as auditing this?

HOLDER:

Well, I think that's something that we'll have to work on. Their -- you know, to audit the nation's prison systems is something that is going to be very substantial. And we're talking about, I think, a very -- you're talking about something that could be cost intensive.

And so how we do this is something that I'd be more than glad to work with the committee on, and with you in particular, about coming up with a mechanism so that we make sure that the monitoring is done in an appropriate way.

WOLF:

By an objective group? I don't think the people who are involved in (inaudible) can audit themselves.

HOLDER:

Well, we'll have to make sure that the audits -- the monitoring is done in a way, yes, that is credible. And we'll have to work on that, sure.

WOLF:

Judge Walton goes on to say, "Cross-gender searches. DOJ standard is regressive on security pat-down searches. Virtually all state prison systems presently prohibit male staff from searching women inmates in the absence of other circumstances. This view is supported by a 1999 study conducted by the National Institute of Corrections, a DOJ component.

"We are informed and now confirming that a similar ban exists in most jails. Bureau of Prisons policy and practice, however, routinely permit cross-gender pat searches of female inmates by male correctional officers.

"Please inquire of the attorney general why he opted to adopt the BOP's practice rather than the practice which is prevalent in the majority of correctional institutions and supported by a robust body of case law."

HOLDER:

Well, what we have proposed is a -- what is out there is a proposed rule, and they'll be comments that will be made - - among those obviously from Judge Walton -- other members of the commission, other members of the public, interested parties, and we'll take those into account before a final rule is actually put in place.

So I'll take that -- I mean, it would have been nice (inaudible) Judge Walton (inaudible) shared that with me. Didn't get it from him. But I will take into account -- and maybe you could share that letter with me...

WOLF:

Sure, we'll share it.

(CROSSTALK)

WOLF:

It's underlined. I have notes, but we'll share this -- this with you.

HOLDER:

Sure, that's fine. And we will take into account all the -- the comments that -- that come from a variety of sources, and, in particular, from those people who were on the commission.

WOLF:

Well, the commission spent a lot of time -- and I think we really want to make...

HOLDER:

Five years.

WOLF:

... yeah, and it's done well. Well, they're not -- you know, they're not professional people. They were taken from different areas and they spend a lot of time. And we want to make sure that it's audited appropriately, and this is very, very successful once -- once it's completed.

I think this department has been very slow with -- with regard to that.

Human trafficking. Last year, I asked you about what could be done immediately to institute greater cooperation between state and local governments, the FBI and the U.S. Attorneys in order to close down the sites where trafficking is taking place, remove the victims of trafficking, and to finally prosecute the offenders.

It would be beneficial for all the U.S. Attorneys to have task forces with regard to this.

What are your thoughts about -- particularly in areas where this is a problem, which, unfortunately, seems to be in most parts of the country? Do you think it's a good idea that every U.S. Attorney have a task force to deal with (inaudible) federal, state and local working together? And if you do, how many currently have task forces?

HOLDER:

Well, I think that it's -- there's a variety of ways in which we need to deal with this. And I think that that is something that is worthy of attention by the U.S. Attorneys Offices. And I think that we need to work with our state and local partners in -- in that regard.

We have done things using -- very quietly. We've had meetings with interest groups who have raised concerns about the use of various media and advertising that have been used to traffick especially young women -- girls actually.

And as a result of those interactions and the pressure that was brought to bear, we've seen, I think, significant changes in the -- in the past -- in the past year. Those efforts that we're doing, again, quietly, are, I think, bearing results.

And so what...

(CROSSTALK)

WOLF:

But I think the question was, do you think it's a good idea for U.S. Attorneys, in areas where this is a problem, to have a task force whereby state and local and social services working together?

And Neil MacBride has one here in Northern Virginia. I think they're bringing everyone in together. I believe they established it at -- at our request, but I appreciate he moved very quickly on it. He felt it was a very important thing.

How many other U.S. Attorneys have a task force like Neil MacBride has?

HOLDER:

That I do not know. But one of the things I've told all of the U.S. Attorneys is to look at what are the issues that you have to confront in your district? How can you improve the quality of life of the people in your district? How are you going to protect the people in your district?

And I know Neil has done exactly what you have indicated, and I think he's done it well. And I think we can learn from what he has done there and see how we might extrapolate, learn from, duplicate, replicate what he has done...

(CROSSTALK)

WOLF:

Could he be the only one that has a task force?

HOLDER:

I don't know. I -- I will check on that and I will get back to you on that.

WOLF:

The Trafficking Victims Protection Reauthorization Act requires DOJ to create a new model state law to further a comprehensive approach to investigating and prosecuting human trafficking, and to do so by drafting provisions that criminalize sex trafficking without proof of force, fraud or coercion, and whether or not the victim is a minor.

Where is the DOJ in the process of drafting this model legislation?

HOLDER:

I -- I will have to get back to you on that, Mr. Chairman. That is something, obviously, I think is worthy of our efforts. And I'll have to see -- check and see exactly where we are with regard to the drafting.

WOLF:

Section 237 of the Wilberforce Act established in March 2009 -- deadline for the submission of a status report to Congress -- that's March 2009 -- on the department's long-delayed progress in commissioning a full report on unlawful commercial sex in the United States.

Without a complete understanding of the horrific nature of this criminal industry -- and, you know, you should be the attorney general that shuts this down. The word should go forth, "Holder is against this. Holder will go anywhere, do anything and eliminate this." This could be your legacy, if you will.

So that's why I think every U.S. Attorneys' Office ought to do what Neil MacBride's doing.

But to go back to the question, without a complete understanding of the horrific nature of this criminal industry, how can federal, state and local policymakers properly deal with what many have described as the slavery issue of our time?

Can you give us an update on the status of this critical report?

HOLDER:

I'm sorry, Mr. Chairman...

(CROSSTALK)

WOLF:

Section 237 of the Wilberforce Act, which established the March 2009 deadline for the submission of the report. I'm (inaudible) can you give us a status of where it is. It's late. Can you give us the status of it?

HOLDER:

OK (inaudible) I will get back to you with regard to where we stand in -- in that regard.

WOLF:

The manager's statement to the Wilberforce Act called on the department to review and report on the organization of its anti- trafficking prosecutions. Has this review been completed?

HOLDER:

Well, the -- I mean, we are in the process of trying to compile an anti-trafficking -- a nationwide anti-trafficking strategy and come up with a guide for use by the task forces that will be in place or that are in place -- and I'll come up with a number for you -- so that we have a robust enforcement effort with regard to this issue.

And I'll come up with (inaudible) with the numbers of task forces that are presently in existence and also detail for you where we stand with regard to the report in the legislation.

WOLF:

The undercover video recently showed that a Planned Parenthood clinic in New Jersey, New York, and D.C., and Virginia all turning a blind eye to the conditions that clearly marked patients as trafficking victims.

Moreover, clinics advised a pimp on how he could avoid being caught by falsifying or omitting key information on the very paperwork that is required to insure (ph) minors.

As you know, the Trafficking Victims Protection Act defines severe forms of trafficking a person that as, quote, "sex trafficking, in which a commercial sex act is induced by force, fraud or coercion, in which the person induced to perform such act has not attained the age of 18."

Have these been looked at with regard to the trafficking law?

HOLDER:

It's my understanding that the FBI actually has looked at that matter. I believe this is true. If I'm incorrect, I will send you something, but I understand the FBI has looked at that and that prosecution was declined in that matter.

WOLF:

OK. Well, I -- I -- I'm going to end. I have some other questions that I'm not going to go into.

But I -- I would really hope -- because when you speak out, Mr. Attorney General, the U.S. Attorneys, they listen. You are their leader. And I think for you to say, "This is a priority for Attorney General Holder: No young teenage person, no young person should be sexually trafficked. No one should be brought in from another country. We could -- you could -- and we'll prepare to help you in any way we possibly can," will really make a tremendous -- you could literally eliminate it for the next two years. If you put effort into it you could literally break the back of this.

And I would urge you -- and the committee will do anything we possible can to help you -- to be the attorney general that literally almost eradicates sexual trafficking from -- from this country.

HOLDER:

Well, as I said, this is something that is a priority of the department. It's a priority of mine. If you look at the fact that Craigslist has dropped their adult ads, that's a significant thing.

WOLF:

That is.

HOLDER:

And that happened as a result of meetings that occurred in -- in my office and the work that some organizations who we met with...

WOLF:

Why, thank you for that.

HOLDER:

And we have had other meetings about other publications that are continuing to do this. And that is a prime way in which young girls are -- are trafficked.

And, again, this is not something that we have done very loudly or sought any attention about. We've only tried to achieve results.

I think you're right, the U.S. Attorneys, I think, maybe are a group of 90-something people who do tend to listen to me -- not many others do. And hope that in my interaction with them I have made clear that this is, in fact, a priority.

And we will work to make sure that we have in place mechanisms that will effectively get at this issue.

I think what Neil MacBride has done in the Eastern District of Virginia is very good. I'm familiar with what he has done there, and we're in the process of developing ways in which other U.S. Attorneys can come up with mechanisms, either doing exactly what he has done, or doing something that will respond to the unique needs of -- of their districts so that we overall have a good national enforcement effort here.

But, as I said, we will continue doing the quiet things as well.

WOLF:

Sometimes the more public the better.

I'm just going to ask one (inaudible) issue and then go to Mr. Fattah. It's about the High-Value Detainee Interrogation Group. I have, over and over, sent letters to the administration.

And everyone I talk to who's a career person thinks it's a good idea. I've asked that the high-value interrogation team be co-located at the Counter-Terrorism Center. Any comments with regard to that?

Because if you're there when the information is coming in, you're more attuned and ready, and know who you have to pick and pull; and to have them co-located there; they're not there. They're -- I know where they are. They're not there.

Does it make sense to co-locate the HIG at the Counter-Terrorism Center in McLean?

HOLDER:

Well, there are ways in which -- I think the -- the -- the key is to make sure that they are communicating in real time, to the extent that that's possible.

(CROSSTALK)

WOLF:

But the purpose of the Counter-Terrorism Center was to bring everyone together (inaudible) be face-to-face -- the stovepipes would be broken down. That's the advantage of it. And I think Leiter's doing a good job...

(CROSSTALK)

HOLDER:

Yeah.

WOLF:

But to have the HIG team co-located there, would that not make sense?

HOLDER:

Well, I mean, I think, as I said, communication, I think, really is the key. I've seen the letter that you sent to Mr. Brennan. I've seen his response back to you. And I would align myself with what he indicated...

WOLF:

That they don't have space? Is that the reason?

HOLDER:

(inaudible) there is the need to make sure that in -- as -- as I said, as close to real time as is possible that communication exists between the HIG and CTC. And I agree with you that Mike Leiter's done a good job there, and I think that the interaction that exists between the HIG and NCTC is actually good.

WOLF:

How many times have the HIG or the MIT interrogation team has been deployed since Christmas Day last year?

HOLDER:

I would have to check on that and get back to you. They have been deployed. I don't know -- I don't know the exact number.

WOLF:

Mr. Fattah?

FATTAH:

Well, thank you. I know that the U.S. Attorneys listen to you, because I know that our U.S. Attorney in the Philadelphia area, Dave Memeger, was out last night in a neighborhood interacting in the community around issues that improve the quality of life there in terms of guns and -- and youth violence, and made a significant impact.

I want to do a couple -- get a couple things in the record since this -- this fiction about you making decisions about which cases to proceed with and which cases not to proceed with based on race.

I just want to put -- you decided to drop the prosecution for the late Senator Stevens. You were applauded by, I think, a lot of members on the other side. You didn't do that on the basis of his race, right?

HOLDER:

No.

FATTAH:

OK. And I want to make sure I enter this news story in the record about that decision.

And also you decided not to prosecute anyone in relationship to the destruction of the alleged videos of torture of prisoners by agents of the CIA or consultants or employees. That wasn't done on the basis of race, was it?

HOLDER:

No. It was not.

FATTAH:

OK. And you decided not to pursue a prosecution of -- of former Majority Leader Tom DeLay and his ties to Abramoff. Was that done on the basis of his race?

HOLDER:

No.

FATTAH:

So now this fiction about the -- the New Black Panther Party -- these were two individuals at one polling place in the entire nation on Election Day who were out there. And the fiction created by Fox News is that they were intimidating voters.

There were no allegations by any voter that they were intimidated, number one. These people said they were out there to protect these voters so they could cast their vote.

Now, they should not have been there. They were rightly arrested. And the department dealt with the adjudication of this matter, as you dealt with all the other cases.

But I think that the allegation -- and I think the most unethical thing a person can do is make allegations based on absolutely nothing. That you were making decisions based on race flies in the face of all of the facts available.

I think it is -- it brings our -- the Congress into disrepute, in fact, to even raise without evidence -- now if we look at what this -- this holdover Civil Rights Commission has done, they ran this -- this ridiculous investigation that the Republican vice chair says lacks integrity to continue these allegations out in the public.

But the facts as they are. And I think that the work of the department in making decisions, rather -- and these are some fairly politically sensitive matters -- but without regard to race or political affiliation, just based on the facts. And that's what we want prosecutors to do, to exercise their discretion and to do it on the side of justice.

So I want to commend you for doing it. And I want to thank the chairman for allowing me to enter these statements into the record.

WOLF:

(OFF-MIKE)

FATTAH:

Now, I want to go to this question...

HOLDER:

If I could just say one thing in that regard -- and I appreciate your comments.

The decisions made in the New Black Panther Party case were made by career attorneys in the department. And beyond that, you know, if we're going to look at the record, let's look at it in its totality.

The department, I guess, just last year requested additional relief on behalf of white voters in a Voting Rights Act in Mississippi, the case of United States v. Ike Brown, where the -- I believe the person there -- the person was suing was black. I mean, so we have done these kinds of things irrespective of the race of the -- the person who was either the complainant or the person who has done the inappropriate thing.

We have simply tried to follow the law, apply the law in a race- neutral way. And any assertions to the contrary are simply not consistent with the facts.

FATTAH:

Now, I -- the reason why I love our -- our chairman -- Frank Wolf has done a great job -- in part because of the passion he brings to this question of human trafficking.

And the department has done some work in this area that I want to make sure we get in the record.

Over the last two fiscal years, you've had a record number of prosecutions in human trafficking cases. And, you know, particularly in this area of children -- you know, some 1,200 children who have -- investigations related to 1,200 children. You've had over 600 convictions in state and federal court, with 25-year-to-life sentences imposed.

I went over and visited in Virginia the Center for Missing and Exploited Children, which is funded by your department. You have a number of agents co-located there -- FBI, ATF and the like -- working day in and day out,

doing amazing work to recover children who've been kidnapped or are being exploited, or being used in child pornography purposes.

So I really want to commend the department. This is some \$30 million-plus being well spent. I don't think the public is as aware as we should be about the number of children who go missing every day.

And, you know, we talk about human trafficking as if they're just young girls being brought from some other place for untoward purposes, but in many instances, we have children right here in our own country -- and it's terrible in any circumstance, but these children who have been taken.

And if it was not for the work of your department to track them down and to both prosecute the people who are violating the law and also rescue these children it would not happen.

So as a father of four myself, I want to thank you for that. And I'd yield back the remainder...

(CROSSTALK)

HOLDER:

If I could just -- in that regard, I think what the ranking member is talking about is the Innocence Lost National Initiative. As of November 2010, the statistics (inaudible) correct, there are 39 Innocence Lost Task Forces and working groups around the country that have worked successfully to recover more than 1,200 children. Investigations have led to 600 convictions with the multiple 25-year-to-life sentences that he indicates. And I think that is an indication of the kinds of attention and resources that we have devoted to this issue.

But we always want to get better at it, and want to work with the committee, and in particular with the ranking member and with the -- with the chair so that we make sure that all that we are doing is funded appropriately and that it gets the attention that it needs.

It's a very serious problem. It's a very serious problem.

WOLF:

Mr. Dicks?

DICKS:

Thank you. I want to thank the gentleman from Texas for letting me go first.

One thing -- in your statement, on page 3, you talk about, you want to expand the Computer Intrusion Initiative to increase our capabilities to detect and counter cyber intrusions.

I serve on the Defense Subcommittee and heavily involved in intelligence oversight. This cyber issue, I think, is one of the most dangerous issues to face the country...

HOLDER:

You're right.

DICKS:

... and -- and I just would like you to describe what the Justice Department is doing with your Computer Intrusion Initiative.

HOLDER:

Well, we -- I think you're right -- this is one of the most dangerous things that we have to confront, both on a national security basis, where people are trying to hack into our computers, glean national defense information, or where they might be used in an offensive way against our -- our country.

There's also the commercial side, where trade secrets are stolen, where intellectual property is stolen as a result of computer intrusions. This is something that we have devoted a great deal of attention to.

Cyber crime, I think, in both the forms that I have described is really something that requires 21st century enforcement efforts. It's something that we have devoted time and attention to. It is a priority for this administration. This is something that is not just the Justice Department working on; this is something that we discuss in meetings that we have in the Situation Room with the president.

We are really focused on the whole question of -- of cyber crime. We have a very effective -- part of our Criminal Division, the computer crimes section, I think does a very, very good job. Our budget for fiscal year 2012 asks for an increase of \$318 million and 42 positions to enhance the FBI's ability to direct and investigate cyber terrorism matters, and also to strengthen the National Cyber Investigative Joint Task Forces. And also to improve our forensic capabilities in this -- in this regard.

This is an area that really is important, and I think that your characterization of this as -- as very serious and something we need to -- is exactly right.

DICKS:

One thing I would mention, I saw a recent report -- and some people say this isn't -- it is still understated -- that this - - that cyber attacks and taking people's intellectual property has reached over \$1 trillion worldwide. Now that's a big number when you talk about that kind of impact.

And, you know, we worry about our financial institutions, our utilities, you know. I think that the Defense Department's doing a pretty good job.

What -- what -- the major concern I have is with the Department of Homeland Security and its -- its -- its coverage of the rest of the government besides defense and the business community in the country and the -- working with the administration on what they're doing.

And do you think there's a need for a regulation here to -- to -- so that the government -- I'm told by the Department of Homeland Security that they cannot direct a company to take certain actions -- like a utility, for example, if they were vulnerable to a cyber attack; that there's certain things they could do. And if they didn't do it, the Department of Homeland Security can't do anything about it.

HOLDER:

Well, I think one of the things we need to do is try to work with our -- with partners on the private side and establish relationships such that when we identify a threat that they take action consistent with that threat. I think that's probably the best way to do it.

But, I think the point that you make about the commercial side is -- is -- is, again, exactly right.

I went to Hong Kong to give a speech about that a few months ago, and then went to China to talk to the Chinese authorities there about the problems -- the issues we have with them about the way in which these cyber intrusions are occurring and the theft of our intellectual -- intellectual property. They announced a program of short duration to deal with the issues that -- that we raised.

But I think working with people in private industry, having a good interaction between government and those on the private side -- for them to come up with ways in which they are responsive to the -- the -- the issues that we identify is probably the best way to do it.

If, ultimately, there is the need for regulation, I mean, that is something -- certainly something that we would want to work with Congress on.

But I think that your identification of this issue, in all the ways in which you have described it, is something that really has to be focused on. And as we have made tough choices with regard to our budget is one of the reasons why we have placed -- sought the pretty substantial increase in this area. Because I think this is an area that is deserving - - even in these hard budget times, this is an area that is deserving of more -- more resources.

DICKS:

You know -- and I'll just end on this. Sometimes people don't even know that they've been...

HOLDER:

That's true.

DICKS:

... intruded on. And -- and -- and this is -- and you don't know necessarily where it's coming from because the way they -- they set these things up can be very deceptive. So I -- I -- I just think -- and I think the vulnerability is -- has not been publicly stated as much as it should so that people will take it -- and the companies will take it serious.

Thank you.

Thank you, Mr. Chairman.

(CROSSTALK)

WOLF:

Mr. Culberson?

CULBERSON:

Thank you, Mr. Chairman.

Mr. Fattah said -- I want to make sure I understood, Mr. Fattah, you -- I hope you weren't referring to my questions as bringing discredit to the Congress, I hope.

FATTAH:

Never.

CULBERSON:

Thank you, my friend.

Because we do work together arm-in-arm in this. But, I mean, the -- these are not -- I think I heard you say "made-up allegations" or something. They're not...

FATTAH:

I said they were fiction -- fiction.

CULBERSON:

Fiction.

OK, well, they're on videotape. And you've got sworn testimony from a whole variety of witnesses -- and I know you're upset (ph) -- in Philadelphia, this happened in your backyard. But this is on videotape. You've got sworn testimony from a whole variety of witnesses in a particular -- and this is now part of the record.

I want to bring to your attention the -- this is sworn testimony in the litigation brought by the Bush -- under the Department of Justice, under President Bush -- a gentleman by the name -- let's see -- Bartle Bull, who was a -- he'd worked in the Lawyers' Committee for Civil Rights Under Law in Mississippi in the 1960s; publisher of the Village Voice. Worked for the New York -- he was the New York campaign manager for Bobby Kennedy's presidential campaign in '68. I mean, this guy goes way back -- Charles Evers' campaign for governor of Mississippi. The guy's civil rights credentials are impeccable.

And he was interviewed by the Department of Justice personnel about what happened on Election Day. He watched these two uniformed men confront voters, attempt to intimidate voters. Position themselves in a location that forced every voter to pass in close proximity to them. They brandished a night stick; were wearing uniforms.

He says, "In my opinion, these men created an intimidating presence at entrance to a poll," (inaudible) direct sworn testimony in the litigation that -- that was going to lead, until you dismissed it, to a permanent injunction against these guys.

This testimony -- sworn testimony, "In all of my experience in politics and civil rights litigation and in all my efforts in the 1960s to secure the right to vote in Mississippi, I have never heard or encountered another instance in the United States where armed and uniformed men blocked the entrance to a polling location.

"Their clear purpose and intent was to intimidate voters. To me, the presence and behavior of the two uniformed men was an outrageous affront to American democracy and the rights of voters to participate in an election."

His sworn testimony is, Mr. Fattah and Mr. Attorney General, that "this would qualify as the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960s."

So it was on videotape. You've got sworn testimony from all sorts of witnesses that these guys were intimidating and harassing people. They admitted liability; were ready to accept the judgment of the court. The department of -- the Civil Rights Division had actually a -- prepared a permanent injunction, and as soon as the new administration came in, they withdrew it.

And -- and -- it is that in itself that is a terrible affront to American justice and the Civil Rights Act that was the greatest achievement of President Lyndon Johnson and President Kennedy -- the Voting Rights Act.

But what's -- what I'm really driving at and what's most disturbing, I know, to me, to Mr. Wolf, to a lot of Americans is the double standard. There's a pattern of a double standard here that Mr. Adams, Mr. Coates, that a number of people in the department have testified to.

And on the Ike Brown case -- Mr. Attorney General, you mentioned a minute ago that you said -- I'm flying through my iPad here; you gotta get you one of these. Frank is about to get one. They're spectacular.

The -- on page 52, if I can get to it quick enough by flying through -- (inaudible) I can't pick pages. They talk about the Ike Brown case, Mr. Attorney General. You mentioned a minute ago that it was your -- your belief that it was professional people and the career attorneys that had handled this.

And as I recall, on page 52, that the attorneys who -- at the time the attorneys made this decision -- and I'll find it here in a second -- that they were -- you say they were career attorney generals, but the time they made the decision, they were actually political appointees.

So there's a lot of -- there's a lot of conflict between the official position of the attorney general and the department and the sworn testimony of attorneys who work in the Civil Rights Division. And that there's -- that we've got sworn testimony, that there's a pattern of behavior of refusing to enforce the law in a race-neutral manner.

(CROSSTALK)

CULBERSON:

So it's a deep concern of the committee, Mr. Attorney General...

FATTAH:

If the gentleman would yield for one second?

(CROSSTALK)

FATTAH:

I don't claim to take any -- any personal offense to what I said earlier. I was not saying that you were bringing the Congress into disrepute.

CULBERSON:

Thank you.

FATTAH:

I'm saying that the allegation that the attorney general is acting on the basis of race is fiction. That is that if you look at all of the decisions to decline prosecution, the ones that I just named -- Tom DeLay, former -- late-Senator Stevens, and so on -- that they're not based on race.

(CROSSTALK)

FATTAH:

The only race involved here...

(CROSSTALK)

FATTAH:

... is using -- the only issue of race is the singling out this particular decision, right?

Now, I happen to know -- and I know you're from Texas -- this is pretty close in for me -- this happened in Philadelphia -- is that the essence of the allegation that among a million polling places, there was one where this took place, that this rises to national significance is bogus on its face.

Secondly...

CULBERSON:

Bogus on its face?

(CROSSTALK)

FATTAH:

That is.

Secondly, that anyone was intimidated, as I told you, no one...

(CROSSTALK)

FATTAH:

... no one has alleged that they were intimidated. But they should not have been at a polling place. It was a federal election. And the Justice Department took appropriate action.

I totally agree.

(CROSSTALK)

FATTAH:

Now, I'm going to yield you back your time...

CULBERSON:

Yes, sir.

FATTAH:

... because the committee has dealt with a lot of issues today. If you think this is the most significant one, I want you to be able to pursue it.

I'm just telling you, I'm not making any personal affront to you.

CULBERSON:

I appreciate that.

FATTAH:

I know that you're sincere. I just think that to -- to anyone who believes that the Department of Justice is operating on the basis of race, I just think it's -- it's -- it's without foundation.

CULBERSON:

OK. Thank you.

And I'm reclaiming my time, and I appreciate that very much, Mr. Fattah.

And we all work together arm-in-arm in this committee, Mr. Chairman and Mr. Attorney General, in a cordial and a friendly way. And we're all concerned to make -- we all are committed to making sure our laws are enforced in a racially neutral way, in a way that's fair and blind. No matter who the president is or who the DOJ attorney general is, I'd be pursuing these questions.

But I would -- I would -- I would hope that this committee will pursue in -- in greater detail and more depth -- and, perhaps, Mr. Chairman, in a separate hearing, these very, very serious allegations of a pattern of behavior to the Department of Justice: sworn testimony that indicates there's a pattern of behavior of refusing to enforce the laws in a racially neutral manner, ignoring the voter intimidation in Pima County, Arizona, ignoring voter intimidation in Philadelphia, the Ike Brown case, where attorneys at the department were harassed -- we've got sworn testimony.

And the reason it's relevant, if I could, in conclusion, Mr. Chairman, point out that the Department of Justice is asking for a \$145 million increase in the Civil Rights Division funding for this year, Mr. Chairman. And that includes funding for 815 staff positions. That's a 14 percent increase in manpower and an 18 percent boost in spending.

I want to make sure American taxpayers are getting their money's worth, Mr. Chairman. That that money's being spent in pursuit of cases in a absolutely blind and racially neutral manner. No matter who it is, if they're intimidating voters, if the voter registration rolls -- that's another question, Mr. Chairman -- Section 8 of the National Voter Registration Act. We've got sworn allegations that it's not being enforced. States are being allowed to keep garbage lists, and the DOJ's charged with cleaning up those lists.

I think it's worth very careful inquiry, Mr. Chairman, to determine whether or not these -- Mr. Fattah says it's false. We've got sworn testimony it's true. We need to pursue that in great detail.

HOLDER:

Well, if I could -- there are just a couple of things. First, the people in the Black Panther case did not admit their guilt. They did not appear and a default judgment was entered against them...

CULBERSON:

But they did not contest liability?

HOLDER:

When you said admit that's an affirmative action...

CULBERSON:

Whatever...

(CROSSTALK)

HOLDER:

I think that the quote that you read from that gentleman that this was the greatest affront in the history...

CULBERSON:

That he'd ever seen...

(CROSSTALK)

CULBERSON:

... personal opinion.

HOLDER:

I mean, think about that. When you compare what people endured in the South in the '60s to try to get the right to vote for African-Americans and to compare what people were subjected to there to what happened in Philadelphia -- which isn't inappropriate, certainly that. But to call that -- to put it -- you describe it in those terms, I think, does a great disservice to people who put their lives on the line, who risked all for -- for my people.

My wife's sister integrated University of Alabama when George Wallace stood in the door and said that she, as a state resident, could not attend the University of Alabama, Vivian Malone, who I'm proud to say was my sister-in-law -- to compare that kind of courage, that kind of action and to say that the Black Panther incident, wrong though it might be, somehow is greater in magnitude or is of greater concern to us historically, I -- I think just flies in the face of history and -- and -- and of the facts.

And I just want to assure again the American people that the allegations that somehow, some way this Justice Department does things on the basis of race is simply false. It is simply false.

Anybody who makes that contention is not telling the truth, is not familiar with the facts, or has a political agenda. It is simply not true.

CULBERSON:

I'm very glad to hear it, Mr. Attorney General. And I know the chairman is as interested as I am and as Mr. Fattah, and all the members of the committee are to ensure -- to make sure that that's not true. I'm glad to hear you say it.

And I'm confident you'll provide proof to the chairman of the committee that everything Mr. Coates, Mr. Adams and these other folks said under -- in sworn testimony -- that everything they said is false. I'm confident you'll prove them -- prove that they're -- I hope that you can prove that your statement is accurate, and I hope the committee will pursue it.

FATTAH:

I think, Mr. Chairman, I want to reiterate the statement of the Republican vice chair who was involved in this supposed investigation that keeps being referred to here. She says that "this investigation lacks political and intellectual integrity from the outset and has consistently been undermined by the imbalance between the gravity of the allegation and the strength of the evidence available to support these -- such charges."

I just want to put that again in the record because this is -- it's obviously an important issue to my colleague. I think it would be important for the committee.

And that the attorney general has no burden to disprove allegations that even the hearer of these supposed statements says, you know, were weighted and imbalanced and lacked integrity from the outset.

WOLF:

Before I recognize Mr. Serrano, I do want to comment, though. I think Mr. Culberson makes a legitimate point. Mr. Fattah and I are both from the city of Philadelphia originally.

My first year of college, I went to the University of Mississippi in Oxford. And I saw discrimination, I saw segregation, I saw things that I didn't like. I was the only member of the Virginia delegation...

HOLDER:

You were.

WOLF:

... to vote for the Voting Rights Act. And there were many editorials criticizing me, from the Richmond Times-Dispatch and other newspapers.

And I think it's important -- we're not looking for finding punishment to go through the Justice Department to find out who did this. But going future -- going future -- and that's why I think it's important, and I appreciate Mr. Culberson raising this -- going future, there ought not be any discrimination based on race. Period.

And if we find it -- and I will tell you that we have had telephone calls from career people at the Justice Department who don't want to come forth with their name. I'm not so anxious to go back to find out what took place a year ago or two years ago, and who's to blame and who puts this in the record.

But going forward, from here on in, from this day forward -- because I believe in the Voting Rights Act strongly, not by rhetoric or words, but by deeds. And we will make sure that it is enforced in an appropriate way.

So I -- I think what Mr. Culberson did was appropriate. We're looking forward.

And with that, let me just go to...

HOLDER:

Well, I just want to say that there have not been, there is not, and there will not be any enforcement of the civil rights laws on the basis of anything other than the facts and the law. Race does not, has not, will not enter into those considerations.

WOLF:

(inaudible) and Mr. Attorney General, you're a man of character and I take you at your word. Period. But I will also sometime sit down with you off the record -- because we're not looking to kind of ferret out and hurt somebody -- give you some of the things that I've been told by telephone calls from career people at the Justice Department.

And so let's work out a time whereby I can tell you. I would just ask you that you protect their -- their -- so that their -- because some are feeling intimidated that if they come forward that they're going to be punished with regard to that.

Mr. Serrano?

SERRANO:

Thank you so much.

I apologize for the fact that I was here this morning, then I left to be ranking member on a hearing. That hearing has long finished and you guys are still going, so congratulations and thank you.

(LAUGHTER)

SERRANO:

I had a very -- totally different question, but one cannot help but think that we Americans have a responsibility. We're living during a time -- and I've been around long enough both politically and personally to remember the '60s.

And it's been a while since I've seen the anger driven -- not necessarily by members of Congress or elected officials -- but by non- elected officials who obviously don't know that Hawaii is a state -- otherwise, they wouldn't question birth. Or won't take a man at his word as to who he is or (inaudible) he is, and who somehow have just gotten used to the fact that there've been some historic, dramatic and very important changes in this country that give rights and opportunity to a lot of folks.

I have no doubt, Mr. Attorney General, that you take your job seriously because I know where you come from -- not only because you are from New York City. But I know who you are. I've dealt with you on -- for many, many years on many other issues -- some which you took a lot of heat for during your confirmation, but which I knew indicated to me that you were looking for what was right to do and -- and to do it correctly.

And I think the danger we run at times as elected officials is that we make statements and not knowing that there's a crowd out there that listens to those statements and begins to believe that there is a problem beyond a question being asked.

So you can bet your lives that tonight there are a couple hundred thousand, if not millions, of Americans who are angry at the government who believe that the Justice Department is functioning under the issue of race only and in unfair and improper ways.

So I -- I just would hope that as we continue to move forward in this country, and we will move forward, that we get over some of these situations.

I take very seriously your comment about your sister-in-law. I take that seriously because I lived that time. I'm old enough to remember that time -- how painful that was, how difficult it was. Now it's hard for people to remember that. Everything happens, and you're here and I'm here, and Mr. Fattah's here, and so it was all simple. It wasn't simple. It was very, very difficult to register.

I remember the Justice Department you have now -- had now under other leadership, dealing with the fact that people in New York were not allowed to vote because they didn't speak English, only to have Paula Dwyer (ph) and other folks go to the courts and say, "Well, you've taught them how to be American citizens in Spanish in a territory. How can you deny them the right to vote now because they don't speak English the way you want them to?"

And those seem now like things that simply happened, but they didn't. They were long-fought battles.

And I know, in closing, that you are too serious a man and too -- and too humane to take that history not seriously and do anything that would be improper or allow anything knowingly to be improper and that would be against the best interests of this country.

I know that and I just felt that I had to say that for the record.

HOLDER:

Well, thank you, Congressman. I really appreciate your comments.

SERRANO:

Now to a -- a local issue. You know that one of the biggest issues we all participated in and there was a lot of pressure on was the James Zadroga Health 9/11 Bill, which allows folks to be covered who were there at 9/11.

The budget that you presented -- after saying all these nice things about you -- in my opinion, may not allow for the reopening of that account properly to service all these folks, the appropriated amounts. We understand that the appropriated amount of -- I believe, it's \$6 million -- it took about three times that the last time that something similar was done.

So my question to you is, having fought such a difficult battle on behalf of people who really deserve help, how do we now deal with the fact that we may not implement it properly?

HOLDER:

Well, we certainly need Congress' help in that regard. I mean, the money is there, and appropriately so, after, you know, a great deal of struggle. For money to be paid to the victims, we need Congress' help so that we have an appropriate amount of money to start up and run this program.

So we want to work with Congress to make sure that we have the appropriate amounts and do that as quickly as we can so that people who, for too long, have been denied relief for heroic actions that they took on the most traumatic day in the history of my hometown, so that they will receive the benefits that they deserve. And we want to work with Congress to come up with those amounts and come up with a process that makes this a promise that we have made by -- that we've all made by putting this fund together to make real that promise.

SERRANO:

Well, I hope so. And I stand ready to assist you in any way that I can.

One last question. And one that's dear and near to all of our hearts on this panel, this should be to the American people: redistricting. Is everything in place for the fact that I suspect with everything that we're hearing out there and with the growth of certain communities and loss of key seats -- you know, New York is losing two, Florida's gaining two; as an example, the Hispanic population's growth, the African-American population, other groups throughout the country. Do you feel confident that your -- everything is in place for what I suspect will be a lot of challenges that somehow will end up with you, with your department?

HOLDER:

Yeah, we're mindful of the role that we may play in a variety of contexts in the redistricting effort. And I think we are prepared for what I think you're saying correctly could be something that -- certainly will be contentious in a lot of places and may have legal implications in many. And we're ready to proceed.

We have configured the Civil Rights Division, other parts of the department in a way that we're going to be prepared to deal with the issues that we'll have to confront.

SERRANO:

Well, thank you so much. And once again, thank you for the job you're doing on behalf of our country.

HOLDER:

Thank you.

WOLF:

Prisons, an area that you really have a unique opportunity to do some fairly dramatic things that can make a big difference.

The Bureau of Prisons is nearly 40 percent over capacity, and the federal prison population is expected to grow by an additional 14,000 inmates over the next year at the cost of \$27 million -- \$27,000 per inmate per year.

Federal system -- we're actually number one in the world, which is not a good thing you want to be number one in -- with regard to the number of people that are in prisons.

Most state correction systems began their reform process by providing outside experts with correction data to conduct comprehensive analysis. I believe it's imperative that experts at the Bureau of Prisons and others outside government fully understand that the drivers of population, costs and recidivism so that we can address overcrowding, improve re-entry programs, reduce recidivism rate, increase public safety, and control costs.

I've asked the Bureau of Prisons -- if they would make available the BOP data that will be necessary. And it's important we get it early because we, through the efforts of Mr. Mollohan (ph), this subcommittee last year helped -- we helped convince Pew and others to put together that forum.

They came up with a lot of really good ideas that the states are moving out on, but the federal government is not. And so it's important that we get that data quickly so that we can apply whatever their recommendations were for the states for the -- for the federal government.

Can you tell us -- we've asked the Bureau of Prisons to give it to us -- that we get it as quickly as possible with as much information as they have. They're now saying, well, they have to go to U.S. Attorneys, and we need something quickly to deal with this issue so that Pew and Council of State Governments can look (inaudible) at that data to come back to make some recommendations.

HOLDER:

Yeah, we'll endeavor to get that information to you as quickly as we can. I'll see what the nature of the information is. And if there are any holdups, I'll try to make sure that we streamline the process and get the information to you.

Because I think the contentions that you've just raised, the concerns that you've expressed, certainly throughout your career and certainly in my interaction with you, I think, is appropriately placed.

We really have to look at ways in which we can use our -- our prison system better than we are doing it. This whole question of re- entry is something that we have tried to focus on. We have worked with you in that regard.

We've asked for a 10 percent increase with regard to the capacity issue. But we want to do more than that. We want to try to work on the prevention side. We want to work on the rehabilitation side. And we also want to work on the whole question of re-entry programs, and to try to cut down the recidivism rate, which ultimately and obviously protects the American people.

We also -- (inaudible) very interesting thing that I don't think too many people understand, but that you all do, and we need to get out there is that we can actually save money and increase public safety at the same time through the use of these rehabilitation and re-entry programs. And so we look forward to working with you and the other members of the committee in that regard.

WOLF:

Texas is doing it...

HOLDER:

They are.

WOLF:

... and Mitch Daniels from Indiana is doing it.

I'm going to have some questions with regard to work on that.

But let me follow back to where we were. Congress mandated federal prisoners serve 85 percent of their time. BOP supports a change in the federal inmate good conduct time credit, which provides inmates clear incentives that encourage positive behavior. The change would increase good time credit availability by seven days a year.

I understand that you're hopeful this (inaudible) proposal will be enacted by Congress. In fact, you have assumed, I understand from the staff, such a change will occur before October 1. That's in your budget request.

Have you submitted a formal legislative proposal?

HOLDER:

I (inaudible) not, we will submit one as quickly as we can. We believe that that will save us about \$40 million by having the good times credit set at the level that we have indicated.

It's an interesting thing -- what I was saying before about how we can save money and increase public safety. And this is one of those examples. You've seen in the states, as you've indicated, especially where you make available to people who are in prison vocational programs or the opportunity to get out of prison sooner if they will avail

themselves of drug treatment programs, vocational programs, educational programs. It saves money in terms of time that they serve in jail, and actually it decreases the recidivism rate.

So we will work on getting you an appropriate proposal in that regard.

WOLF:

I think the earlier the better.

And I'm not sure -- I hope this committee -- I mean, I would be open to carrying something, and I think the gentleman would. You know, the authorizers obviously would have to tell us that it's OK, but I think the earlier you get something up, I think the better it is.

There is an area that I think we can make a tremendous difference in. Having a robust work program in our nation's prison is an important priority, quite frankly, of mine.

Statistics I received from Bureau of Prisons tell us that inmates that participate in work programs are 24 percent less likely to offend again, 14 percent more likely to find work outside prison, and 23 percent less likely to misconduct in prison.

What are you doing with regard to prison reform? And in the interest of time, you know -- you ought to be boldly moving out. I have a proposal -- I think you have the authority to -- to do it -- of -- of putting industry into the prisons, the prison industry, to get products that are no longer made in the United States -- which, unfortunately, are a lot of products. So you're not competing with organized labor. You're not competing with the furniture manufacturers. You're competing with somebody in Bangladesh or China or in Mexico.

And I -- we call it repatriation, bringing back if -- if you will, whereby then the men maybe can recreate that industry back in the United States.

If you -- for instance, years ago, if you were a judge in the District of Columbia, Lorton was the armpit of the nation. It was brutal. I used to go down to Lorton. I was in a program down there. It was brutal. Brutal.

We tried to bring in a television manufacturer. Emerson was somewhat -- a little interested in it. It was the last manufacturer of an American television set. They have since left. I think they're now down in Mexico.

They were a little open to it, and so we came and said, "Let's manufacture Emerson television sets or portions of the television set in Lorton." The push-back from the District government and others -- and you know what happened.

Lorton -- the men would be so afraid, they -- I've had some men tell me at Lorton, they couldn't even sleep at night. They were afraid -- they were in the dormitory style -- somebody would put a shiv in them and kill them.

Why not you be something -- be bold and bring back in industries that are no longer operating in the United States -- so you won't get across the breakers with the labor unions, you won't get across the breakers with the people that are manufacturing furniture or something like that -- and really energize -- because you can't put a man or woman in prison for 15 or 20 years and give them no work.

And very few people in the federal prisons are working now. In fact, you know, what has the loss been with regard to Prison Industries? How -- how much -- how many jobs have you dropped in the last four years in the prisons?

HOLDER:

I don't have those numbers, but the program is not nearly as robust as it once was. And I think that is something that is ultimately really short-sighted.

The ability to provide work opportunities and skills to people through the Federal Prison Industries is something that I have supported, you have supported, and I think that over the long term is good for our -- our nation.

Just one thing here. I was handed a note with regard to that proposal, that legislative proposal that you talked about. That -- I was indicated that -- you should get that this week, that we talked about in the previous question.

WOLF:

Well, I you have an opportunity. I assume you're going to be here for the next two years. You have an opportunity to...

(UNKNOWN)

(OFF-MIKE)

WOLF:

No, I didn't mean that in a...

(CROSSTALK)

WOLF:

Excuse me?

(UNKNOWN)

(OFF-MIKE)

WOLF:

No, I assume there's an opportunity. You could be like (inaudible) for such a time. I mean, I'm missing the humor...

(CROSSTALK)

HOLDER:

He's talking about my two years -- my two years more here in this job as a sentence.

WOLF:

Oh. Oh, I see (inaudible).

So you can be like (inaudible) for such a time. You can literally transform, if you are going to be here for that period of time, to try to really work hard to bring -- would it not make sense to bring back some of the work that's being done now abroad and -- and put it into the Prison Industries?

HOLDER:

Yeah, I wouldn't disagree with you. To the extent that we can come up with employment opportunities, work opportunities for people who are incarcerated in federal -- in the federal system -- state systems as well -- those are the kinds of things we need to -- we need to encourage.

WOLF:

But will you make it a priority?

HOLDER:

I have tried to make -- I've tried to make this a priority, that is to work in ways in which we deal with rehabilitation, re-entry, prevention. All of these things are part of it.

But with regard to this one in particular, yeah, I will do what I can and work with you in -- in that regard.

As you know, this is not something that is universally supported. But it is something that I think is something that we should be behind and something that we should be putting resources and opportunities in.

WOLF:

The law now -- when you -- excess income from the Prison Industries, is that returned to the Treasury or can you us that?

HOLDER:

I don't know. I'll have to check on that. I hear some whispering behind me (inaudible) there's probably an answer...

(CROSSTALK)

WOLF:

Maybe they can whisper loud and we can hear.

STAFF:

Prison Industries' income stays with the Federal Prison Industry...

WOLF:

It says with...

STAFF:

(OFF-MIKE)

WOLF:

So, therefore, the more prison industries you have...

(CROSSTALK)

WOLF:

... one, you lower the recidivism; two, you have...

(CROSSTALK)

WOLF:

I would hope -- well, if you can help -- we will try to help you here, but I would really hope that you would really, in addition to eliminating sexual trafficking, that this would (inaudible) be one of your legacies with regard to the prisons and with regard to the prison reform issue.

Do you want to read for me...

HOLDER:

I'm not sure which one I just got.

I -- I think we're fine.

WOLF:

OK.

The last two questions, then I'll -- I'll go to Mr. Fattah, or then Mr. Schiff if he has a question (inaudible).

What are your thoughts -- what should we be doing with regard to radicalization?

HOLDER:

Yeah, that is an issue that is of great concern as one looks at the nature of the threat that we have endured these past, oh, I don't know, 12, 18 months or so.

We have seen an increase in the number of American citizens who have, for whatever reason, decided to try to do harm to their country and to their fellow citizens.

We look at the use -- and we try to determine what is -- what are the common factors that we see there that change people? You know, the guy who was going to do the Times Square bombing, Shahzad, what happened to him? Ostensibly just a normal guy who kind of goes off the deep end.

We are working -- we have substantial outreach efforts that the Department of Justice has done through its United States Attorneys' offices so that communities -- Muslim communities do not feel isolated. And we've talked to our British counterparts about the issues that they have dealt with there and ways in which they are trying to have a robust and effective counter-radicalization program.

Our FBI is doing a really substantial amount, and, I think, doing a good job in reaching out to Muslim communities.

I have certainly tried to use the soapbox that I have to talk about these issues and to go to Muslim groups and make them understand that they are American citizens, they are part of our American community.

And it seems to me that one of the things we have to do is not let these communities become isolated, feel that they are being set upon, that they are being pointed at; to understand that they are just like the rest of us and want normal things for their kids. They want to feel safe in -- in their homes. And we have to deal with those concerns.

We have to deal with use of the Internet and the way that is being used to radicalize many of these -- many of these people. But this counter-radicalization effort is something that the president has focused on, and has told his nation security team that he wants an effective, robust program. And he's tasked a variety of us with that responsibility. John Brennan is -- is -- is the one who on a weekly basis -- we meet with him on Tuesday afternoons with the president -- is constantly bringing that up.

WOLF:

Your -- your answer triggered it. Did it trouble you or did you speak out on the issue when CAIR ran those posters urging people not to cooperate with the FBI? Did you see that poster? It was a very -- it was very -- kind of shocking.

HOLDER:

Yes, and, you know, that's the kind of thing that...

(CROSSTALK)

WOLF:

... speak out at the Justice Department criticizing CAIR for that?

HOLDER:

Well, we -- we have -- we have a troubled history with that organization.

The -- and we have to counter that by, you know, countering the -- or saying negative things about those kinds of -- those kinds of posters, but then also doing things on the affirmative side.

WOLF:

Sure.

No -- but I -- I -- but that was, I thought, a very counterproductive thing for CAIR to...

HOLDER:

It clearly is. It's clearly counterproductive, and it's not in the interest of the Muslim community for that to be seen as the way in which they're going to interact with federal law enforcement.

WOLF:

One other issue too you triggered. What is the connectivity of all these cases? Do all of (inaudible) involve to a certain degree the Internet? Is the Internet -- I know it's a difficult issue, but I mean, just on the surface, has there been an Internet connection on 100 percent, 50 percent -- I mean...

HOLDER:

I'm not sure I can give you a percentage. But a substantial number of them, when you look back and then do the things we're capable of doing -- I don't want to go into too much -- but the things that we can do you, you can kind of see out -- attempts by these people to touch base with or to look at these jihadist websites.

WOLF:

Would it not make sense to take down al-Awlaki's site? I mean, he is preaching hate. The colonel was radicalized by that. We have 13 people who were killed. His name has come up in other cases.

Would it not make sense in that case to take that site down? Because the 13 families who will never have a loved one return to their house. And we know what he's preaching now. I mean, I think he's crossed the line. Would it not make sense to take al-Awlaki's site down?

HOLDER:

Well, I mean, we try to do what we can with the tools that we have. And, you know, cyberspace is huge. And if you try to knock down a site here, people pop up over there.

And so what we are trying to do is come up with ways in which we are identifying those sites that are -- are problematic; trying to counter the message that you see on those sites, and then take physical action where -- where we can.

WOLF:

Well, I -- I think that -- you know, I understand. I -- my sense is, from talking to people, there are ways of taking his site down. They could perhaps go back up again, but there are different degrees.

But certainly the hatred that he's been spewing and the death that we've seen as a result of (inaudible) I think the administration should take down the site.

Now, I know there are some going to say, "We gain information from it," but that would be very difficult to meet with the families of the 13 who would say he was radicalized.

So last issue, before I go to Mr. Fattah or Mr. Schiff, are you considering having our law enforcement people carry weapons in Mexico in light of what took place with the ICE?

HOLDER:

Yes, I -- I think we have to consider...

WOLF:

I saw you were at the funeral, if my memory serves me...

(CROSSTALK)

HOLDER:

Yes. Yes.

WOLF:

And I appreciate...

(CROSSTALK)

HOLDER:

Yes, I went out to -- to Texas.

We have to take into consideration everything so that our people are protected while they're doing the great work that they do. And that is one of the things that I think we have to look at and -- and talk to the Mexican government about.

WOLF:

So that is under consideration?

HOLDER:

It is something that I am certainly considering. And -- and, you know, I want to hear from the people who are -- who are there.

We have to protect our people. You know, the information I get, that Mr. Fattah shared about the guns that we used in the -- the death of ICE Agent Zapata, you know, is of -- of -- is of great (ph) concern. So we have to make sure that those kinds of incidents are -- are not repeated. And to the extent that that involves the potential arming of them, that's something I think we have to consider.

WOLF:

Do our DEA people in Colombia carry weapons?

HOLDER:

I'm not -- I'm not sure about that. I -- I'm not sure.

I -- I haven't yet -- I think they do, but I'm not sure about that. I don't want to answer the question not being sure.

WOLF:

OK.

And I assume if they did that would be because of the permission of the Colombian government?

HOLDER:

Right. Yes.

WOLF:

So is that the -- that's -- that's the decider right there, is whether or not the government of Mexico permits...

HOLDER:

Yes. I mean, it's something we have to work with -- with the Mexican government to try to address.

What I think, given what happened -- what tragically happened two weeks ago the -- I think potentially has changed the fact situation that we have to confront and may require a different -- different policy.

WOLF:

Have you looked at the success in the Colombian situation -- the DEA -- and try to replicate that in the country of Mexico? Are there any similarities that, "This is successful because of this, this, and this, and therefore if we applied it" -- because 34,000 -- 35,000 individuals have been killed in Mexico. And I'm sure every family down there lives in fear.

Have you -- has anyone looked at what was done in Colombia with regard to the DEA and the comparable training and different things like that?

HOLDER:

Yes, we have. In fact, that is one of the templates that we try to use given the success that we encountered over a long period of time...

WOLF:

Yes.

HOLDER:

... and it was not easy. But given the success that we ultimately achieved in Colombia we have tried to see if there are lessons that we have learned there that we can apply in Mexico. And we've tried to do that through a variety of means: through the way in which we have deployed our people through the Merida Initiative and ways in which, you know, aid goes to Mexico.

Yeah, but we have talked about and we have examined and shared with our Mexican counterparts what occurred in -
- in Colombia.

WOLF:

Have there been any meetings between DEA and Mexico and Colombia perhaps down in Colombia to show what was done and what worked and what didn't work?

HOLDER:

I'm not sure if there have been meetings in Colombia, but I know that, certainly, the -- the lessons that we learned and the experiences that we had in Colombia certainly have been shared with our -- our Mexican counterparts. Those are -- there have been briefings in that regard. That I'm aware of.

WOLF:

OK.

Mr. Fattah?

FATTAH:

I'm going to yield to Congressman Schiff.

SCHIFF:

Thank you, Mr. Chairman.

I didn't want to interrupt earlier in the discussion of the New Black Panther Party issue, but I did want to make a brief comment on it. And I'll -- I'll be economical with my comments. I know it's been a long morning for you.

But having spent part of this weekend visiting the Martin Luther King Museum in Atlanta, I am struck by the (inaudible) nature of this whole discussion.

One of the things I found most -- kind of shocking about the exhibits I saw there was the long list of laws in the 50 states that were discriminating against Americans based on their ethnicity, denying them their ability to vote, denying them their ability to enjoy all the other attributes of citizenship.

And to look at that history, then consider the discussion we've been having, to me seems a little shocking in its disproportionality.

It seems to me the -- the commission investigation has been highly politicized. And my colleague, Mr. Fattah, read the vice chair's statements. I also would -- would like to read briefly from the -- a couple of the commissioners, Arlan Melendez and -- and Michael Yaki, and ask that their statement also be included in the record.

They introduced their dissenting opinion by saying, "The commission's investigation into and this report concerning the New Black Panther Party has been a tremendous waste of scarce government resources. They've wasted our own resources at the commission, but those of the Department of Justice, as well.

"In addition to squandering time, money, and attention, the majority has further squandered the reputation of the U.S. Commission on Civil Rights as it has spent more than a year on an Ahab-like quest to hobble the (inaudible) administration and to attempt to rehabilitate the disgraced record of the previous administration's Department of Justice."

That record they're referring to -- the previous administration, included findings by the Office of Inspector General that under Mr. Schlozman, the Civil Rights Division had been highly politicized, with career attorneys being replaced by people of ideological pedigrees rather than people of experience.

In fact, the OIG found that people were hired with no background in civil rights, with no experience in it -- or in prosecuting cases even for that matter, and with no interest in it.

And I'm very proud of -- of how that department has been turned around under this administration.

And -- and -- and the claim that the department now is going to intervene in some way on behalf of a -- a racist hate group because it's a Black supremacist group instead of a White supremacist group strikes me as beyond credulity.

And in any event, I -- I think the department has made a sea change for the better, and I -- I wish you continued sailing in the right direction.

One of the issues I wanted to raise with you involves Miranda, and in the intersection between criminal law and the national security environment.

And I wanted to ask you -- obviously, the Miranda decision is a -- one of constitutional import that we have only a limited ability to influence. It's a court-drafted doctrine.

Do you think it would be useful for the Congress to set out its understanding of -- of how broadly the public safety exception to Miranda should be interpreted?

Would -- would it be useful in a department's advocacy before the court to be able to point to? Well, the Congress believes that this ought to be interpreted broadly, as not only protecting a police officer in a grocery store like in Corals (ph), but also in protecting citizens in -- in New York City in the event that there was a bomb in a vehicle, or even that it -- it also extends to vital emergency information that may be acquired that could protect the lives of troops out in the field?

Would it be useful in -- should a case arise where you have to argue about how soon Miranda was given for the Congress to weigh in and express its view that it should be interpreted broadly?

HOLDER:

Well, you're right that Miranda is of constitutional dimension, and ultimately would be the courts that would have to decide in a particular case whether the government had exceeded what it is allowed to do under the public safety exception to the Miranda rule.

I think that an expression by Congress, however, about its view of what the Miranda limits are given the nature that we -- the nature of the threat that we face and the need to use the public safety exception for interrogation purposes.

And as you say, dealing with this new threat -- and it's not a grocery store robbery. It is a question of, you know, an Abdulmutallab -- are there other planes that have other people with -- with bombs on them?

Given the nature of the threat, I think an expression by Congress is something that Congress might consider, and I think that would be useful for the courts to -- to have.

But obviously that is (inaudible) for Congress to decide. But...

SCHIFF:

Let me ask you one other related question, and that is in -- in my view something that may be of more significant import in this context than Miranda, and that is the presentment requirement -- the requirement to bring a suspect before a magistrate within so many hours.

I know there's a disagreement in this subcommittee and indeed in the Intelligence Committee where I serve about in what circumstances someone should be Mirandized at all, or somebody should be processed to the criminal justice system as opposed to the military tribunals. But there are going to be cases, I think, that we can all agree that are going to be handled in the criminal justice system.

You know, a future Timothy McVeigh situation is more likely to be handled in the criminal courts than in -- in -- at Gitmo or in a brig somewhere.

Given the fact that some terrorism cases are going to be handled criminally, would it be useful for the Congress to revisit the kind of rigid requirements of the presentment clause, and provide that in terrorism cases that there is a longer period of time if the attorney general or your designate certifies certain requirements are met that you could make an ex parte application to the court to get a greater period of time before you're required to present a suspect to a magistrate?

HOLDER:

Well, that's an issue that I think is worthy of examination. I'd be reluctant to say that we ought to commit ourselves to, you know, one course of action or another. But it's something that I think we should -- we can look at and see whether or not there is a way in which we can have something that is consistent with our values, consistent with the constitutional obligations that we have; what makes us more effective in the fight against terrorism that -- that we have.

But again I -- that -- we have given what we -- the tools that we now have, both with regard -- and the restrictions that we have both with regards with Miranda and the presentment time period, we've done, I think, a pretty good job as you correctly say in dealing with those who have been brought into the criminal justice system.

You know, military commissions cannot handle cases involving American citizens. And what we have seen over the last 12, 18 months are increasing numbers of American citizens who are engaged in these terrorist activities. Those will have to go into the criminal justice system. And I think we have to make sure that the system is capable of -- of handling those kinds of cases.

SCHIFF:

Well, I -- I look forward to working with you on that.

Let me turn to a couple other quick areas. One is of deep interest to my constituents, and that is intellectual property. I have a lot of the studios and post-production and pre-production work in my district. And we lose countless -- tens of thousands of jobs as a result of I.P. theft.

This subcommittee over the last several years has increased the budget for the FBI to bring on new agents to work on I.P. cases. I think over the last couple cycles we've added about 50 agents in this area.

One of the internal analyses, though, indicated that -- it was a GAO study -- that although there was a substantial increase in the number of agents devoted, there wasn't a substantial increase in the number of hours that the FBI was devoting.

In other words, there were -- there was more manpower, same amount of hours being devoted to the problem. And I think the FBI responded in part that they needed time to -- to train these new agents. But at the same time it also pointed to the fact that these I.P. dedicated agents were sometimes being used for other investigations.

That's a concern given that this was really the focus of why these slots were funded. And I would ask you if you could look into this. And I don't know if you have anything -- you'd like to comment today. But given -- given the magnitude of our economic challenges right now, this is an opportunity to crack down on the loss of American jobs and -- and intellectual property.

HOLDER:

No -- and I think that's right, this is a -- a priority the vice president has -- is leading a task force. DHS is involved; the Justice Department is involved. Victoria Espinel at the White House is involved in this.

And this whole question of the theft of intellectual property is something that I went to and gave a speech about in Hong Kong; went to China to talk to our -- to the Chinese officials there about the concerns that we have about what -- what's happening in -- in China.

We have in our budget requests, I guess, from fiscal years '09 and '10, 51 agent positions in the FBI that was supposed to be dedicated strictly to I.P. enforcement.

And I think that given the job killing capacity -- or impact that this I.P. theft has, that if we are to make this economy -- I mean -- it's wrong, it breaks the law. But there are also economic consequences to it.

And for that reason, I think it is -- it's a very legitimate concern, and it's a reason for us to prioritize -- to prioritize this.

It is what occasioned my trip to Hong Kong, to China, and occasioned the administration to set up a task force that is led by -- by the vice president.

SCHIFF:

Well, if you could take a look into the -- the use of these agents to make sure that if they haven't been dedicated to I.P. that they focus on I.P. I think that would be welcome.

ICE has been very aggressive in this area. And I want to applaud what they're doing. I know they're getting some push back. They've been actively involved in seizing the domains of websites that are responsible for a disproportionate amount of the trafficking.

And I -- I raise this because I don't want the Department of Justice to be discouraged from undertaking similarly aggressive action against pirates. And I'm not talking about the Somali variety, although I agree with that as well -- by the pushback that ICE is getting. Because there are many of us who completely support what ICE is doing, and -- and would love to see the -- the Department of Justice equally aggressive in these actions.

Finally, I -- I know you're familiar with Project HOPE out of Hawaii. This is the effort by Judge Steven Alm and others are using, pulling graduated sanctions to try to attack recidivism, and have been very successful at it.

I know there is a grant program -- the Smart Probation Program in your budget -- \$7 million. And I wanted to see whether Project HOPE and similar efforts like that are the kind of thing you're contemplating with this Smart Probation effort.

HOLDER:

Yes, it is. I'm familiar with Project HOPE. I know Judge Alm when he -- from the time when we served together as -- as U.S. Attorneys. He actually came to -- all the way from the state of Hawaii here to Washington to share with me what he's doing. And it's very impressive. And those are the kinds of things that we're trying to -- to replicate.

This whole notion of graduated sanctions really has -- has made more effective the probation efforts that they have there, and those are the kinds of things that we want to try to replicate.

SCHIFF:

Well, I -- I think -- and this gets to something I know our chairman has worked on for many years -- to the degree the Justice Department can help pilot and lead similar some of the most effective attacks on recidivism, it not only is obviously better for society, but a lot of the states like my own have such phenomenal budget problems in part because their corrections costs are just going through the roof, and have for the last two decades.

And I think part of putting our economy both nationally and at the state level back on a sustainable trajectory is trying to figure out a better way to deal with corrections and deal with recidivism, and deal with public safety generally. Because what we're doing now just hasn't worked when you look at how many people leave custody and then go back in.

I mean, it's now become the exception rather than rule, people not recidivating.

And I thank you for the -- the time, Mr. Chairman, and I yield back.

WOLF:

Mr. Fattah?

FATTAH:

Thank you, Mr. Chairman.

I'll ask my last question for the record. There is a recent Supreme Court case in which some challenge has been made to the -- utilizing the 10th Amendment. It's a Pennsylvania case arguing that -- you know, a federal -- a federal arrest in a particular case may, you know, may fall outside of the scope of what would be constitutional given the 10th Amendment prohibition -- it's the federal action.

I know there's been a lot of discussion about the 10th Amendment, and -- and health care. If you could furnish the committee with what it would mean if there was a -- if -- if the court decides that -- that people can raise these 10th Amendment issues in criminal cases, how that would affect ongoing issues and even cases that may have already been, you know, decided.

HOLDER:

Sure.

FATTAH:

You know, I know it's a hypothetical, but given some of the comments of some of the justices, I think it's at least a reasonable question to ask about what affect this could have if we -- if there's a ruling that allows 10th Amendment issues to be raised (inaudible) federal prosecutions of -- of criminals.

HOLDER:

OK. We will formulate a response to that.

WOLF:

Thank you.

I have one last question. On several occasions -- maybe two, maybe three -- when asked about Khalid Sheikh Mohammed, you said, "Decisions will be made within a week." Well, with -- I think it was "within several weeks," I think is the exact term.

I think you said that about a year ago, and I think you said it again in the middle of the year. And I don't know if you said it again -- I think you did.

What is the status, and what are your plans for Khalid Sheikh Mohammed?

HOLDER:

Obviously, I can't predict time -- timing very well.

(LAUGHTER)

That is a matter that is under active review. And we are trying to work our way through that given the -- a whole variety of things, among them the congressional restrictions that were put in place under the defense authorization bill and that are being considered, I guess, with regard to the -- the continuing resolution, or the budget that's being considered.

And so we are working our way through that, and as soon as we have an ability to announce a decision, we're -- we're going to do so. I'm not going to get in the business anymore of trying to predict time.

WOLF:

Oh, I was going to say, do you think it'll be within a few weeks, but I won't...

(CROSSTALK)

HOLDER:

My record in that regard is not a good one, so I'm not going to add to it.

WOLF:

OK. With regard -- anyway, we appreciate your testimony.

And with that, the hearing is adjourned.

HOLDER:

Thank you, Mr. Chairman, Congressmen.