

HEARING OF THE HOUSE JUDICIARY COMMITTEE SUBJECT: JUSTICE DEPARTMENT  
OVERSIGHT CHAIRED BY: REPRESENTATIVE LAMAR SMITH (R-TX) WITNESS: ATTORNEY  
GENERAL ERIC HOLDER LOCATION: 2141 RAYBURN HOUSE OFFICE BUILDING,  
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REP. SMITH: The Judiciary Committee will come to order.

Without objection, the chair is authorized to declare recesses  
of the committee at any time.

We welcome everyone here, but particularly our guest today, the  
attorney general of the United States, Eric Holder.

I'm going to recognize myself for an opening statement, and then  
the ranking member for his opening statement.

This morning we welcome Attorney General Eric Holder to the  
committee for an oversight hearing on the U.S. Department of Justice.  
First, I would like to thank the attorney general for supporting the  
reauthorization of the expiring Patriot Act provisions. I also  
appreciate his support of the mandatory data-retention policy to help  
law-enforcement officials track dangerous pedophiles and keep children  
safe.

Although he may not want to take credit for this next item, I  
should also thank the attorney general for the decision not to try  
certain terrorists in the U.S. It is the right decision and will ensure  
justice for the families of the 9/11 victims.

Terrorists remain intent on carrying out their plots to destroy  
America. The killing of Osama bin Laden is a significant victory in  
America's efforts to combat terrorism. But the terrorist threat does not  
end with bin Laden's death.

In the years since 9/11, al Qaeda has expanded and splintered  
into smaller groups and rogue terrorists around the world. This makes it  
harder for us to detect and deter plots against Americans, both here at  
home and abroad.

Despite Sunday's victory, we cannot afford to leave our  
intelligence community without the resources it needs to dismantle

terrorist organizations, identify threats from groups and individuals, and interrupt terrorist plots. So Congress must reauthorize the Patriot Act.

Our laws should keep pace with the evolving terrorist threat, but they must also keep pace with rapidly changing technology. Nowhere is this more apparent than with the dramatic increase in the proliferation and exchange of child pornography. Today pedophiles can purchase, view or exchange this disturbing material with near impunity. Child pornography on the Internet may be our fastest-growing crime in America, increasing by an average of 150 percent a year.

Better data retention will assist law-enforcement officers with the investigation of child pornography and other Internet-based crime. When investigators develop leads that might save a child or apprehend a pornographer, their efforts should not be impeded because vital records were destroyed.

While I appreciate the department's support on these important matters, I am concerned that in some cases this administration may have placed political and ideological considerations above enforcing the law.

Earlier this year, the department abandoned its obligation to defend the Defense of Marriage Act, a federal law enacted by Congress and signed by President Clinton to protect the institution of marriage. It seems the president's personal political views regarding the law may have trumped the obligations of the Department of Justice. Another example of selective enforcement is the administration's views when it comes to immigration laws enacted by the states. The Justice Department sued Arizona for enacting a law that mirrors federal immigration law. The administration justifies its actions by claiming that the Arizona law wrongly supersedes federal authority. But what about a law recently enacted in Utah that creates a guest-worker program for illegal immigrants? This undermines federal immigration law, and yet the administration has taken no action.

Similarly, the Justice Department refuses to defend Congress's constitutional authority to determine national drug policy. Marijuana distribution is illegal under federal law, regardless of whether it is used recreationally or medicinally. But rather than enforce federal drug laws, the department directed federal prosecutors not to bring charges against marijuana dispensaries in the states that have taken it upon themselves to legalize medical marijuana.

And just last week it was reported that the department has dropped its criminal probe of a lawyer who admitted leaking classified information on the terrorist surveillance program. This case should have been a slam dunk for the department, since the attorney admitted to violating the law. But the president's ideological opposition to the TSP program may have stopped a legitimate criminal investigation.

The Justice Department has a solemn duty to defend the laws of the land as enacted by Congress, without politics or prejudice. I am

concerned that there seems to be a pattern of selectively enforcing the law based on the administration's political ideology.

I do want to thank the attorney general for coming today, and we look forward to hearing from him on these and many other issues.

The gentleman from Michigan, Mr. Conyers, the ranking member of the Judiciary Committee, is recognized for his opening statement.

REPRESENTATIVE JOHN CONYERS (D-MI): Thanks, Chairman Smith.

Once again we welcome the attorney general, Eric Holder. Most of us have known him for more than a number of years in his various positions in the government.

And I welcome you here and praise your standing up for the rule of law, especially in the area of national security, where you were the attorney general that supported the end of using torture, and you released legal memos on this subject that proved that what you were doing was right, and some of those legal memos were incorrect.

Now for the things that we want you to improve on. I start off with the fact that the worst economic upheaval since the Depression, with all the suffering and damage that has caused citizens and their family, there is, to my knowledge, not one single prosecution on any of the Wall Street barons that have created this economic mess. The systemic abuses not only have not ended, but are still going on, as far as I'm concerned.

In the area, General Holder, of the approach to crack-cocaine cases under the Fair Sentencing Act, that the department will continue to seek extreme sentences that have been rejected as a policy matter by both the executive and the legislative branch is disappointing. And more needs to be done to ensure that the so-called pipeline cases are handled in a just manner.

In the role of antitrust enforcement and merger review, we're getting more discussion about this, but our economy continues to become more and more dominated by global megafirms. And just about every merger that has come through the Department of Justice front door has made it out alive. And I know that you're getting ready to block one large merger, but antitrust is still underutilized in the Department of Justice. And I want to network with you, if we can, to increase the use of antitrust enforcement as these global megafirms get larger.

And then, in the national-security area, the state secrets privilege policy is deeply troubling to me. Of course, the department has become more transparent of late, and I appreciate that the state secrets report recently transmitted to our committee. There's still a lot of decision-making that remains flawed. This privilege to me is a threat to the separation of powers and to the right of every citizen to lawfully fight back against government abuse and must be reined in.

Outside of those minor observations, we welcome you to the committee, General Holder.

Thank you, Mr. Chairman.

REP. SMITH: Thank you, Mr. Conyers.

Without objection, other members' opening statements will be made a part of the record. We are pleased to welcome today's witness, United States Attorney General Eric H. Holder Jr. On February 3rd, 2009, Attorney General Holder was sworn in as the 82nd attorney general of the United States.

Attorney General Holder has enjoyed a long and distinguished career of public service. Joining the department through the attorney general's honors program in 1976, he became one of the department's first attorneys to serve in the newly formed public integrity section. He went on to serve as a judge of the superior court of the District of Columbia and the U.S. attorney for the District of Columbia as well.

In 1997, Mr. Holder was named by President Clinton to be the deputy attorney general. Prior to becoming attorney general, Mr. Holder was a litigation partner at Covington & Burling, LLP in Washington, D.C. Mr. Holder, a native of New York City, attended Columbia University, graduating in 1973, and Columbia Law School, from where he graduated in 1976.

Mr. Attorney General, we look forward to hearing your testimony and welcome you again to today's hearing. And please proceed.

ATTY GEN. HOLDER: Well, thank you, Chairman Smith, Ranking Member Conyers.

Chairman Smith, that was a wonderful introduction except for the part where you mentioned the date that I graduated from law school in college. People are now calculating how old I am. And I'm of an age where that is -- I'm sensitive to that. Other than that, thank you.

But also, distinguished members of the committee, good morning, and thank you for this opportunity to discuss the critical work of our nation's Department of Justice.

Now, as I have stated often, no aspect of our work is more important or more urgent than protecting the American people.

REP. SMITH: Mr. Attorney General, would you pull your mike a little bit closer so that we can hear you better? Thank you.

ATTY GEN. HOLDER: Protecting the American people is our most fundamental responsibility. Two days ago, with the death of Osama bin Laden, the leader of al Qaeda and the world's most wanted terrorist, our nation made historic progress in fulfilling this responsibility and in achieving justice for the nearly 3,000 innocent Americans who were murdered on September the 11th, 2001.

This achievement was the result of steadfast, almost decade-long effort, one that spanned two administrations and was advanced by many dedicated military and civilian leaders, intelligence and law-enforcement officers, diplomats and policymakers, investigators, prosecutors and counterterrorism experts. For the last two years, President Obama has made certain that efforts to kill or to capture Osama bin Laden remained a central focus in our nation's fight against terrorist threats.

For the president's national-security team, achieving this goal has been at the forefront of our work, even as we continued and strengthened broader efforts to dismantle and defeat terrorist networks and use every tool available to combat national-security threats both at home and abroad.

Now, the Justice Department has played a vital role in this ongoing fight against terrorism.

Now, the Justice Department has played a vital role in this ongoing fight against terrorism. During the last two years, we have helped to identify and to disrupt plots to attack New York City's subway system, and plots to deploy weapons of mass destruction in Texas, Oregon and Washington state.

We have secured guilty pleas as well as long sentences and actionable intelligence from terrorists intent on harming our people, our allies and our interests. And the department has charged more defendants in federal court with the most serious terror-related offenses than in any two-year period in our nation's history.

Through the use of robust military, intelligence and law enforcement operations, this administration has sent a clear and unequivocal warning to those intent on harming the American people: You will be pursued and you will be brought to justice. Although we can all be proud of Sunday's successful operation and we can all be encouraged by the way that thousands of Americans have joined together at this defining moment in our fight against terrorism, we cannot become complacent. The fight is far from over.

Just yesterday, I ordered the department's prosecutors and law enforcement agencies to be mindful that bin Laden's death could result in retaliatory attacks in the United States or against our interests overseas. And I have instructed department officials, as well as our state and local partners, to maintain focus on our highly effective counterterrorism and deradicalization efforts.

I've also reiterated what President Obama said on Sunday evening that the United States is not and never will be at war with Islam. Bin Laden was not a Muslim leader. He was a mass murderer of Muslims in many countries, including our own. We cannot and we will not lose sight of this fact. And I pledge that at every level of today's Justice Department we will remain focused on our paramount obligation to protect the citizens that we serve.

Using every available resource and appropriate tool, including the federal court system, we will be vigilant against both international and domestic threats, and we will continue to utilize the critical authorities that are provided under the provisions of the Patriot Act, which I hope Congress will move promptly to reauthorize for a substantial period of time. On this issue, I want to thank Chairman Smith for his leadership and for his strong support. Beyond our national security work, the department will take steps to build on current efforts to combat violent crime and financial fraud and to defend the rights of all Americans, especially the most vulnerable among us.

And let me say finally that our country and the world have really just witnessed an historic moment. What we make of it now is up to us. Osama bin Laden has been brought to justice. A leading terrorist will no longer be free to order the murder of innocent people across the globe. And just as we came together nearly a decade ago in the aftermath of the most devastating attack in America's history, I believe we must come together again.

On 9/11, our nation was united as never before by tragedy, by grief and by a shared sense of loss. Today, we must be united by a collective resolve and a common purpose to protect our homeland and to protect our people, to honor the values that have made our nation great and to build on the extraordinary record of progress that's been achieved in protecting the people we are all privileged to serve.

So thank you, Mr. Chairman. I'd be more than glad to respond to any questions that you might have.

REP. SMITH: And thank you, Mr. Attorney General. And I'll recognize myself for questions. The first is this. At the end of the month, there are three temporary provisions of the Patriot Act that are set to expire. A lot of people say that we might exaggerate the significance of the ability of those provisions to enable us to gather intelligence. Would you comment on how important those three provisions are, and whether you feel that they should be extended?

ATTY GEN. HOLDER: Well, we believe -- I believe that it's absolutely essential that these expiring provisions be reauthorized. We never want to see these acts, these provisions expire. The fact that they have sunsetted periodically and have required us to come back periodically to get them reauthorized is not helpful to us. We need certainty. Our prosecutors, our investigators need certainty in that regard. So our hope is that these provisions will be reauthorized for as long as we possibly can.

If they were done on a permanent basis, that is not something that we would object to. I am trying to confront, though, a political reality in trying to get to the necessary votes in the House, the necessary votes in the Senate, and my hope would be that at a minimum we would reauthorize these provisions for a substantial period of time.

REP. SMITH: OK, and thank you, Mr. Attorney General. My next question goes to something I mentioned in my opening statement, and that is the importance of data retention by ISPs to allow us to go after the child predators on the Internet. Has the absence of data retention or significant periods of time for data retention hampered your ability to go after these individuals? ATTY GEN. HOLDER: I can't point to a specific case, but I am concerned that the lack of retention period will hamper our ability to get at important cases, among the ones that you mentioned, child pornography, but also in the terrorist field, national security field. That is something that we're talking about with our European counterparts, where they want to have data retention periods that are substantially shorter than what I think is appropriate. But I think the concern that you have expressed with regards to the retention of data is something that is worthy of our attention.

REP. SMITH: OK, thank you. Mr. Attorney General, as I mentioned in my opening statement, it seems to me that we've had the appearance that the Department of Justice has chosen to prosecute cases based upon political ideology rather than equal justice under law. And some of the examples that come to mind are, for example, the decision of the Department of Justice to sue Arizona on an immigration bill that that state passed, but then not --

ATTY GEN. HOLDER: Mr. Chairman, could you --

REP. SMITH: -- sue Utah for the immigration laws that that state passed. And it seems to me that the department probably should be consistent in its application of the law.

Also, you reopened an investigation into CIA interrogations early in your tenure, and yet you ended a criminal probe into the lawyer who publicly admitted leaking classified information on the terrorist surveillance program. Again, I mentioned that in my opening statement.

This does give the appearance of a pattern of selectively enforcing the law, and I wanted to ask you for your comment as to whether that appearance is accurate or not.

ATTY GEN. HOLDER: Well, let me be very clear. With regard to those matters and all the other work that this Department of Justice does, we apply the facts as we find them. We apply the law as we find it. We do what we do and make decisions without any regard for political considerations.

Frankly, the work of the department could be made a lot easier if we listened to the critics, if we listened to the pundits, if we looked at the polls. That is not what we do. It is not what I've asked the men and women of the department --

REP. SMITH: But you understand that the examples I mentioned give that appearance, whether that's accurate or not. Do you see the inconsistency that I point out and feel that that's not accurate? Or do you think that there is an appearance of inconsistency there?

ATTY GEN. HOLDER: Well, I don't see necessarily the inconsistency or the appearance of political considerations that you mentioned. For instance, with regard to the Utah law -- REP. SMITH: Yeah.

ATTY GEN. HOLDER: -- that's a law that doesn't go into effect until 2013. It has always been Department of Justice policy to try to work with states to see if there's a way in which we can reach an agreement without us having to actually file suit.

So we will look at the law, and if it is not changed to our satisfaction by 2013, we will take all the necessary steps.

REP. SMITH: OK. Thank you, Mr. Attorney General. The ranking member has yielded his initial time to the gentlewoman from Florida, Ms. Wasserman Shultz, so she'll be recognized for her questions now.

REPRESENTATIVE DEBBIE WASSERMAN SHULTZ (D-FL): Thank you so much, and I thank the ranking member and the chairman.

General Holder, it is good to see you again. And I know that you're going to really be surprised about the subject about which I'm going to ask you, but that would be our focus and your priority, which I'm thrilled continues to be a priority, on the exploitation of our nation's children.

We've worked hard to implement the Protect Our Children Act, and the national strategy on child exploitation, interdiction and prevention report that came out last year detailed that there are hundreds of thousands of criminal suspects in the U.S. engaged in child pornography trafficking. Just to give everyone an idea, according to the office of juvenile justice and delinquency prevention, in 2009 our Internet Crimes Against Children Task Forces made over 3,000 arrests and identified over a thousand child victims.

Since passage of the Protect Our Children Act of 2008, the funding, though, has remained relatively the same, about \$30 million. In the 111th Congress, under the Democratic leadership, we passed a budget that included \$60 million for our ICAC Task Forces, and we know that with every -- with every dollar that we add we can make it that much more likely to actually rescuing a child victim.

So wouldn't you agree that by doubling the ICAC Task Force budget that we would have an opportunity to rescue that many more children?

ATTY GEN. HOLDER: Well, let me say that we have certainly enjoyed working with you. The focus that you have placed on this issue, I think, is totally appropriate.

REP. WASSERMAN SCHULTZ: Thank you. It is -- I hope what will be a legacy item for this Department of Justice: that people will see that we stood up for our nation's most vulnerable and most important citizens, our children. And the work that you have done with us I think



has been extremely effective. The ICAC Task Forces, I think, are again - - have been extremely effective, and we want to support them in every way that we can.

We are unfortunately confronted with budget realities that make it extremely difficult for -- to do all the work that we want to do. But with regard to those task forces, we want to try to expand them to the extent that we can with the ones that do exist and then try to wring out efficiencies so that we can in some ways make sure that these budgetary problems do not get in the way of the very important work that we have done together.

REP. WASSERMAN SCHULTZ: So let me just point out the administration has been incredibly supportive and has made it a priority. My concern is that we made it a -- we had made a commitment in the 111th Congress to continue to increase the funding for the ICAC Task Forces, and in this Republican Congress I'm quite concerned that that same commitment won't be met.

Now, the chairman has been -- Chairman Smith has been incredibly committed to making sure that we can go after these child predators. I'm hopeful that his influence rises to the top so we can ensure that continued commitment.

I want to also just touch on a letter that I sent you about Sholom Rubashkin, which we sent in December. And it's a case where the judge has been accused accurately of some ex parte communication and excessive sentencing. And I won't get into it here, but if we could follow up with you on that and get a response from the department, I would appreciate it very much, because it appears both the sentence has been -- that the sentence is incredibly excessive and the judge who levied the sentence engaged in inappropriate ex parte communications. So if we could follow up with you on that, that would be great.

And then lastly, I just want to ask you about the gas prices task force, because I think it's fantastic that the administration has set up this task force. If we look -- first, I just want to review the current situation, because most people aren't aware of this. According to the Energy Information Agency, under the U.S. Department of Energy, as of a week ago -- this is a week ago -- the U.S. crude oil reserves that we had were at 363,125 barrels, which is higher than at any point during the eight years of the Bush administration.

Our total petroleum imports are at their lowest level since 1997. Domestic oil production for the last two years is up, and, in the Gulf of Mexico, we have larger production now than at any point in the last two decades at 1.64 million barrels a day, which is double the production in 1992.

Yesterday, though, the average price at the pump was \$3.96, up over a dollar from a year ago this week when it was \$2.90. So with all the good news about supply, one would think that it -- that there must be a dramatic increase in the demand for gasoline that drives those

increases, but that's just not the case. So it seems like there's something that smells in Denmark.

Can you tell us specifically how the fraud working group, which, again, I think is really a very aggressive way at pursuing the facts and separating fact from fiction and helping to get to the bottom of how we can explore manipulation, explore collusion and fraud, and tell us how Congress can assist you in this effort.

ATTY GEN. HOLDER: Well, there are certainly market forces that are at work, and I don't want to oversell what it is that we will be doing. But to the extent that there are inappropriate attempts to manipulate the market, that there is price gouging, other things of that nature that have had a devastating impact on average Americans who are trying to in these tough economic times make do, that would be the focus of this task force.

We have partners from the federal government as well as our state and local counterparts -- state attorneys general, district attorneys -- all who will be coming together to look at this situation to see if there are people who are doing things that are inappropriate. And to the extent that they are, we will hold them accountable. This is a serious effort by a dedicated group of people that, as I said, is pretty wide ranging. It involves prosecutors, investigators at a variety of levels. We will look at this on both the civil and the criminal side.

REP. WASSERMAN SCHULTZ: I thank the ranking member and the chairman for their indulgence and yield back the balance of my time.

REP. SMITH: (Inaudible.) The gentleman from -- excuse me -- the gentleman from Wisconsin, Mr. Sensenbrenner, former chairman of Judiciary Committee, is recognized for his questions.

REPRESENTATIVE JIM SENSENBRENNER (R-WI): Thank you very much.

Thank you for coming, General Holder. I'd like to ask a few questions relative to the department's February 23rd decision not to defend the constitutionality of Section 3 of the Defense of Marriage Act. And as a result, the House of Representatives is going to have to hire outside counsel at our own expense to be able to make sure that this issue is properly argued before the court. Why'd you do it?

ATTY GEN. HOLDER: Well, we had a unique situation in the Second Circuit where this case -- where the decision was made. We had in prior instances been in circuits where the Courts of Appeals had a defined standard, a rational basis standard. In the Second Circuit, we had, for the first time, a circuit that had not looked at the issue and had not come up with an applicable standard.

But when the department looked and had to make the determination as to what the appropriate standard was given the nature of the way in which gay people had been treated in this country, given the nature of the reasons for the passage of the statute, it was our feeling that a heightened scrutiny test had to be applied. Applying the heightened

scrutiny test, we did not think that the statute would pass constitutional muster, and as a result, thought that we could not make reasonable arguments in defense of the statute, something that is done extremely rarely but happens occasionally. And I recommended to the president that we not defend the statute, and he agreed with that recommendation.

REP. SENSENBRENNER: Well, sexual preference has never been a protected class in any of our civil rights laws. And, you know, my understanding is that the vast majority of the courts disagree with the Second Circuit and believe that the lower standard, which is rationally related to a legitimate government interest, is the one that applies. Now, evidently the president has decided to take the opinion of one court to the exclusion of other courts to make this decision that you -- that he will not execute the laws that he took under oath to enforce.

ATTY GEN. HOLDER: Well, I mean, these instances happen occasionally. In fact, there is a federal statute that anticipates this, and under that statute, when the attorney general decides not to defend a statute, a letter is sent to Congress, as I did in this case and as I've done in other instances. The reasons for the determination were, as I said, this different standard and the fact that much has changed since the passage of the bill 15 years or so ago. The Supreme Court has ruled that criminalizing homosexual contact is unconstitutional. Congress has repealed the "don't ask, don't tell" policy. Since the lower courts have --

REP. SENSENBRENNER: But Congress has never repealed or modified the Defense of Marriage Act, and this law has been on the books for over 15 years. And you were the deputy attorney general at the end of the Clinton administration, and this concern was never raised. And now, all of the sudden, two years into the Obama administration, the president and you apparently have decided that Section 3 is unconstitutional. You know, I know you've got to pivot around a little bit in this business, but the Constitution hasn't been pivoting around.

ATTY GEN. HOLDER: Yeah, but circumstances have changed, and that's what I was saying.

REP. SENSENBRENNER: Is it political circumstances or legal circumstances? ATTY GEN. HOLDER: No, as I said, if you look at the history of discrimination, coupled with what Congress has done with regard to "don't ask, don't tell," what the Supreme Court has said about --

REP. SENSENBRENNER: Well, "don't ask, don't tell," with all due respect, sir, was a personnel issue in the Defense Department, and the decriminalization of homosexuality -- that was the criminal law. DOMA does not deal with either of these two items.

DOMA was an attempt to define, for federal purposes that marriage is between one man and one woman. And 45 states in this country have also reached that conclusion either through a constitutional

amendment ratified by the people, as was the case in Wisconsin, or through statutory enactments by the legislature.

You know, my concern on this, Mr. Attorney General -- and it's deeply troubling -- is that the president has decided to usurp the function of Congress in making laws, which a former president has signed, and also to usurp the function of the courts by saying that this law is unconstitutional when that's not his job.

Now, you know, I guess what I can say is that I certainly would support an effort to have the cost of Congress' defending this provision that the president and you have refused to do so come out of the Justice Department's appropriations so that the message is sent down the street that an attorney general or a president can't willy-nilly decide that a law that they may have voted against had they been in Congress at the time is unconstitutional.

Well, my time is up, and, you know, let me say I haven't said the last about this.

But you made the wrong decision, and I think that there ought to be a little bit of skin off the department's back as a result of the wrong decision being made.

And I yield back.

ATTY GEN. HOLDER: Well, with all due respect, in addition to the determinations that I made and the president agreed with, which is based strictly on an assessment of the legal situation in front of us and several lower courts -- several lower courts, they have moved that the DOMA itself is unconstitutional. And the notion that this is somehow something that ought to be, as you said, taken off the backs of the Department of Justice in a financial way, I think, is inappropriate.

The lawyers in the Department of Justice who would have worked on that case, believe me, have more than a their -- a full-time job and they will have to use -- the time that might have been used in the DOMA defense, they will use it in other areas. So I think that that is an appropriate -- (inaudible).

REP. SMITH: Without objection, the gentleman from Wisconsin is recognized for --

REP. SENSENBRENNER: Well, you know, I -- Mr. Attorney General, I guess what I can say is that we're in a tough budget time, and we all know we're in a tough budget time. If you take the position that this should come out of Congress' budget, which we willingly cut on the second day of the session, essentially what you're saying is that there shouldn't be money -- government money to pay a lawyer to argue the constitutionality of this law.

And, you know, I'm one of those that believes that everybody is entitled to a lawyer no matter how wrong their position may be. And, you know, what you're saying is, well, just because you and the president

have decided not to defend DOMA, because you and the president have decided it's unconstitutional, there should be some kind of financial shifting around so that the lawyer gets paid for, because this is a serious constitutional question, and the best lawyers in the country ought to argue both sides of the case.

And I yield back.

REP. SMITH: The gentleman's time has expired. The gentleman from New York, Mr. Nadler -- (inaudible) --

REPRESENTATIVE JERROLD NADLER (D-NY): Thank you. And I'm very heartened to hear from the --

ATTY GEN. HOLDER: Could I just say I don't disagree with Mr. Sensenbrenner in the sense that good lawyers ought to be involved in this matter? And you apparently hired Mr. Clement, who's a great lawyer. But Congress, it seems to me, has the ability to pass an appropriation to pay Mr. Clement for the defense, the great defense, that I'm sure he will -- he will render. To take it out of the Justice Department, I think, however, is inappropriate.

REP. NADLER: I'm delighted to hear the observation of the gentleman from Wisconsin and I look forward to his -- that everyone is entitled to a lawyer and I look forward to his support of greatly increased appropriations for legal services and legal aid so that people who need lawyers in this country can get it. And we'll be working together on that, I'm sure.

Mr. Attorney General, I want to offer my sincere appreciation to the administration for its daring and successful mission to eliminate Osama bin Laden. I want to commend our military, our intelligence personnel and the administration for never forgetting 9/11 and for continuing to pursue terrorists and bring them to justice. And please bring that message back to the president.

As you well know, during the last Congress a number of us worked tirelessly to pass the 9/11 Health and Compensation Act so that we can properly honor, remember and care for the victims of 9/11. This new law reopens the Victims' Compensation Fund, which will allow those still suffering and dying from their work at Ground Zero to finally apply for financial compensation for their losses.

You and I have met about setting up the fund, and, again, I want to encourage you to make rapid progress on appointing a special master, setting up the mechanisms necessary to process claims and doing everything you can to ensure that those still suffering from this -- the attacks will get the compensation that they deserve. And I hope you let us know if there's anything we can do to help ensure that implementation of the act goes as smoothly as possible.

Now, getting back to -- thank you. And now getting back to the little discussion of DOMA, I don't believe that the administration had any choice in the matter at all, by looking at the legal precedents. And

tell me if it isn't true that Mr. Sensenbrenner is a little mistaken, because he said you chose one circuit over the others.

In fact, a number of circuits had established the rational relationship test. The Second Circuit hadn't established any test, which is why you had to look into the position of the department in the Second Circuit case -- what should you do, not whether you agreed with the Second Circuit or not. It was a new question, which you had to consider for the first time in a -- in a new circuit.

But isn't it true that the cases in the other circuits that determined that the rational relationship test was the -- was the right test all were done pre-Lawrence-imposed balance? In other words, they were all done in a -- in a legal context in which the Supreme Court has said that the act of consensual sodomy, the homosexual act itself, could be properly made a crime.

This was specifically -- oh, that was a 19 -- what, '86, case -- was specifically overturned by the 2003 case of Lawrence, which stated you couldn't do that. And this had to give an entirely new context, and there has been no determination of the -- by any court, as far as I know, but certainly by any circuit -- of the proper scope of review, or standard of review, after the Lawrence case.

And if you look at the normal criteria for determining the standard of review that the Supreme Court has enjoined upon us as to what a suspect classification is, et cetera -- does this class have a history of discrimination, does it have the political power to stop the discrimination, et cetera, et cetera -- it meets all the tests. And you really had no choice but to go that route.

ATTY GEN. HOLDER: Well, I would agree with you. I mean, the legal environment, the legal landscape has fundamentally changed since some of those earlier decisions were made by those other circuits. And we confronted in the Second Circuit a jurisdiction or circuit that had not ruled, and so therefore we had to examine the legal environment as it exists today.

And on that basis -- not on any political basis, but on a legal basis, a constitutional basis -- the recommendation that I made to the president was that there was not a reasonable argument that could be made in favor of the constitutionality of DOMA, and the president agreed.

REP. NADLER: In a context after Lawrence, not just in the context of social change.

ATTY GEN. HOLDER: Exactly. But in terms of what the courts have said, understanding what the courts said and when they said it, what the Supreme Court said, what many lower courts have said, and then looking at the -- hard to decide what the appropriate standard (would be ?).

REP. NADLER: Well, I commend you for that determination. I think it was compelled by the courts. And I certainly hope that we will

not start trying to intimidate the department in terms of its legal decisions through the use of the appropriations process. That would be wholly inappropriate. Let me switch topics, if I may. We have here your letter from Ron Weich, actually, on the -- on the state secrets doctrine. And you make some very interesting points, but the -- but the key point is the courts should have the information; you're going to exercise this power very sparingly, et cetera, et cetera. But it's still a power the executive is going to use.

In the Ninth Circuit -- in the initial decision in the Ninth Circuit, I thought the most important sentence was a sentence where the three-judge panel said the executive cannot be its own judge. And all the criteria which you set forward in this letter are fine criteria, but they all say, in effect, trust the department, trust the executive branch, no recognition of separation of powers, that --

And my contention is that you say in here that the courts -- the department recognizes the courts have an essential and independent role to play in reviewing the executive's assertion. It should be in approving the executive's assertion. There should be secret proceedings and so forth, if necessary, but the key is that the courts should have to OK or not an assertion of the fact that --

A motion to dismiss on the grounds of executive privilege should have to be OKed by the court, not simply noted by the court, regardless of how restrained and proper the executive is. That seems to me fundamental to our system of checks and balances and completely missing from the department's position.

ATTY GEN. HOLDER: Well, we have tried to do -- what I've tried to do was really reform the process by which the invocation of that privilege is made. There are a whole series of levels of review that have to be agreed to, including by the highest levels in the Department of Justice. And I ultimately must agree that the invocation of the privilege is appropriate.

Since the invocation, since the -- this new process was put in place, we have only invoked the privilege on two occasions and we only will do it in those instances where it's necessary to protect national security, and not to hide anything that might be inappropriately done by the -- (inaudible) --

REP. SMITH: (Sounds gavel.) (Inaudible.) The gentleman's time has --

REP. NADLER: May I -- may I have unanimous consent for an additional minute?

REP. SMITH: The gentleman is recognized, without objection, for an additional 30 seconds.

REP. NADLER: Well, all of this may be true and all of this may be exercised properly by you, and maybe by your successor or not, but the decision is still reserved to the department, not the court. And that's

the fundamental problem, which I think is -- which I think is inconsistent with our general system of government. ATTY GEN. HOLDER: Well, as I said, I think we have in place a new process that handles the concerns that you have, and we make sure that the invocations of the privilege are rare and are appropriate.

REP. NADLER: Thank you.

REP. SMITH: OK. The gentleman's time has expired. You can double-check this mic for me, please?

The gentleman from North Carolina, Mr. Coble, is recognized for his questions.

REPRESENTATIVE HOWARD COBLE (R-NC): Thank you, Mr. Chairman.

Eric -- General Holder, good to have you on the Hill.

Mr. Attorney General, last June, the Justice Department contacted Alamance County in my district to inform the county board of commissioners that it was commencing an investigation concerning allegations of discriminatory policing, and unlawful searches and seizures.

The county assures me that there's no factual basis of these allegations and at an equally convenient time, Mr. Attorney General, I'd like to meet with you and/or the appropriate staffer at Justice regarding this matter.

ATTY GEN. HOLDER: Okay. We are, I guess, in the process of negotiating with the Sheriff's Office to get some relevant documents and apparently there has been partial compliance with our document request, but to the extent that you have concerns, I am sure that we can work out some interaction between our staffs.

REP. COBLE: I thank you for that.

An important element, Mr. Attorney General, of our federal bankruptcy law is a requirement that debtors consult with an approved agency to receive a briefing and a budget analysis from a credit counseling agency prior to filing for bankruptcy relief. To assure high quality standards for prefiling counseling, the executive office of the United States trustee is charged with approving nonprofit budget and credit counseling agencies that may provide this service.

There are allegations that the trustee office has approved a number of credit counseling agencies that are not meaningfully interactive with debtors prior to certifying that they have completed the prerequisite prefiling counseling. There are also allegations that many of these nonprofit agencies are related or linked to for-profit entities.

Are you familiar with these allegations?



ATTY GEN. HOLDER: I've heard -- I'm not intimately familiar with them, but I've heard conversations in the department that -- about the subject that you're talking. I know that we are looking at these matters. To the extent that you have information though that you think that we have not adequately addressed, again, that would be information if you can share with us, I'll make sure that the appropriate people in the department examine it.

REP. COBLE: And I thank you for that if you would get back to us on what you find out as well.

Finally, Mr. Attorney General, as has been mentioned, we're in a cutting mode on the Hill, as you know. What are your priority areas of cuts? ATTY GEN. HOLDER: I always like to ask -- have the question asked the other way. (Laughter.)

REP. COBLE: Well, I didn't mean to induce laughter when I asked that question, Mr. Attorney General.

ATTY GEN. HOLDER: Well, you know, we are mindful of the fact that we have tough budgetary times and the department has to step up as other executive branch agencies have. We have our priority areas which all revolve around the protection of the American people, national security, financial frauds, the prevention of violent crimes, the protection of the most vulnerable among us. We want to have an adequate budget that will allow us to do those kinds of things.

There are budget proposals that are floating around. We have talked to our counterparts at OMB, have made known to them what our priorities are. And my hope is that recognition will be made of the unique responsibilities that the Justice Department has and that a budget that will allow us to serve the American people in the way that I have described will be actually enacted.

REP. COBLE: I thank you for that.

Mr. Chairman, I yield back prior to the illumination of the red light.

REP. SMITH: Thank you, Mr. Coble.

The gentleman from Michigan, Mr. Conyers, is recognized for his question.

REP. CONYERS: Thank you, Chairman.

One of the things that I hope we can take a new look at is the state secrets privilege in which the exclusion of evidence from a legal case based solely on affidavits submitted by the government stating that the court proceedings might disclose sensitive information which could endanger national security causes the information to go and the case collapses. And I think that is a serious problem in the way the previous administration and this one is proceeding.

What bothers me, General Holder, is that there have been cases challenging the use of rendition, of wire tapping, of torture, and the administration has used the secret privilege -- state secret privilege to have these lawsuits dismissed. I think it's very troublesome and problematic, and I'm wondering if a number of us here can begin to persuade you to re-examine the use of this technique because it makes it very hard to challenge in those cases to bring a case against the government. ATTY GEN. HOLDER: Well, I certainly heard the concerns that were expressed by members of this committee and, frankly, other members of Congress and people outside of Congress. And I was concerned myself about the invocation of the privilege and I think I have put in place a regimen that as I indicated to Mr. Nadler would make the use of the privilege rare and appropriate and transparent to the extent that we can.

We have sent a report to Congress about the invocation of the privilege which has not been done before. I've put in place a series of review steps that did not exist before and required that the attorney general himself or herself actually sign off on any invocation of the privilege, all of which is new. And it would seem to me that that I think would deal with many of the concerns if not all of the concerns that have been raised, but I mean this is a fluid process. And to the extent that there are other ideas that you or other members of the committee have, I'd be more than glad to listen to them, work with you and see if there are further changes that we need to make.

REP. CONYERS: Well, thank you. And I'm familiar with that new report. But, look, many in the legal community don't think that it changes really very much, and we've got a lot more meeting to do and discussion and I'm glad you're open to it.

Let me turn now to antitrust. Now, the antitrust division has been dormant for many years in my view and the global corporations get larger and larger and larger. It works against our economy. It certainly takes jobs away from this country, as badly as we need them, and I haven't seen one major case in which your department has refused to approve a significant merger.

Now, isn't there some way we can begin to review that? And I'd like to be able to meet with you and others on this committee that think we can make a good case that it's not good law, it's terrible for the economy and that it would be the right thing to do to start refusing it. DOJ hasn't refused one merger.

ATTY GEN. HOLDER: Well, we have, I think, a very vigorous antitrust policy. We've got a great assistant attorney general, Christine Varney, who is the head of the antitrust division, and I think that she has in fact revitalized the work of the antitrust division. To the extent that proposed mergers have come before the antitrust division, they have oftentimes been approved, but approved with conditions that were required by the department, changes in business practices, investment of certain components in the businesses that sought to merge. And I think that the way in which Christine is going about it -- the men and women of antitrust division are going about their enforcement activities is appropriate.

Again, based only on the facts of the law, there are mergers that we presently have that we are in the process of considering. I can't talk about those, but in the examination of those proposed mergers, we will be vigorously enforcing the antitrust laws. REP. CONYERS: Thank you, Chairman Smith.

REP. SMITH: Thank you, Mr. Conyers.

The gentleman from Virginia, Mr. Goodlatte, is recognized for his question.

REPRESENTATIVE BOB GOODLATTE (R-VA): Thank you, Mr. Chairman.

And, General Holder, thank you very much for coming to be with us today.

A few weeks ago Director Mueller testified before this committee and highlighted the threat of cyber crime. Please let us know what measures the department is currently taking to strengthen our nation's cyber security.

ATTY GEN. HOLDER: Well, it is an issue that is of great concern to us in the department.

We have within our criminal division computer crimes section that does a great deal of work dealing with issues that come before it. It has been publicly revealed about steps -- enforcement steps that we've taken with regard to a matter that was in -- centered, I guess, in Connecticut with regard to what we call botnets.

The national security is potentially threatened by cyber issues. There's economic fraud that can be perpetrated through the use of cyber components. We work with the FBI in trying -- and our other -- in other agencies within the executive branch to try to deal with these cyber issues -- child pornography, as was indicated before. A whole variety of things can happen. I mean, the cyber world can be such a positive force but it is also -- the potential for great negative activity is there. And so we are very active in a variety of ways in dealing with these -- with these cyber issues.

REP. GOODLATTE: Are there additional tools that the Congress can provide to the department that would help you in this critical mission?

ATTY GEN. HOLDER: Well, I think that is actually a very good question because the reality is that these cyber issues evolve, and what was state of the art six months ago isn't state of the art necessarily today. And to the extent that we can come before this committee, work with members of this committee in looking at the issues that we are confronting now or that we expect that we'll have to confront in six months, a year from now, and make legislative requests that would be certainly something that we would appreciate. And I would take advantage of that offer.

REP. GOODLATTE: Well, thank you. And so I take it you would be willing to work with us to identify these additional tools and try to enhance our nation's cyber security as well as your ability to combat cyber crime?

ATTY GEN. HOLDER: Absolutely. Absolutely.

REP. GOODLATTE: Another subject area I wanted to get into relates to intellectual property, which is a subset of cyber crime, if you will. There's a great interest on both sides of the capital in legislation to better protect the public by enhancing respect for intellectual property online. One of the proposals being considered has been to give the department enhanced authority to petition federal courts to block access to websites, many of which may be based outside the United States which are dedicated to offering illegitimate physical and digital goods to American consumers. In this regard I wonder if you could address some key concerns. First, do you have suggestions for how this committee can ensure that such new authorities are used often enough to serve as a meaningful deterrent to the scope of illicit online activity?

ATTY GEN. HOLDER: Well, I think you're, again, right to identify that as an issue that is of concern -- that is of legitimate concern. I went to Hong Kong and to China a few months ago and raised -- gave a speech in Hong Kong about this very issue -- raised with Chinese officials who I met with about the concerns that our government has with regard to these -- to these matters. To the extent that we can identify the need for new tools or to the extent that there is proposed legislation we would want to work with you, look at that legislation and see if in fact there are ways in which we can either pass it, modify it, but there are huge economic concerns -- huge economic concerns around the issues that you've -- that you've raised.

REP. GOODLATTE: What protections does the law currently provide before the government can seize or seek forfeiture of a domain name and are there any additional steps you believe are necessary to ensure that the constitutional requirements are met -- that legitimate users of these domains are protected?

ATTY GEN. HOLDER: Yeah. Those are -- the difficulty there really are -- the difficulties there really are constitutional in nature and to the extent that we can craft bills that allow the department to seize domain names, to take other actions and do so in a constitutional way that is something that I think we should explore, and we don't have all the answers in the department with regard to how that legislation might be crafted and so I've been working with this committee and, frankly, met other senators who have raised -- senators who have raised this issue as well I think would be a wise use of our time.

REP. GOODLATTE: And given that around a hundred websites have been ordered seized by federal courts under existing authorities what's your best estimate of the number of websites you might expect the department would be able to target on an annual basis if something along

the lines of the existing law was enacted to reach sites that are wholly based outside of our borders?

ATTY GEN. HOLDER: I don't know if I could give you a real good -- a specific numerical estimate but I can say that with different tools and given the nature of the threat that we face that we would, I think, be -- we'd have substantially greater than the hundred or so that you have mentioned if we had those additional tools. But as I said, working with you to identify the tools that we need and making sure that those tools are constitutional in nature would be of great use to the department.

REP. GOODLATTE: Thank you. Thank you, Mr. Chairman. REP. SMITH: Thank you, Mr. Goodlatte. The gentleman from Virginia, Mr. Scott, is recognized for his question.

REPRESENTATIVE BOBBY SCOTT (D-VA): Thank you, Mr. Chairman, and welcome, Mr. Attorney General. In your prepared remarks you talked about the importance of getting -- all religions getting along. Are you aware that then-Senator Obama in Zanesville, Ohio, said that if you get a federal grant you can't use that grant money to proselytize to the people you help and you can't discriminate against them or the people you hire on the basis of religion?

Is it possible in this administration today for someone to apply for a federal grant and articulate an intention to discriminate against people of particular religions -- for example, you know, they don't want to hire Catholics, Jews and Muslims? Would they be entitled to run a federal program?

ATTY GEN. HOLDER: Well, I want to say that we want to make sure that we partner with faith-based organizations in a way that's consistent with our values and a way that's constitutional. And we will continue to evaluate any legal questions or concerns that are raised with regard to -

REP. SCOTT: Well, does that mean yes, they can get a federal grant and discriminate?

ATTY GEN. HOLDER: We don't want to be in a position where people are in fact getting federal grants and discriminating. We'll have to look at obviously at least everything --

REP. SCOTT: Well, we know of at least one administration official who has suggested that they're going to deal with discrimination on a, quote, "case by case basis." What kind of cases would we don't hire Catholics, Jews and Muslims be OK?

ATTY GEN. HOLDER: Well, obviously, that kind of situation would not be OK, would not be legally appropriate, would be inconsistent with our values.

REP. SCOTT: Is that -- is it legal under this administration?

ATTY GEN. HOLDER: It's not a question of it being legal under this administration. It's a question of how the law -- what the law says and --

REP. SCOTT: Does this administration provide grants to organizations that actively discriminate based on religion or not?

ATTY GEN. HOLDER: We don't want to do that. We try not to do that but the question is what, you know -- REP. SCOTT: Well, wait a -- wait a minute. Either you do or you don't. Do you not give grants to organizations that actively discriminate based on religion or not?

ATTY GEN. HOLDER: The attempt we make is not to do that. The -- as I've indicated, our hope is that we do -- the grants that we give are consistent with the law but beyond that are consistent with our values.

REP. SCOTT: We don't have time to go into the legal memo of June 29th, 2007. Could we give -- could you for the record provide the administration analysis of that legal counsel memo which essentially suggested that the Religious Freedom Restoration Act of 1993 provides a virtual exemption to statutory nondiscrimination provisions? Could you provide that to us for the record?

ATTY GEN. HOLDER: I'm sorry. Provide you --

REP. SCOTT: With a -- whether or not the status of the -- of that policy and whether or not that legal counsel memo is still in effect. Could you provide that for the record?

ATTY GEN. HOLDER: Well, as I understand it the memo is still in effect, as I understand it.

REP. SCOTT: That the Religious Freedom Restoration Act gives organizations a virtual exemption to statutory nondiscrimination provisions?

ATTY GEN. HOLDER: If you're talking about the 2007 OLC World Vision opinion I --

REP. SCOTT: So if you're running a Head Start program -- if they're running a Head Start program they can discriminate even though there is a statutory provision prohibiting discrimination? They can discriminate anyway?

ATTY GEN. HOLDER: What I was saying is that in terms of -- with regard to that specific OLC opinion we are not in the process of reconsidering it. That is not something that, as I understand it -- (inaudible).

REP. SCOTT: Well, I'm not talking about the memo. I'm talking about the policy. Can they discriminate notwithstanding a specific statutory prohibition against discrimination -- they can discriminate anyway based on that interpretation?

ATTY GEN. HOLDER: Obviously, discrimination cannot occur that is -- that contravenes federal law.

REP. SCOTT: Well, let me ask a number of -- my time is running out. Let me ask another -- a number of questions just for the record since we don't have time for the answers. The Prison Rape Elimination Act regulations apparently overlooked juveniles prosecuted and jailed as adults. We want to work with you on making sure that they are covered. We also understand that the changes we made in the crack cocaine law still are not being applied for those who committed their crimes before the law went into effect.

We need to know what changes need to be made since we have ascertained that those are unjust laws.

I also want to ask you whether or not you believe poker is a game of chance or a game of skill, and whether or not the anti-gambling laws apply to poker as they would for roulette and other games of -- like that. I'd like to know -- if I can get another 30 seconds, Mr. Chairman, to just ask the questions for the record.

The news reports have talked about the compromise of a lot of identity information. Prosecution of identity theft and organized retail theft -- not shoplifting but organized, including e-fencing and everything else, are resource-intensive activities -- if you could give us an idea of what kinds of resources are needed to effectively combat identity theft, consumer identity theft and organized retail theft.

Also, on reentry, your remarks -- prepared remarks talk about the importance of reentry and that you are studying what works and what doesn't work. We know that a lot more applications are in than we have money to fund and so we'd like to know how that study is going, and also I hope that you're going to continue to support the Federal Prison Industries, if you could give us a comment on that. That is shown to have a significant reduction --

REP. SMITH: The gentleman's time is expiring.

REP. SCOTT: -- on recidivism, and I appreciate the chairman's indulgence.

ATTY GEN. HOLDER: OK. I'd be more than glad to answer all those questions, except the one about whether poker is a game of chance or skill. That's beyond my capability.

REP. SMITH: Thank you, Mr. Scott.

The gentleman from California, Mr. Lungren, is recognized.

REPRESENTATIVE DAN LUNGREN (R-CA): Yeah, thank you very much, Mr. Chairman.

According to ESPN, it's a sport. (Laughter.)

Mr. Attorney General, in 1996, while I was attorney general of California, we helped work with the Congress to pass the Antiterrorism Effective Death Penalty Act. One of the things was to try and create incentives for states to improve their habeas corpus procedures and to allow an expedition of their consideration by federal courts.

Unfortunately, no court ever found any state to do that, so in 2005 we passed legislation, which changed that responsibility for certifying a state from the courts to the attorney general. You published draft regulations on March 2011. The comments on the draft are due June 2011. I would hope that I could have your commitment that we will move on this since this goes all the way back to 1996.

ATTY GEN. HOLDER: Yes. I mean, we have -- I have tried to move this as quickly as we can.

REP. LUNGREN: OK, as long as I've got your commitment, that's all I need.

I would just say with respect to DOMA, it would have been helpful if the president of the United States, as a former constitutional law professor, during the time he was running for president would have indicated that he had some constitutional questions about the DOMA when he was going around the country saying that he believes that marriage is between one man and one woman. These newfound understandings of the Constitution after one's elected are somewhat troubling, and particularly when it goes to the question of defending a law that was duly passed by the Congress and signed by a president.

Mr. Attorney General, do you support and approve the action the president and the U.S. military took in going to Pakistan, killing Osama bin Laden and taking his body?

ATTY GEN. HOLDER: I think that the acts that we took were both lawful, legitimate and appropriate in every way. The people who were responsible for that action, both in the decision-making and the effecting of that decision, handled themselves, I think, quite well.

REP. LUNGREN: Can you tell us for the public record whether we can therefore be assured that any intelligence which led to this capture and killing of Osama bin Laden was not the result of enhanced interrogation techniques?

ATTY GEN. HOLDER: Well, I think, as has been indicated by other administration spokesmen, there was a mosaic of sources that led to the identification of the people who led to --

REP. LUNGREN: I understand that. But were any pieces of that mosaic as the result of enhanced interrogation techniques?

ATTY GEN. HOLDER: I do not know.



REP. LUNGREN: If that were the case, would that have made the action that we took against Osama bin Laden illegal? ATTY GEN. HOLDER: No. I mean, I think that, you know, in terms of the attenuation to the extent that -- let's assume that there were -- that that was true. The attenuation between those acts that might have been problematic and the action that was taken just two days ago, I think, was sufficiently long so that the action was -- could still be considered legal.

REP. LUNGREN: Could we have used the same tactics against Khalid Sheikh Mohammed when we captured him in Pakistan that we did against Osama bin Laden? Would that have been lawful?

ATTY GEN. HOLDER: Could we have --

REP. LUNGREN: Used the same tactics against Khalid Sheikh Mohammed when we captured him in Pakistan as we did against Osama bin Laden; that is, killed him rather than captured him?

ATTY GEN. HOLDER: Well, the aim with regard to bin Laden was to kill or capture him. I would think that with regard to Khalid Sheikh Mohammed, we could probably apply those same standards of kill or capture. We had the ability there to capture him as opposed to kill him.

REP. LUNGREN: Does it seem in some ways inconsistent or difficulty for more relevance to say that it is -- per se so shocks the conscience that one would subject Khalid Sheikh Mohammed to waterboarding but it would not shock the conscience to put a bullet in his brain?

ATTY GEN. HOLDER: Well, one has to take into account a whole variety of things. And when you're on the scene, you want to get the person who you're trying to capture, but you also have to make sure that you are protecting the lives of the people who are on our side and who put themselves at risk, and it is for that reason that there was a safety component there, and the kill-or-capture component raises itself in a way that it would not when it comes to the interrogation of Khalid Sheikh Mohammed or somebody else.

REP. LUNGREN: Since you opposed a military commission trial for Khalid Sheikh Mohammed, would you have opposed a commission trial for Osama bin Laden had he been captured and not killed?

ATTY GEN. HOLDER: Well, I mean, that's a hypothetical. I'm not sure that it is particularly relevant.

REP. LUNGREN: Well, you've taken a strong position against military commissions and the reluctance that you showed towards closing Guantanamo. You issued a rather strong statement about your disappointment with the Congress with respect to both our efforts to keep Guantanamo open and our efforts to have military tribunals. So I think it is an appropriate question to ask you whether or not, since you opposed a military trial for Khalid Sheikh Mohammed, whether you would have opposed a military trial for Osama bin Laden and rather given him the protections of a civilian trial. ATTY GEN. HOLDER: Well, I think one has to look at -- my position is oftentimes mischaracterized, and on

the same day that I indicated that it made sense to -- tactical sense to put Khalid Sheikh Mohammed in a civilian court I sent, like, five or six other cases to military tribunals, military commissions. I don't have a problem with the military commissions, but t the decision I made in the Khalid Sheikh Mohammed case was based on my review of the facts, the evidence and tactical decision -- tactical decision that no member of Congress had the ability to see but I did.

REP. LUNGREN: So it's tactical rather than civilian courts being the one that can uphold the constitutional notions of fair play as opposed to a military tribunal?

ATTY GEN. HOLDER: I think our military commissions are in fact -- especially since they have been modified -- are constitutional and can give fair trials. But the decision with regard to Khalid Sheikh Mohammed dealt with a whole variety of things that I uniquely had access to and made -- and that's why I made that decision and why I would have been so vehement in my comments about what I think is an inappropriate and wrong decision by Congress to block our ability to try the case in that forum.

REP. LUNGREN: Thank you, Mr. Chairman.

REP. SMITH: Thank you, Mr. Lungren.

The gentleman from North Carolina, Mr. Watt, is recognized for his questions.

REPRESENTATIVE MELVIN WATT (D-NC): Thank you, Mr. Chairman.

Welcome, Attorney General Holder. I'm going to submit with -- if I can get the unanimous consent, a copy of a letter I received from the attorney general for North Carolina asking me about funding for the elimination of meth labs -- meth lab cleanup.

You may not have the information at your hand, but if you could just let me know what the basis was for the U.S. DEA halting all funding across the country for meth lab hazardous waste cleanup.

ATTY GEN. HOLDER: Right.

REP. WATT: Apparently it's having substantial adverse impact not only in North Carolina but throughout the country. And it would be helpful to know why they stopped that funding. I'll submit -- I ask unanimous consent to submit a copy of the letter, and I'll give --

REP. SMITH: Without objection, the letter will be made a part of the record.

REP. WATT: In August of 2010, after a joint working group of antitrust and FTC economists and senior attorneys and public workshops and comment opportunities, the Department of Justice made a substantial revision to its horizontal merger guidelines.

Let me ask you three questions, and then I'll just give you the rest of the time to respond, to the extent you can. And if you don't have time, maybe you can provide written responses.

First of all, could you briefly explain the impetus for the revisions and describe generally what the department hoped to achieve in making the changes? Second, could you highlight some of the most significant changes made to the guidelines and briefly assess the impact these changes have had on recent merger reviews?

And third, what role, if any, did the new guidelines have in the department's analysis of the merger between Google and ITA in particular, and if there are other mergers, that these guidelines were significant in? I'd like to have your response, probably in writing, to the last question. But if you could respond briefly to the first two questions, that would be helpful.

ATTY GEN. HOLDER: I think what I'd like to do is be able to give you maybe a more detailed response in writing, but to say that the changes that we made, that were done under the leadership of our assistant attorney general Christine Varney, were all designed to make the department's enforcement efforts more effective, to revivify the antitrust division and to make sure that as we look at matters, we have the tools that we need and that those tools are transparent, so that people understand that where the department is coming from, what -- people have some degree of certainty. They can understand how things have to be structured; all, as I said, with the aim towards making the enforcement of our antitrust laws as effective as we can and we are as aggressive as we can.

With regard to the specific questions that you have asked, as I said, we will get you something in writing.

REP. WATT: OK. Is it likely that this new approach, though, is going to make it less likely -- it seems to me that you're moving toward a more compromised approach, as opposed to an enforcement approach of saying this violates the antitrust laws; therefore, we will not approve it. Am I misreading that, or -- and I think that may be the discomfort that Mr. Conyers was raising earlier. There have been no disapprovals, not that we're looking for disapprovals. Is this a shift in policy in the department, I guess, is a better question.

ATTY GEN. HOLDER: To the extent that you are concerned or others are concerned that we're somehow stepping back from being aggressive in the enforcement of the antitrust laws, I want to put your minds at ease. That is not what we are attempting to do. In fact, we take these cases and examine them one by one, as we have to.

And as I think I indicated to Mr. Conyers, with regard to the decisions that have been made, we have oftentimes required things of the parties before the mergers were approved. The fact that there has not been one that has been rejected -- and I'd have to look to make sure that's accurate; let's assume that that's true -- that is not an indication that there is any timidity on the part of the antitrust

division in the Justice Department to enforce the antitrust laws or any indication that, going forward, some of the more high-profile ones that we are now in the process of considering might not pass muster.

REP. WATT: Thank you, Mr. Watt.

The gentleman from Ohio, Mr. Chabot, is recognized.

REPRESENTATIVE STEVE CHABOT (R-OH): Thank you, Mr. Chairman.

Mr. Attorney General, I'd like to comment on the gentleman from Virginia, Mr. Scott, whom I agree with on -- one of the few issues I think we agree on, on federal -- the importance of the federal prison industries, and would encourage you to look into that matter. I think it's an important program.

I think that once we have people locked up -- and at this level it's federal prisons; I've dealt with them at the local level as well -- I think we ought to make sure we're utilizing those resources. And most of them are going to be out in the street someday. And, to the extent that they can get job skills and improve themselves, so that when they're back out, some, at least, could become productive citizens, I think, is very important.

Let me move to an entirely different topic, then, and that's Guantanamo Bay, or Gitmo. I've been there three times. The first time I was there was shortly after it opened. It was about nine years ago; not much to it at the time. That's when we, of course, held that detainees are terrorists or enemy combatants, whatever terminology one prefers to use now, or even back then; most of them captured in Afghanistan.

And the reason, of course, we set up Gitmo is we needed a safe and secure place to keep the most dangerous people, essentially the worst of the worst, the terrorists, most of them. And the goal was not to do it on U.S. soil. And at that time, they were at Camp X-Ray within Guantanamo Bay. It really wasn't much more than a bunch of cages out there. And I think a great disservice was done when we had these initial photographs where they had bags over their heads and they were kneeling, and the impression, the wrong impression, was given that that's the way we kept them all the time. And the world press pretty much went wild, and it was, I think, a blow to the stature of the United States around the world, because that's not how these prisoners are treated, for the most part.

At its zenith -- and I was there a second time about five years ago, and then most recently about a month ago, so I've seen it pretty recently and through the whole process. At its height, we had somewhere around 800 detainees is what my information is there. We're now down to about 172. A number of them have been transferred back to the countries of their origin. In some cases the countries didn't want them back.

And we tended to try to give back the folks that we thought were the least dangerous to the country. But even at that, it's -- the records show that about 25 percent have taken up arms again against the

United States or some other country, essentially, so one out of four have become terrorists again. And that's, to me, very disturbing.

And they are treated -- there's a lot of allegations out there about how terribly they're pressed, treated; for example, the waterboarding. First of all, waterboarding that's out there, this did not occur at Guantanamo Bay. Is that correct, Mr. Attorney General?

ATTY GEN. HOLDER: I think -- I think that is correct.

REP. CHABOT: OK, so no waterboarding there. So, first of all, when we hear that term and we have the equivalent that it's torture, you know, people can think what they think. But the definition -- it's not torture. But it didn't happen at Guantanamo Bay, and I think that's an important point to make.

When prisoners are there, they get -- they probably eat better than they have in their lives, get the same medical treatment that our own soldiers get. They have cable TV, 22 channels, exercise equipment, a Quran, a prayer rug, clothing, access to legal care, among other things. Would that be accurate, sir?

ATTY GEN. HOLDER: I don't know about all the specifics. I was in Guantanamo shortly after I became attorney general. And it is a place that I think treats people as they should be treated. I don't know about all the details of what you've just gone through.

ATTY GEN. HOLDER: OK. And there's a separate section, and it's classified, so I can't go into a lot of this, but there's about 20 people there. The worst of the worst is Khalid Sheikh Mohammed. But I think our men and women in uniform have been really disparaged unfairly. And these are quality people who have handled a tough job with great professionalism and restraint. Are you familiar with the term a Gitmo cocktail?

ATTY GEN. HOLDER: A Gitmo cocktail?

REP. CHABOT: Yeah.

ATTY GEN. HOLDER: I think I know what that is, but I'm -- I think I know what it is.

REP. CHABOT: Yeah. And it is what you think it is.

ATTY GEN. HOLDER: Right. OK.

REP. CHABOT: It's fecal matter and other pretty horrific things that get thrown by prisoners at our guards. And even under those circumstances, there's an awful lot of restraint that's handled there. But I know this is one thing where I agree with the administration now, where they've changed their opinion about closing down Gitmo, and also bringing those people back here to the United States.

There's absolutely -- that was a terrible idea, sir, to bring them to the United States, to try them here, to have the anti-American, vile mindset of some of these radical jihadists spread among the prisoners in our federal prisoners. And that's where they ought to be tried. We shouldn't give people -- and I'll -- could I have 30 seconds, Mr. Chairman?

REP. SMITH: The gentleman is recognized for an additional 30 seconds without objection.

REP. CHABOT: Thank you.

To give a master propagandist like Khalid Sheikh Mohammed a soapbox to spew that anti-American venom around the world is just not the way to go. So I commend you for bringing them back here now and -- excuse me -- for keeping them at Gitmo.

We also built a \$16 million court facility there that was virtually unused, and so now it is going to be used and should be, and full speed ahead with that.

Thank you.

REP. SMITH: Thank you, Mr. Chabot.

The gentlewoman from California is recognized for her questions, Ms. Lofgren.

REPRESENTATIVE ZOE LOFGREN (D-CA): Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for being here today.

You know, a couple of years ago the Immigration Subcommittee held a hearing on ICE's raid of a meatpacking plant in Postville, Iowa. And the factory workers there were literally rounded up and herded into a cattle area and then figuratively treated like cattle. They had group hearings with shared counsel, no translation services and very questionable guilty pleas and prison time.

Judge Mark Bennett, who sentenced a number of the immigrants, said this about that proceeding, and I quote: "I found the plea agreement" that the immigrants were asked to sign "professionally and personally to be offensive." "I thought it was a travesty." "I was embarrassed to be a United States District judge that day."

Now, that was then; this is now. One way to look at these prosecutions is the impact in terms of due process rights and our adherence to law as to the defendants.

Another way to look at it is, how are we using our resources. And I've had my -- the attorneys on the subcommittee take a look at the BRATA and I understand that illegal reentry after deportation is now the most prosecuted federal felony in the United States and that misdemeanor prosecutions of immigration offenses in border districts have tripled from 2007 to 2010 and that these prosecution decisions making reentry

felony prosecutions the most commonly prosecuted felony, federal felony, have come at the expense of prosecuting other crimes. And nonimmigration felony prosecutions in nonborder districts have declined 6 (percent) to 8 percent in the same time frame.

Now, I raise this because many of us, when we go home every week, get this question from our constituents: As far as we can tell, the department has not brought a single prosecution of a high-ranking Wall Street executive or a major financial firm in the wake of the Wall Street scandals that contributed to the global economic crisis. So it looks to me that the department is spending its resources prosecuting nannies and busboys who are trying to get back to their families, illegally reentering, and yet we have not brought any prosecutions on the bandits on Wall Street who brought the nation and the world to the brink of financial disaster.

Could you explain these priorities, Mr. Attorney General?

ATTY. GEN. HOLDER: Well, there's a lot packed into that question. The fact that there are so many prosecutions along the border is an indication of the nature of the problem that we confront. This administration has always stood for a comprehensive approach to --

REP. LOFGREN: No, no, no. I'd like to know about the Wall Street, the lack of Wall Street prosecutions.

ATTY. GEN. HOLDER: All right. Well, I was just dealing with some things you said. All right. The fact that we have these prosecutions on the border is not any indication that we're not taking the Wall Street potential offenses seriously. We have prosecuted a great many cases that deal with fraud with regard to the mortgage area, with regard to financial schemes. A case was brought -- I guess was just decided, oh, in the last couple of weeks, a \$3 billion fraud scheme that involved Colonial Bank, Mr. Lee Farkas. The department is looking right now at the report prepared by Senator Levin's subcommittee that deals with Goldman Sachs.

The notion -- people have to disabuse themselves of the notion that somehow or other this Department of Justice, the prosecutors who look at these cases don't want to bring these cases. They come to the Department of Justice to look at matters like this, to apply the law, look at the facts and to bring new cases. We are extremely aggressive in that way.

REP. LOFGREN: May I ask how many investigators and U.S. attorneys are assigned to the prosecution of executives on Wall Street who may have committed misconduct?

ATTY. GEN. HOLDER: I can't give you an exact number, but I can tell you that a substantial number of people in the Southern District of New York as well as the Criminal Division here in Washington, numerous --

REP. LOFGREN: Well, maybe we can get that number after the -- this hearing.

I'd like to turn to the whole mortgage industry. There was tremendous misconduct undertaken relative to the mortgage industries, including fraud. And as you're aware, I am sure, all 50 attorney generals have engaged in settlement discussions with banks about their misconduct.

Recently, the comptroller of the -- of the currency released a draft cease-and-desist order, which one expert described as the "regulatory equivalent of a Potemkin Village."

I'm wondering if you could tell us -- I understand the department is also engaged in the negotiations -- what should the top priorities for a global settlement of legal claims against the servicing industry include. Do you concur with the attorney generals' outlined settlement, or do you have a different approach?

ATTY. GEN. HOLDER: Well, I'm not sure you can look at -- you can say that the attorneys general -- attorney generals are a model if they have a variety of approaches. Tom Perrelli, who's the associate attorney general, is intimately involved in that process, and we're trying to work with the financial institutions as well as the state attorneys general to try to work our way through an appropriate settlement.

REP. LOFGREN: Well, they have a framework, and I'm just wondering if you agree with that framework or not.

ATTY. GEN. HOLDER: Well, I -- yeah, there's a framework. There is a framework, but there are still a whole bunch of different views, believe me. There's a stated framework, but in terms of the interaction that goes on in these negotiations, there are a variety of positions that we are trying to harmonize and trying to work with the financial institutions to reach --

REP. LOFGREN: Well, if I could ask unanimous consent for 30 seconds, Mr. Chairman. Could you tell us if the --

REP. SMITH: The gentlewoman's recognized for an additional 30 seconds.

REP. LOFGREN: If the settlement discussions fail, are you prepared to prosecute these institutions, since that is the basis for the settlement discussions?

ATTY. GEN. HOLDER: If there -- if the negotiations fail, if there is a basis for prosecutions, we will bring them.

REP. LOFGREN: Thank you, Mr. Chairman.

REP. SMITH: Thank you, Ms. Lofgren.

The gentleman from California, Mr. Issa, is recognized for his questions.



REPRESENTATIVE DARRELL ISSA (R-CA): Thank you, Mr. Chairman. Mr. Attorney General, I'd like to thank you for the work that the U.S. attorney, Laura Duffy, is doing in San Diego going after coyotes, going after gun traffickers at the border, the work in my border district area of making our cities safer, because the crime in Mexico often stops at the border -- because of her work and willingness to prosecute human traffickers and gun traffickers is very much appreciated -- so just so you hear two sides of the California story for a moment.

Mr. Attorney General, we have two Border Patrol agents who are dead, who were killed by guns that were allowed, as far as we can tell, to deliberately walk out of gun shops under the program often called Fast and Furious. This program, as you know -- and the president's been asked about it; you've been asked about it -- allowed for weapons to be sold to straw purchasers, and ultimately many of those weapons are today in the hands of drug cartels and other criminals.

When did you first know about the program, officially, I believe, called Fast and Furious? To the best of your knowledge, what date?

ATTY. GEN. HOLDER: I'm not sure of the exact date, but I probably heard about Fast and Furious for the first time over the last few weeks.

REP. ISSA: Now that you've been briefed on it, the president has said on March 22nd that you didn't authorize it. Did your deputy attorney general, James Cole, authorize it?

ATTY. GEN. HOLDER: I'm sorry --

REP. ISSA: The deputy attorney general, James Cole.

ATTY. GEN. HOLDER: Did he -- I couldn't hear. Did he --

REP. ISSA: Did the deputy -- did the deputy attorney general authorize it?

ATTY. GEN. HOLDER: My guess would be no. Mr. Cole, I don't think, was in the -- I think. I don't think he was in the department at the time that operation started.

REP. ISSA: But he's been aware of it much longer.

ATTY. GEN. HOLDER: He's been aware of it much longer?

REP. ISSA: Than you have, since you've only been aware of it a few weeks.

ATTY. GEN. HOLDER: I'm not sure --

REP. ISSA: How about the head of the Criminal Division, Lenny Breuer? Did he authorize it? ATTY. GEN. HOLDER: I'm not sure whether

Mr. Breuer authorized it. You have to understand the way in which the department operates, although there are -- there are operations -- this one has become, has gotten a great deal of publicity --

REP. ISSA: Yeah, there are dead Americans as a result of this failed and reckless program. So I would say that it hasn't gotten enough attention, has it, Mr. Attorney General?

ATTY. GEN. HOLDER: Well, not necessarily. I mean, there's an investigation that is under way. (Inaudible.)

REP. ISSA: I'm aware of that investigation. Let me follow up with a couple of questions.

ATTY. GEN. HOLDER: (Inaudible) -- and we will have to look at that to see exactly what happened with regard to -- (inaudible) --

REP. ISSA: Well, Mr. Attorney General --

ATTY. GEN. HOLDER: -- I take very seriously the allegation -- (inaudible) --

REP. ISSA: Well, Mr. Attorney General, do you take seriously -- Mr. Attorney General, do you take -- do you take seriously a subpoena signed by the clerk of the House?

ATTY GEN. HOLDER: Of course.

REP. ISSA: After 14 days of waiting for a letter to be signed or acknowledged or responded to, we sent a subpoena signed by the clerk of the House. Thirty-two days later, last night, your people responded by giving us 92 pages representing three documents that were public records already, all of -- were available and saying that the other 400 or so responsive pages were not going to be produced. Do you stand by that and are -- were you aware of that?

ATTY GEN. HOLDER: I think we indicated that the other 400 pages would be made available for review, just to be accurate, I think. So those in essence were being made available as well.

REP. ISSA: And that took 32 days to get that answer?

ATTY GEN. HOLDER: The information was gathered as quickly as it could. I've taken steps to enhance our ability to respond to subpoenas and document requests in that regard. I was not satisfied with the pace at which these things were happening and, as I said, I've taken some steps to make sure that we are more responsive.

REP. ISSA: Mr. Attorney General, do you agree that Congress has an independent responsibility, particularly when U.S. persons have been killed because of a failed and reckless program, to investigate those who authorized, approved, knew about it and in some other way were responsible for it?

ATTY GEN. HOLDER: Well, as I indicated to you last night when we spoke about this at the White House, yeah, I think that there is a legitimate oversight responsibility that Congress has, but I think also Congress has to use that oversight responsibility in a responsible way. We have cases -- 20 matters that will go to trial in June of this year so --

REP. ISSA: Mr. Attorney General, isn't it true that those cases that will go to trial in June -- I have very limited time; I'm sorry -- those cases are basically a bunch of meth addicts who did the buying -- that you do not have what this program was supposed to produce, you don't have the kingpins, you don't have the places it went. What you have are the people that you already had on videotape many, many months before indictments were brought. Isn't this true?

ATTY GEN. HOLDER: There are cases that are important that we are trying to bring that we wanted to try successfully, and they are part of a scheme. They are part of a scheme. You can't look at a case and its -- and as an individual matter and think it is unimportant, because small cases lead to larger ones, and that's why it is important.

REP. ISSA: I'd ask unanimous consent for an additional 30 seconds.

ATTY GEN. HOLDER: That's why these cases are important, and that is why we --

REP. SMITH: Without objection, the gentleman is recognized for an additional 30 seconds.

REP. ISSA: Mr. Attorney General, my final question, though, is, from what you're saying about a scheme and so on, do you stand by this program? In other words -- and it's not a hypothetical, really -- if you knew this program -- knew about this program 90 days ago, 180 days ago, would you have allowed it to continue? And, if not, then what are you going to do about the people who did know and allowed it to continue?

ATTY GEN. HOLDER: Well, what I have told people at the Department of Justice is that under no circumstances in any case that -- any investigation that we bring should guns be allowed to be distributed in an uncontrolled manner. (Inaudible.)

REP. ISSA: So that would be consistent with the March 9th letter from Deputy Attorney General James Cole in which he said that we should not design or conduct undercover operations, which include guns crossing the border; if we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border and so on. That's your policy today?

ATTY GEN. HOLDER: That has -- that is our policy. That has certainly been the policy that I've tried to impose -- (inaudible) --

REP. ISSA: And isn't Fast and Furious inconsistent with that policy?

ATTY GEN. HOLDER: Well, that's one of the questions that we'll have to see: whether or not Fast and Furious was conducted in a way that's consistent with what Jim wrote there and what I have said today, and that's what the inspector general is in fact looking at.

REP. ISSA: And will you agree to work with both this committee, of course, and the other committees investigating this as to -- we're not looking at the straw buyers, Mr. Attorney General. We're looking at you for our purchasers. We're looking at you. We're looking at your key people who knew or should have known about this and whether or not your judgment was consistent with good practices and whether or not instead the Justice Department is basically guilty of allowing weapons to kill Americans and Mexicans. So will you agree to cooperate with that investigation both on the House and Senate side? ATTY GEN. HOLDER: We'll certainly cooperate with all the investigations, but I'm going to take great exception to what you just said. The notion that somehow or other this Justice Department is responsible for those deaths that you mentioned, that assertion is offensive, and I want to tell you that -- (inaudible) -- policy --

REP. ISSA: What if -- what if it's accurate, Mr. Attorney General?

ATTY GEN. HOLDER: -- of the Justice Department to make sure that we do all that we can to protect law enforcement agents. It is one of the reasons why I have tried to look at, you know, a whole variety of methods, techniques that we can use to protect the lives of law enforcement agents. It is something that this country has not focused enough on. Over the last two years, the rate at which people in law enforcement have been killed has risen about -- (inaudible).

REP. ISSA: What am I going to tell Agent Terry's mother about how he died at the hand of a gun that was videotaped as it was sold to a straw purchaser fully expecting it to end up in the hands of drug cartels?

ATTY GEN. HOLDER: Well, you know, one, we'll have to see exactly what happened with regard to the guns that are at issue there. And I've attended the funerals, you know. This is something that -- this isn't theoretical. It's not political. This is extremely real for me as attorney general.

REP. ISSA: It is for us, too.

ATTY GEN. HOLDER: I've looked into the eyes --

REP. ISSA: I thank the chairman.

REP. SMITH: The gentleman's time has expired.

ATTY GEN. HOLDER: No, I've had to look into the eyes of widows, of mothers who have lost sons. I have felt their pain. And the notion that somehow, some way we are less than diligent, less than strong in our

determination to keep the people who put their lives on the line every day to protect the American people -- that we're doing -- not doing all that we can to protect them is inconsistent with the facts, inconsistent with the people who serve in the Department of Justice.

REP. SMITH: Thank you, Mr. Attorney General.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized for her questions.

REPRESENTATIVE SHEILA JACKSON LEE (D-TX): Thank you very much, Mr. Chairman. Mr. Attorney General, I consider these opportunities a chance for us to work as a team. We are in fact a team. I have been privileged to serve on this committee since being elected to the United States Congress, and it is an honor because we hold in our hands, as you do, the lives of Americans as it relates to the laws of this land. First of all, I too want to add my appreciation for I know what was a combined effort on the capturing and, of course, the ending of the evil actions of Osama bin Laden.

Obviously, the intelligence and various law enforcement officers, certainly the CIA at the lead, certainly had over the years a longstanding effort. And I thank you, the expanded team and President Barack Obama, and it should be said over and over again. I thank you also for the very astute team -- legal talent that you have combined under your leadership at the DOJ, and what I would like to see most of all is our enhanced cooperation. We have worked together in the past, and I have a series of questions, some of which I want to have answers, but I'd really like you to say -- be in touch with, and, that person, please have them be in touch with me in my office. Some of these require a detailed answer.

You may not have had the details. I associate myself with Congresswoman Wasserman Schultz on the Rubashkin case -- Rabbi Solomon (sic) Sholom Rubashkin -- excuse me. And I think we can talk about this very briefly, only because this person has been convicted and has been sentenced for 27 years. It is a nonviolent crime, first offender. They have eight or seven or nine children, maybe 10 children, and they have been disallowed bail while they're on appeal, I think, on the basis of an issue of flight risk. I would ask for a review of this case on the basis of the potential of bail, and I want -- and I need to work with someone on that, giving you the parameters. And I don't want to engage and I want to do it not as interfering in a prosecution, which is already done. It's a question of a bail.

The second question, very quickly, is regarding the Communication Management Units. Sixty to 70 individuals are in it. Two-thirds are Muslims. It is a very harsh unit. A story was told to us by Sara (sp) -- (inaudible). That was her dad -- no communication with his children. I'd like to know what your thoughts are about the practices surrounding CMUs and whether or not they are extremely harsh in light of the population. It seems to me that there needs to be someone getting back to me, if you would, and that is on the CMUs.

The IRS criminal division -- we've had a lot of colorful stories about actors and others, but it's serious when it comes to our neighbors and friends.

I would like to meet with the IRS -- DOJ, IRS or a(n) individual dealing with the ability to resolve what seems to be innocent cases, meaning -- (inaudible) -- payroll taxes. I know since -- (inaudible) -- but individuals who have been in small business who have had some mishaps in their health and they're now caught up in this system. I really think we're better than this and I really think the Justice Department is better than this and I think we have the latitude. As a barred lawyer, someone who has a license, I'm certainly aware of ex parte contacts, but I would be very interested in having that opportunity. On those three, I just -- will you be able to let me work with individuals under your staff?

ATTY GEN. HOLDER: We'll try to certainly look at the request that you've made and get information back to you.

REP. JACKSON-LEE: I would greatly appreciate it, particularly on the rabbi about why he does not -- cannot have a bail.

Let me go now to the ATF situation. We had a report by the OIG that indicated that the greater guns -- that long guns have a shorter time to crime than handguns in Mexico. We know that the ATF has no permanent director, but I believe that -- as the OIG has said, that ATF needs to have reporting responsibility or be able to get the data and be able to have more enforcement opportunities of these AK-47s that are killing people on both sides of the border with these horrible drug cartels. What is your answer to that?

ATTY GEN. HOLDER: Well, we have certainly proposed that with regard to long guns along the border with regard to four states that there be a reporting requirement if somebody buys two long guns over the space of five days, that are larger than .22 caliber, if they are semiautomatic and if they have detachable magazines. It's a proposal that OMB is in the process of, I think --

REP. JACKSON LEE: So we are working on that. I have a short period of time and I'll pursue it further with you. I'd like to see that happen.

Specifically with respect to Harris County, and I have a whole series of questions but I will get on -- ask them in writing. We submitted to the Justice Department a police brutality tape regarding Chad Holley and have asked for the Justice Department to investigate. We've heard nothing from that. We've heard announcements from Seattle and Miami, Florida and nothing for Houston, Texas.

I also need to have a status report -- I'd like your answer on this -- and I'd ask status reports on the question of the Harris County jail. You issued a report that there were constitutional violations. The question is, what has been the oversight of the Department of Justice and have they completed.

I also want to ask a question -- I'd ask an additional 30 seconds so you can answer this. The issue of the Continental-United merger, that is finished. I want to thank your assistant attorney general for antitrust for a very open discussion, but I would like to know whether there is a follow-up and whether or not we need to strengthen the Clayton Act 7A -- Section 7A for the Justice Department, because we, frankly, feel there is no oversight.

Could you answer the question about the brutality case, excessive force, and why there has not been a response, and including that in a police brutality investigation, and then what's the status of the Harris County jail? ATTY GEN. HOLDER: We'll try to get you answers to all of those questions, and I might ask you for a budgetary increase given the nature and the -- all those things that you've now put on our plate. But we will get you answers to all --

REP. JACKSON LEE: Well, I can say, Mr. Attorney General, I am one of your strongest advocates and supporters, and so I expect no less from you. And as it relates to budget, you can assure that Sheila Jackson Lee will not be asking to cut the COPS budget of 600 million (dollars) -- you might want to answer where that will hurt you -- or the FBI at 83 million (dollars). Anything that I will be doing will be increasing the funding for the Department of Justice, because I believe in what you do, both in terms of your juvenile division, your civil rights division.

And if I can add one more thing, I need to understand what you're doing with respect to redistricting and the oversight over the numbers of cases that will be coming forward and the involvement of the Department of Justice.

ATTY GEN. HOLDER: We'll certainly answer all those questions. And, you know, I was kidding you, but you have been a big supporter of the department. And for that we are, you know, very thankful institutionally, and I thank you very personally for all the support you've given me over the years.

REP. JACKSON LEE: And I will come -- I will add amendments so that you can get more monies on this appropriation. I'm sure Chairman Smith will support me on those amendments and greater funding for the Department of Justice.

Thank you. I yield back.

REP. SMITH: Thank you, Ms. Jackson Lee. And the gentleman from Virginia, Mr. Forbes, is recognized.

REPRESENTATIVE RANDY FORBES (R-VA): Thank you, Mr. Chairman.

Mr. Attorney General, thank you for being here. Forgive me for talking quickly, but I only have five minutes. I want to begin. I was interested that the ranking member deferred his questions at the beginning today to the head of the Democratic National Committee, who

asked two questions, one relating to gas prices and the other, child pornography, so I'd like to pick up on those two questions.

The first one on gas prices was this: The indication was that somehow this spike-up is a result of illegal activity by major oil companies in terms of either price gouging or illegal influence in the market. Six months before the administration came into office in July of 2008, it was the highest spike we'd had, \$4.11. The president talked about it in the campaign. The administration came in concerned about energy and the price of gas at the pump. In the last two and a half years since you've been in office, can you tell us what evidence you have uncovered that you can present to the committee today that the prices at the pump have been affected by illegal activities of major oil companies in terms of price gouging or illegal influences on the committee -- I mean, on the market?

ATTY GEN. HOLDER: Well, the purpose of the task force would be to examine --

REP. FORBES: I'm sorry to interrupt you. I'm talking about evidence that you currently have, not task forces' studies. But in two and a half years, have you uncovered any evidence that you can present to this committee today of such activities?

ATTY GEN. HOLDER: Well, I'm not prepared to present them at this point, but I -- what we're trying to do with the task force is --

REP. FORBES: So you don't have any to present to us today. Have you made any prosecutions?

ATTY GEN. HOLDER: But the task force would look at all this stuff and see what has happened over the course of time and --

REP. FORBES: When did you set up the task force, Mr. Attorney General?

ATTY GEN. HOLDER: The task force was constituted, I'd say, over the last couple of weeks.

REP. FORBES: The last couple of weeks. So we've had two and a half years and knew these concerns were there, so, except for the last two and a half weeks, you've done nothing to do ascertain if we have any such evidence, and you have none to present to the committee today.

ATTY GEN. HOLDER: Well, given the situation that we are now confronting, that is relatively recent in terms of the recent --

REP. FORBES: But Mr. Attorney General --

ATTY GEN. HOLDER: -- price hikes that we have seen --

REP. FORBES: But we knew, Mr. Attorney General, in July it was higher. Today, it's 3.9 (dollars) per gallon. It was \$4.11 then. No



prosecutions, no recommendations of any changes to the law from anything you've found out in the last two and a half years.

Let me skip that and go to the pornography issue. Do you believe that there's any connection -- we talked about child pornography. Do you believe there's any connection between hard-core adult pornography and child pornography, human trafficking, violence to women and sexually violent behavior? ATTY GEN. HOLDER: There are a number of things that you have put together there, and there are relationships between certainly some of them. And we are --

REP. FORBES: Which ones do you feel there's no (connection to ?)?

ATTY GEN. HOLDER: -- certainly trying to look at those issues - - violence against women --

REP. FORBES: Which one do you feel there's no connection to so I can take that one off the table?

ATTY GEN. HOLDER: Well, I --

REP. FORBES: Let me repeat them again. Human trafficking, any connection?

ATTY GEN. HOLDER: With?

REP. FORBES: Between hard-core pornography and human trafficking? (Inaudible.)

ATTY GEN. HOLDER: There's probably -- yes, there's probably some (connection ?).

REP. FORBES: Violence to women? Yes or no.

ATTY GEN. HOLDER: Probably.

REP. FORBES: Sexually violent behavior?

ATTY GEN. HOLDER: I'm not -- that I don't know.

REP. FORBES: So you don't know if there's any connection between hard-core pornography and sexually violent behavior?

ATTY GEN. HOLDER: I'm not -- I don't know.

REP. FORBES: OK. How about child pornography?

ATTY GEN. HOLDER: Probably yes.

REP. FORBES: OK. Of those, then, can you tell me how many agents that you've had assigned to investigate hard-core pornography in the United States right now?

ATTY GEN. HOLDER: We have a child enforcement and obscenity section -- (inaudible) --

REP. FORBES: No, no, I'm talking about on hard-core pornography, not on child pornography -- hard-core adult pornography.  
ATTY GEN. HOLDER: Congressman, if you'd let me answer the question, I have an answer for you, but I have to speak.

REP. FORBES: Sure. Go ahead.

ATTY GEN. HOLDER: We have to work this out. You asked a question. Will you give me a chance to --

REP. FORBES: And if I can get the time, I'd love to take as much time --

ATTY GEN. HOLDER: I'd be more than glad to give you more than five minutes, if the chairman's willing to do that. We have a child enforcement and obscenity section that handles as part of its responsibilities examination of obscenity matters. It is not only a child exploitation section. It looks at obscenity matters more generally and has recently been reformed to include a taskforce that looked at strictly obscenity matters that has now been moved into CEOS.

REP. FORBES: Well, you had a task force that was set up under the previous administration and got 52 convictions for hard-core pornography cases that I understand. Have you disbanded that task force?

ATTY GEN. HOLDER: It has not been disbanded. It has been incorporated into CEOS.

REP. FORBES: Can you tell me how many prosecutions in the last two and a half years of hard-core pornography cases this administration has undertaken and how many convictions you have obtained?

ATTY GEN. HOLDER: We have a number, and I can get that number to you. I don't have it at my fingertips.

REP. FORBES: OK. Will you get that number for us?

ATTY GEN. HOLDER: I certainly will.

REP. FORBES: And will you also let us know, if you would, how many attorneys that you've assigned to adult hard-core pornography and how many agents that you've assigned to adult -- or hard pornography?

And if you would, when you give that to us, would you let us know the evidence you've received of any major oil companies' illegal activities that have resulted in gas prices -- evidence you have to date; secondly, prosecutions you have had to date, and third, any recommendations you've made to change the laws.

And with that, Mr. Chairman, my time is up. REP. SMITH: Thank you, Mr. Forbes.

(Cross talk.)

ATTY GEN. HOLDER: With regard to the oil question. The task force that we're putting together would look at not only what is going on now but what has happened over the past and make determinations about whether or not there are inappropriate market manipulations or price gouging. I'm not -- this is not to say that we are not dealing with something that might be market-driven. We don't go into this with a preconceived notion, and what the task force will look at is the situation and then make appropriate determinations, and then we'll take action that is appropriate. But we don't go into this with any preconceived notion.

REP. FORBES: Mr. Chairman, my only point was that we knew this was a big problem in July, though, A, we've gone two and a half years and we've just set up a task force two weeks ago. And with that, Mr. Chairman --

REP. SMITH: Thank you, Mr. Forbes. The gentleman from --

(Cross talk.)

ATTY GEN. HOLDER: -- I was not the attorney general of the United States, just for the record.

REP. SMITH: And the gentleman from Tennessee, Mr. Cohen, is recognized for his questions.

REPRESENTATIVE STEVE COHEN (D-TN): Thank you, Mr. Chairman.

Mr. Attorney General, you were asked a question earlier, which reminded me -- you smiled when the question was asked, kind of a smile, and it reminded me of a nice article I read on the Web this morning that said that President Obama, when he engaged in activities over the weekend going to Alabama, going to Florida, dealing with Mr. Trump at the dinner and all those things, that he had a poker face.

Now, it's been said, I believe, that you and the president have played poker together, is that correct?

ATTY GEN. HOLDER: No, we've never played -- never played poker with the president.

REP. COHEN: I thought --

ATTY GEN. HOLDER: I don't know if the president plays poker.

REP. COHEN: You don't know that?

ATTY GEN. HOLDER: I don't know.

REP. COHEN: OK, well, let me ask you this. You seem to think that maybe you didn't know whether it was skill or luck in poker. Do you

think Phil Ivey is just lucky? He's the world's greatest poker player. Do you think he's lucky -- and Annie Duke -- or do you think they have some skill involved?

ATTY GEN. HOLDER: I'm not sure I know who Mr. Phil Ivey is, but I'm sure there is some degree of skill that is involved in -- there's some degree. I'm not a poker player myself.

REP. COHEN: You're not? Well, OK, I didn't realize that. You might become one, because it's one of the rapidly increasing popular activities in America, and it's been going on for years. And people used to play it at tables, like in the kitchen. They'd play poker. Now they do it on the Internet because there are things like -- you just -- it's amazing the things you do on the Internet. I even got one of these. I'm moving into the age (and you do those?) --

ATTY GEN. HOLDER: I've got one, too.

REP. COHEN: Yeah, and you pay bills and you do things that you'd used to not do there, but you do them.

Do you think we really ought to be spending a lot of time in trying to deal with Internet poker, or do you think we should find a way to make it legal to tax it and to bring revenue in that can help pay for the folks that Mr. Sensenbrenner wants to take out of your budget?

ATTY GEN. HOLDER: Well, I mean, we have to enforce the law as it exists, and there are laws on the books with regard to Internet gambling that we have to enforce. We recently announced an action in the Southern District of New York. It is for, I guess, Congress to decide what the law is going to be, and then we will enforce those laws.

REP. COHEN: Well, I agree with you generally. I mean, I understand, like, if it were civil rights laws in the '40s and '50s that the government had to defend and then maybe 10, 12, 15 years later -- after Thurgood Marshall's arguments and the court's agreement -- that they realize those weren't valid laws, and the law changed because society changed, people's thinking changed.

Same thing with DOMA -- there are certain laws, and things change, and you change the -- even though it's the law Congress passed, there's a change in the cultural lag, and it kind of catches up, and the people's perception of it changes. Some of the same people that gave us DOMA -- most of them -- gave us the laws against Internet poker. It was that "families-value" crowd that -- yeah, and -- quotes.

And they gave us those laws, but sometimes they might not have been the right laws, and you -- some of Mr. Forbes's folks, who you could be prosecuting some of those obscenity cases with some of the people you've otherwise got concerned with some of these laws concerning Internet poker. And there are priorities. We can't do everything. Don't you think that maybe in the priority range that Internet poker would be down at the bottom of the level and beneath obscenity and hard-core pornography and child rape and things like that?

ATTY GEN. HOLDER: Well, there are a whole variety of things that we have responsibility for. You know, the cases that we brought, for instance, in the Southern District of New York involved pretty substantial amounts of money and big financial institutions, and I think those cases are appropriate.

There are going to be some other cases in this area that aren't really federal cases, because they're not really large enough. People are not -- the degree of harm is not serious enough. So, you know, even within a certain class of cases, certain ones are going to be worthy of our attention, and then some will not be.

REP. COHEN: Did the Southern District coordinate with the Criminal Division or you particularly about the policies of your office, which have been kind of in flux underlying the decision to effectively criminalize poker, going after these folks?

ATTY GEN. HOLDER: Yeah, the Southern District worked with the Criminal Division, worked with Main Justice in, you know, the formulation of that case. So the primary responsibility was in -- was in New York. REP. COHEN: Well, we're coming down on time, which is my fault, but freedom's a big issue with me and the opportunity to do things. And a lot of people -- the cocaine and crack sentencing, we've made progress, but is the department seeing that we're asking for sentences that are maybe on the lower range for those people that were indicted before the law changed?

ATTY GEN. HOLDER: What I've told our prosecutors is I've given them discretion so that they ask for sentences that are appropriate, looking at the facts of each individual case, that the department is going to make up -- we're going to take a position with regard to whether or not the law should be made retroactive before the Sentencing Commission. But while we are still in that process, I have asked my prosecutors to make sure that we only ask for sentences that are appropriate and consistent with the facts.

REP. COHEN: Has there -- expungement is an issue I'm interested in, too. Do you believe we should have for, like, low-level crimes -- where they're misdemeanors -- an expungement law on the federal level whereby after, say, seven years, a first offender for a nonviolent offense could get their record expunged to maybe get a job?

ATTY GEN. HOLDER: Now, I think that's certainly something that I'd want to work with the committee on and consider. It's certainly something we had here in Washington, D.C., when I was a judge for a really basically small number of offenses -- obviously nonviolent -- so that the stigma that goes with a conviction, especially for younger people, might not harm their abilities to get meaningful employment, to otherwise make themselves productive members of society. And so the ability to have that as a tool in the federal system is certainly something I'm willing to consider.

REP. COHEN: Can I -- the red light's come on, and I'm going to -- the hypothetical yield back the remainder of my time that doesn't exist. But I'm going to bring up, if I can, in the extra 30 seconds I know the chairman's going to give me --

REP. SMITH: Without objection, the gentleman is recognized for an additional 30 seconds.

REP. COHEN: Thank you. I'm going to bring up an issue that the chairman wouldn't want me to bring up, which is the fact that --

REP. SMITH: In that case, he's not recognized for an additional 30 seconds. (Laughter.)

REP. COHEN: The Memphis Grizzlies beat the San Antonio Spurs 4-2. I know you play basketball with the president. Has he caught on to Zach Randolph and the Grizzlies being a dynasty in the making -- (inaudible)?

REP. SMITH: The gentleman's time is definitely expired. (Laughter.) The gentleman from Arizona, Mr. Franks, is recognized for his questions. REPRESENTATIVE TRENT FRANKS (R-AZ): Well, thank you, Mr. Chairman.

Thank you, General Holder, for being here.

Sir, money is indeed the lifeblood of terrorism. Without funding, terrorism would be nearly impossible. The 2008 Holy Land Foundation case was the largest terrorism financed case in U.S. history, as you well know. And according to the volumes of case history and evidence available on the website of the federal courts of the Northern District of Texas, hundreds of U.S.-based persons or entities are listed as unindicted coconspirators who allegedly funded millions of dollars to the designated terrorist organization Hamas under the guise of funding a Muslim charity.

Now, the sources have told us that the case was the product of 19 years of investigations consuming thousands of hours -- thousands of man hours -- of manpower -- and millions of dollars. Over the past year, the Department of Justice has signaled that it will not further prosecute this case, despite the voluminous evidence that the unindicted coconspirators are financing terror from within the United States.

Now, Chairman Smith of this committee and Chairman King of the Homeland Security Committee are interested, obviously, in learning why this case was dropped, as you well know. You've received correspondence recently from both of them.

Now, you've claimed that the career attorneys made the decision to drop the case, but the press reports are saying that prosecutors, FBI agents and even your own spokesperson at DOJ are telling a different story. They claim that the decision to scuttle the largest terrorism finance case, in U.S. history now, spanning three administrations, was

made not by career attorney but instead by senior Obama administration political appointees.

Now, the scuttling in this case obviously has outraged the career lawyers. And, according to Congressman King, we just learned from his office that his letter today was responded to in a completely unresponsive way. It never did speak to the questions that he asked. So I guess I ask you here then today, which individuals -- and I hope you'll say their -- the names. Which individuals are responsible for scuttling the Holy Land Foundation prosecutions of the unindicted coconspirators?

ATTY GEN. HOLDER: Well, the premise of your question is inaccurate. There was no scuttling of the case -- (inaudible) --

REP. FRANKS: Do you intend to -- I'm sorry. I don't know what happened there. This was a -- I didn't mean to do that. I wasn't yelling at you. The microphone kind of went off on me. Do you intend to prosecute these cases? ATTY GEN. HOLDER: The decisions that were made not to prosecute those cases were made initially in the Bush administration, continued in this administration. (Inaudible.)

REP. FRANKS: I have to stop you on that. So you claim that the decision to drop the case was a continuation of the approach taken by the Bush administration, but that really isn't true. The Bush administration successfully prosecuted the first round of defendants. They aggressively secured convictions on all 108 counts.

And the first -- you know, the first round didn't conclude until after -- until three weeks after the election of Barack Obama. Essentially, the Bush administration just ran out of time. They were pursuing this, and Peter King has said that, you know, it's hard to hide behind the deliberations of the Bush administration that predate the successful prosecution of the Holy Land case. So you're obviously not following the Bush administration's path, because they did prosecute and they got 108 convictions.

ATTY GEN. HOLDER: But a decision was clearly made in not indicting certain organizations and people in that initial case. That is why they were, as you said, unindicted coconspirators.

But the other thing is that what you say about the concerns about the career prosecutors, that seems very inconsistent with press reports that I have read from -- (inaudible) -- that matter of career prosecutors and said that there was no political pressure brought to bear on anybody in connection with decisions --

REP. FRANKS: (Inaudible.)

ATTY GEN. HOLDER: That was in the Dallas Morning News. I believe that is the newspaper. And I'd be more than glad to get a copy of that article --

REP. FRANKS: I'm sorry the microphone is giving me so much trouble here. But let me just ask you, did you (or the case ?) abandon or not? Did you do that?

ATTY GEN. HOLDER: No.

REP. FRANKS: Did anyone in your department do that?

ATTY GEN. HOLDER: No.

REP. FRANKS: OK. Were you personally involved in any decision to delay any prosecution of the case?

ATTY GEN. HOLDER: No.

REP. FRANKS: Have you communicated with the White House about the Holy Land Foundation case? Was the White House involved in any sort of issue to try to delay or to not to persecute the case -- prosecute the case?

ATTY GEN. HOLDER: No.

REP. FRANKS: OK. Were any of the unindicted coconspirators communicating -- outside the legal process, now -- with the White House or the Department of Justice about the Holy Land Foundation case?

ATTY GEN. HOLDER: Not to my knowledge.

REP. FRANKS: OK. All right. Well, I think my time is up here. And thank you, General, for coming. REP. SMITH: Thank you, Mr. Franks.

The gentleman from Illinois, Mr. Quigley, is recognized for his questions.

REPRESENTATIVE MIKE QUIGLEY (D-IL): Thank you, Mr. Chairman.

Welcome.

You know, coming from Chicago, I can't help reflect on the fact that there's a trial taking place there. And while I don't ask you to comment on that, I note that there always seems to be a trial taking place there or other places in the country that deal with public integrity.

As you know, the court has struck down the honest-services section of the statute, a very valuable tool that prosecutors had to go after public officials using their office for personal gain. We could really use your office's help preparing a replacement. I think it was probably appropriate the statute was struck down because it was probably, as they said, too vague. But I appreciate your comments on what we need to do to fill that void.

ATTY GEN. HOLDER: Well, there's -- that obviously is a very valuable tool. It's been used over the years in any number of instances.



It is a statute that has a somewhat troubled history. It's been declared unconstitutional. I guess that's been applied on at least a couple of occasions. So I think what we need to do is come up with a statute that will survive constitutional scrutiny once and forever. And obviously we would be willing to work with this committee and others so that we could have that tool back in place.

REP. QUIGLEY: Thank you. And I'd like to afford you the opportunity here to talk about another issue that's important to everyone here, and that's the recent extraordinary increase in police-officer shootings across the country. I think, since January, 29 police officers have been shot in this country. This is an increase in fatal police shootings of more than 50 percent over last year. I believe you convened a conference on this last month. I would, again, appreciate your office's help on what else we can do to help you in this vein.

ATTY GEN. HOLDER: That is something that is of great concern to me. It is the reason why I convened that summit a few weeks ago. It's one of the reasons why we have tried to increase our funding of bulletproof vests that are made available to state and local police agencies and why we have tried to now require that there be a mandatory wear policy. It is why we have something also called the valor program, so that officers can be trained as to how to handle themselves in these situations when their lives are most likely to be put at risk. That is something, I think, that is really worthy of this committee's time, certainly my time. And I would be glad to work with you in that regard to try to keep our law-enforcement officers safe.

REP. QUIGLEY: I can't help but inject another statistic that is bothering to me. The 29 officers fatally shot this year, 20 were killed by individuals who would have been barred by federal law from possessing guns. In my vein, this gets to the greatest loophole of all, and that's the gun-show loophole, the fact that you could be barred from getting on an airplane, you can have multiple felonies, you could have been adjudicated as being dangerously mentally ill, but you can go to 33 states and go to a gun show and buy just about anything you want without a background check whatsoever.

Your thoughts on this?

ATTY GEN. HOLDER: Well, I mean, I think we have to look at the laws that we have on the books. We need to certainly enforce them. We need to be asking questions about whether they are adequate, whether they're keeping our people safe, whether they're keeping law-enforcement officers safe.

I think we also have to focus on -- and I think the point you made is a very, very good one -- who has these guns. It's not only a question of, you know, what guns we are dealing with, but also who has them. They're obviously -- everybody has Second Amendment rights. The Supreme Court has ruled that in the Heller case. This Department of Justice respects that decision.

But I think questions can be asked about are there felons, too many felons who, for whatever reason, are in possession of guns, people who have mental issues, whether they should have guns, people who have domestic-violence issues, whether they should have guns. There are a whole variety of questions as to the who that I think we should focus on as well.

REP. QUIGLEY: And I agree. And to close, I would suggest to those who are very supportive of the Second Amendment that while that case did grant Second Amendment rights, the majority opinion did talk about limitations. One was who. One of the others was what. And I think it's fair to ask, if you're out to protect your home or you're hunting deer, whether you need a 30-round clip. That's my own editorial comment for the day.

Thank you, Mr. Chairman. I yield back.

REP. SMITH: Thank you -- thank you, Mr. Quigley.

The gentleman from Texas, Mr. Gohmert, is recognized.

REP. LOUIE GOHMERT (R-TX): Thank you, Mr. Chairman.

And thank you, Attorney General, for being here. I want to follow up on what Mr. Franks was talking about, the case involving the Holy Land Foundation. You've mentioned the Dallas Morning News article. I have a copy of it here. I've also got a copy of the Politico article. And the person you're talking about is Jim Jacks, who is the interim U.S. attorney for the northern district of Texas, because the president has not made a nomination for U.S. attorney for the northern district of Texas.

So as long as Mr. Jacks stays in the good graces of the president -- he serves at the will of the president, or of the judges in that area -- he might even get the nomination if he does a good enough job from the president. He serves at his will.

So let's go to this. Are you aware that this same career prosecutor that you've mentioned filed pleadings in the case before Judge Solis and before the 5th Circuit where he supported the decision of Judge Solis that there was evidence to keep the unindicted coconspirators listed? Because some of them were wanting to be eliminated as coconspirators. He filed documents with the court.

And I'm rather sensitive, as a former judge and chief justice, to lawyers filing things and saying things they don't believe, because it seems that the position Mr. Jacks is taking now, which could be viewed as supportive of the president's position on some of the people and some of the organizations that are unindicted coconspirators, are inconsistent with his position and his pleading. And I have copies of those as well. But the judge found, after reviewing Mr. Jacks' pleading, that there was plenty of evidence to keep them in as unindicted coconspirators.

Now, if a lawyer files something that he doesn't believe, and he knows he doesn't believe it, some judges think it's a fraud upon the court that requires punitive actions to be taken. So I'm also aware that when someone makes a statement to the Dallas Morning News, even if he believes it's not true, though it may help him in his political appointment, there is no actionable punitive measures that may be taken.

So I wonder which Mr. Jacks' opinion we're relying on, the one that's the interim, that possibly hopes to be nominated or stay in that position, or the one that filed pleadings before the court.

Now, are you aware that one of the unindicted coconspirators is the Islamic Society of North America, ISNA? Were you aware of that?

ATTY GEN. HOLDER: I don't have at my tip fingers all the unindicted coconspirators. But there's not an inconsistency in the --

REP. GOHMERT: Well, wait a minute.

ATTY GEN. HOLDER: -- position that -- REP. GOHMERT: My time is so limited; I have to ask questions and get short answers. The FBI has recruited through the ISNA magazine. ISNA has advertised in FBI publications -- in their publications.

And even in -- the White House's own deputy assistant national security advisor went out and spoke and met with and spoke out at the -- let's see -- the All Dulles Area Muslim Society, or short for that is ADAMS -- ironic -- but Deputy National Security Advisor Denis McDonough even in his opening remarks thanked the president of ISNA, and that thank you is on the White House website.

So I'm wondering when you say that you nor anyone else, as I understood, in your department assisted at all in the decision not to pursue prosecution of the most important funding case for terrorism in American history, do you need to under reflect on that or can you absolutely be certain that no one in your department had any consultation with Mr. Jacks or anyone making the decision in this case before the decision was made not to pursue it?

ATTY GEN. HOLDER: I'm not sure that's the question that I was asked, but beyond that, the --

REP. GOHMERT: Well, that's the question I'm asking.

ATTY GEN. HOLDER: Well --

REP. GOHMERT: I went beyond Mr. Franks. That's the question I'm asking.

ATTY GEN. HOLDER: Well, you see, now, you asked me one question. You're saying -- though your question is what now? You -- am I -- (inaudible) --

REP. GOHMERT: My question is very specific. Is there anyone in your department who consulted with Mr. Jacks, or whoever made the decision, before the decision was made not to pursue any of the unindicted coconspirators in the Holy Land Foundation trial?

ATTY GEN. HOLDER: My understanding that in fact there was contact between Washington national security professionals and the U.S. Attorney's Office in Texas in that regard. (Inaudible.)

REP. GOHMERT: Are those Washington national security professionals part of your department, because that was the question?

ATTY GEN. HOLDER: Part of the National Security Division.

REP. GOHMERT: But weren't they under you? ATTY GEN. HOLDER: Yeah, The National Security Division is part of the United States Department of Justice.

REP. GOHMERT: Did they consult with you in any way?

ATTY GEN. HOLDER: No.

REP. GOHMERT: All right.

Thank you. I see my time (has expired ?).

ATTY GEN. HOLDER: But one thing I want to say that I think was grossly unfair -- you have cast aspersions on a person who I don't know who has served, I understand, the United States Department of Justice and the people of this country quite well for a good number of years, and you've implied that he would take a position in order -- a position in a case in order to maintain a position as an acting U.S. Attorney or to become the U.S. Attorney.

These are the kinds of things that, you know, will get reported in the newspapers. People don't know this gentleman. They'll wonder about him, and I think that's a very unfair thing to do given the fact that I don't think there's any basis for the assertions that you have made.

REP. GOHMERT: Wait. Now, wait a minute. And when you're saying there is no basis for an assertion --

(Cross talk.)

REP. SMITH: The gentleman is recognized for an additional 30 seconds.

REP. GOHMERT: -- (inaudible) -- no basis for the assertions that he said one thing in the pleadings before the trial court and the same things before the pleadings in the 5th Circuit, and yet he comes out and says something entirely different later that there's no evidence to support that. And basically what he's telling the Dallas News: There was no basis for a case there, and you're saying I have no basis for saying

that? I've got the Dallas News article. I've got the pleadings he filed. That's what I'm basing it on.

ATTY GEN. HOLDER: No, what you -- it's not inconsistent. His saying that there is a basis to keep these people, these organizations as unindicted coconspirators --

REP. GOHMERT: Have you looked at the documents that were made available in this case before you say that I'm being unfair by making allegations? Have you looked at the evidence in the case?

Here's ISNA. Here's documentation of the money they provided which ended up supporting terrorism, as found by the court, and you're saying I have no basis for saying what I did. There is a basis for what he said before the 5th Circuit and before the trial court, and so I don't appreciate the allegation that I am making unfounded allegations.

ATTY GEN. HOLDER: I'm just saying -- replying -- responding to what you said. You essentially said that he would take a position in order to maintain a position. That's silly what you implied.

REP. GOHMERT: I raised the issue, and, sir, I don't know how many cases you've ever tried in court or prosecuted, but I can assure you if you tried a case and you had someone with the impeachment material that was available for Mr. Jacks on his inconsistencies and you didn't pursue it, you would not be an effective trial lawyer. These are a basis for impeachment of his stating that there was no politics involved, because there was no case there.

REP. SMITH: The gentleman's time has expired.

MR. BOBBY SCOTT (D-VA): Chairman. Chairman, what -- the attorney general was trying to explain why there was no inconsistency, and he kept getting cut off. Could the attorney general respond to the -- to the question -- (inaudible) --

REP. GOHMERT: I was responding to the allegations about me having no basis for my statement.

REP. SCOTT: Well, can the Attorney General -- (inaudible) --

REP. GOHMERT: And I deserve to have a chance --

(Cross talk.)

REP. SMITH: Does the attorney general have anything to add?

ATTY GEN. HOLDER: I was simply saying that the notion that the filing of something that says that these people -- organizations should be treated as unindicted coconspirators is not inconsistent with this notion that there wasn't political pressure brought to bear on that decision. I don't see how one necessarily affects the other, and, you know, I'm going to speak up for my people. That's what I'm doing. You

know, I'm not going to let people who work in the United States Department of Justice have their characters assailed without any basis.

Now that, you know, might be something the people in this committee feel is easily done. It's not going to happen as long as I'm attorney general of the United States.

REP. GOHMERT: OK.

ATTY GEN. HOLDER: It's not going to happen. REP. SMITH: Thank you, Mr. Attorney General.

REP. GOHMERT: Well, now, Mr. Chairman, I should have a chance to respond since there were allegations made about me, but I do appreciate the attorney general now letting us know that Mr. Jacks is one of his people.

Thank you.

REP. SMITH: OK.

ATTY GEN. HOLDER: As the 114,000 other people who work in the United States Department of Justice.

REP. SMITH: Thank you both.

(Cross talk.)

REP. GOHMERT: So he is part of your department?

ATTY GEN. HOLDER: These are my people. (Laughter.)

REP. SMITH: Thank you both.

(Cross talk.)

REP. SMITH: The gentleman from --

REP. GOHMERT: And your department did make that decision --

REP. SMITH: The gentleman's time --

REP. GOHMERT: -- not to prosecute?

REP. SMITH: -- has expired.

The gentleman from Florida, Mr. Deutch, is recognized for his questions.

REPRESENTATIVE TED DEUTCH (D-FL): Thank you, Mr. Chairman.

General Holder, thank you for being here.

The Wall Street Journal reported today that the U.S. has filed a lawsuit against Deutsche Bank for lying repeatedly about the quality of mortgages so they could profit from the resale. According to the lawsuit, when selecting mortgages from the Federal Housing Administration's insurance program, Deutsche Bank did not consider whether the borrowers would be able to repay. In clear violation of the Federal Housing Administration's mortgage insurance program, these government-insured mortgages were then sold off, earning the bank a massive profit while leaving homeowners to face foreclosure and the government on the hook to pay billions of dollars in insurance claims. The claims are startling and the charges highlight the efforts to seek profit at any cost while leaving thousands of people and their families to lose their homes and the taxpayers being forced to pay for the bank's actions.

First, I'd like to commend you for the department's vigorous pursuit of these charges against Deutsche Bank and I'd like to ask whether -- first, whether the department is investigating any other large banks and possible deceptive actions that they may have taken to fuel the mortgage crisis that the country's been facing. We'll start with that.

ATTY GEN. HOLDER: We have a very active program under way that looks -- looking at a variety of players in the mortgage deal. We've brought a number of cases already. There are a number of investigations that are -- that are pending.

REP. DEUTCH: Next, would the department pursue criminal charges that would result in in-jail time for the heads of these large banks and servicers if it's found that they knowingly took actions like those described in the lawsuit filed against Deutsche Bank?

ATTY GEN. HOLDER: Yeah. I mean the scrutiny that we would bring would not simply be at the organizations or be -- and be looking to punish the organizations. If there are individuals who have taken actions that would warrant individual liability, that is something that we will pursue as well.

REP. DEUTCH: And if I could just pursue one possible line of prosecution that's been raised, I'd love your thoughts on it, and that is under Sarbanes-Oxley -- the requirements under Sarbanes-Oxley that executives at Wall Street firms have to establish and maintain adequate systems of internal control, that they've got to regularly test those controls to make sure that they're adequate, and, as I understand it, that that statute provides that in the case of knowingly making false claims, one would be subject to fines of up to a million dollars and imprisonment of up to 10 years, and that if those claims were willful, those violations were willful, fines then of up to \$5 million and jail time of up to twenty years in prison.

Is this the -- would this be the basis of potential claims against individuals in connection with the mortgage foreclosure cases that are being pursued?

ATTY GEN. HOLDER: Those are potential statutes. There are other statutes that we can bring -- I mean, some as old and tried and true as wire fraud and mail fraud. I mean, there are a whole variety of tools that we have, including those that you have mentioned, and we will try to make use of all of those as we continue in these investigations.

REP. DEUTCH: And so as you pursue these claims, at what point is the determination made? Obviously, my colleagues asked. Others have asked. It's certainly been a big topic of conversation.

While there's a billion-dollar case that's been filed today, which I applauded you for, given the vast array of potential claims that could be -- individual claims that could be brought that would bring the potential of criminal violations, when might we expect to see some of those cases filed as well?

ATTY GEN. HOLDER: It's hard to predict. You know, we are serious about the investigating that we are doing, and it's always hard to determine exactly when these cases will be -- when decisions will be made either to prosecute or to decline prosecution. All I can tell you is that we are looking at these cases seriously. We are going to pursue them aggressively. and as soon as we can make a determination and share that, you know, with the American people, we will.

REP. DEUTCH: So then there is -- just to conclude, General Holder, there is -- we should know, the members of the committee, the American people, should know that your Justice Department is vigorously investigating these potential claims, and that under Sarbanes-Oxley and a whole array of other statutes the possible -- the possibility for criminal prosecution against individuals in connection with the mortgage foreclosure crisis is real, and we should look forward to the potential of those cases being brought.

ATTY GEN. HOLDER: I don't want to overpromise, but the possibility that those cases could be brought -- yes, that is certainly the case. I mean, we are in the process of looking at a whole variety of these matters, and it is possible that criminal prosecutions will result. Civil actions might result. We're going to try to take whatever enforcement action we can to try to hold people responsible where that is appropriate.

REP. DEUTCH: Thank you, and I yield back, Mr. Chairman.

REP. SMITH: Thank you, Mr. Deutch.

The gentleman from Utah, Mr. Chaffetz, is recognized.

REPRESENTATIVE JASON CHAFFETZ (R-UT): Thank you, Mr. Attorney General. I appreciate you being here. I'd like to go back to Project Gunrunner and Operation Fast and Furious. You said that in just the last few weeks is when you'd heard this. The president made statements to this in a report on Univision back on March 22nd. Were you aware of this operation before the president or after the president made those comments? ATTY GEN. HOLDER: My guess would be probably before the president.



REP. CHAFFETZ: Who briefed the president about this? He obviously knew something about it. He made a statement about it. Who briefed the president?

ATTY GEN. HOLDER: I'm not -- I don't know.

REP. CHAFFETZ: Who would typically -- who would do that? If not the attorney general, who would brief the president on it?

ATTY GEN. HOLDER: Well, I mean, we have a White House contacts policy so that the Justice Department interacts with the White House counsel's office. I don't know what process goes on from the White House counsel within the White House.

REP. CHAFFETZ: Let me move on. Are you familiar with the president's comments, then, on March 22nd? He said, quote, "There may be a situation here" in "which a serious mistake was made and if that's the case, then we'll find out and we will hold somebody accountable." Would you agree with that comment, or not agree with that comment?

ATTY GEN. HOLDER: Yes, I would agree with that.

REP. CHAFFETZ: Would you agree that there were some serious mistakes made in this situation?

ATTY GEN. HOLDER: I don't know. I mean, that's one of the things that we're trying to investigate. That's what I've asked the inspector general to look at, to see --

REP. CHAFFETZ: Now, it's been reported that the death of Brian Terry, one of our Border Patrol agents -- that there were guns from the operation found at that scene. Is that in dispute?

ATTY GEN. HOLDER: I don't know that to be factually accurate. I don't know. I've heard that. I asked the inspector general to look into that and I'm waiting -- awaiting that report.

REP. CHAFFETZ: Is there a scenario if those guns were found at that scene where -- is there a possible scenario where mistakes weren't made, and yet we have guns at the scene of the death of one of our Border Patrol agents?

ATTY GEN. HOLDER: I think that's right. I mean, I think -- if those facts are in fact accurate, I suspect that, you know, mistakes in fact have been -- were made.

REP. CHAFFETZ: Now, this program was approved by the Justice Department. My understanding is in January of 2010 -- I guess I'm struggling to understand why an operation as big and as large and as important as this has not come to your attention for more than a year after it was originally authorized. Can you help me understand that?

ATTY GEN. HOLDER: Well, you have to understand -- I mean, it's something that is big, you've described as big --

REP. CHAFFETZ: (Inaudible.)

ATTY GEN. HOLDER: -- in comparison to all the other things that are going on in the department at any one given time, might not seem quite as large. I have, as I said, 114 (thousand), 115,000 employees -- the FBI, the ATF, the DEA, you know, a whole variety of things that we've talked about here today.

REP. CHAFFETZ: I guess my concern is here's an operation where we're knowingly allowing more than 1,500 guns to go across the border -- maybe with good intentions, but obviously with consequence that is unparalleled. I'm just not aware of us on a regular basis allowingly and knowingly allowing guns to be put in the hands of bad guys, and now we've got -- I just don't understand why that doesn't come to your attention.

Also, my understanding is that they are receiving task force money. In these types of programs, a task force must be approved at very high levels, including the level of deputy attorney general. Who did know about this? Who did authorize this, and when did they authorize it?

ATTY GEN. HOLDER: Well, again, that is part of what the inspector general will be looking at: who exactly was involved, what the level of knowledge was, who should be held accountable, if in fact there were mistakes that were made. That's what the inspector general will be looking at.

REP. CHAFFETZ: So it's not -- is it your intention to not comply with our subpoena, because the attorney -- because the inspector general is doing that? Or do you believe -- that is, are you precluded from complying with the subpoena because the IG is looking into it, or can you do both simultaneously?

ATTY GEN. HOLDER: We can do both simultaneously. What I've asked is that with regard with replying to the subpoenas that will not be -- that we try to minimize the impact on the ongoing cases. It's not the inspector general's report. And we've tried to come up with ways in which we will make information available to the committee in a timely fashion and not harm those ongoing investigations.

REP. CHAFFETZ: The ATF office involved in this was evidently the Phoenix office. Are there any other ATF offices that you're aware of that may have been involved or engaged in this?

ATTY GEN. HOLDER: (That were ?) involved in -- REP. CHAFFETZ: In the Project Gunrunner, Operation Fast and Furious. Or was it just the Phoenix office?

ATTY GEN. HOLDER: I don't know.

REP. CHAFFETZ: OK.

Let me move to a different issue, if I could, in my short time here. I just recently went down to the border with Mexico. I think one of the statistics that the Border Patrol puts out there is that they only have 15 percent -- 15 percent operational control. What are we -- what do we need to do to secure the border? Because I was shocked and surprised, and I went for hours in places right along the border where there's nothing more than a barbed wire fence, cut in many places, and never even saw a Border Patrol agent.

So we're pouring a lot of resources into this, but what, from your opinion, do we have to do to actually secure the border? Because it's not happening.

ATTY GEN. HOLDER: Well, I think that -- you know, the situation along the border is better now than it probably ever has been, which isn't to say -- (inaudible) --

REP. CHAFFETZ: But how do you -- how do you -- how do you assess that, or how do you come to that conclusion?

ATTY GEN. HOLDER: Well, you base it on the number of people stopped, the amount of drugs we recovered, the number of guns that are --

REP. CHAFFETZ: So if that stat goes up, if the number of apprehensions goes up, is it better? Or is it -- if the number of apprehensions goes down, is it better?

ATTY GEN. HOLDER: Well, I mean, it depends. You know, it depends on a whole bunch of things. It's certainly a function of our -- the number of people we're trying to get in. It also is a function of what our -- how effective our enforcement efforts are, which is not to say that there aren't issues or problems along the border. And I think we have to do all that we can to secure our border. And I think that one of the ways in which we do that is to really look comprehensively at this whole immigration question.

REP. CHAFFETZ: No doubt. I think that we've got to fix illegal immigration and do a lot of other things.

But the statistic of apprehensions -- if it goes up, are we doing a better job securing the border; or if apprehensions go down, are we doing a better job of securing the border?

ATTY GEN. HOLDER: That's a -- that's a difficult one to answer -- (inaudible) -- REP. CHAFFETZ: I know. That's why I asked you.

ATTY GEN. HOLDER: Yeah. You can say that if we are apprehending more people, that means we're stopping more people coming through. On the other hand, if we're getting fewer people, it's entirely possible that our enforcement efforts are working and fewer people are trying to get in. It's a difficult question to answer.

REP. CHAFFETZ: I at some point would love to know the answer to that question, Mr. Chairman, but I appreciate it. Thank you.

REP. SMITH: Thank you, Mr. Chaffetz.

The gentleman from Puerto Rico, Mr. Pierluisi, is recognized.

COMMISSIONER PEDRO PIERLUISI (D-PR): Greetings, Mr. Holder.

In the brief time that I have, I want to address the problem of drug-related crime in Puerto Rico. For the first three months of this year, 301 homicides were committed in Puerto Rico, a 35 percent increase over the same period last year. And this is unacceptably high for 3.8 million people.

You might say, you know, why am I raising this local issue. Well, the fact of the matter is that unfortunately Puerto Rico has long been a transshipment point for drugs coming into the U.S. mainland, so this is tied to the -- to the U.S. as a whole. When I look at the federal government's efforts to combat drug-related violence in Puerto Rico, I'm troubled that key DOJ offices on the island have vacancy rates between 17 percent and 57 percent.

From speaking with you and others at the department, I understand that apparently you're having difficulty recruiting agents for places like Puerto Rico, high-crime localities or high-cost localities. And I wonder, how are you making these decisions? When you assign personnel throughout the department, different agencies -- ATF, DEA, FBI -- to your knowledge, are you taking into account homicide rates, for example, the level of violence, issues such as recruitment difficulties?

Are you giving any incentives to your agents to locate in places like Puerto Rico, or it could be Miami or it could be LA? I mean, different places, maybe, say, Detroit, those which are facing high crime at a certain point, like New Orleans? What are -- how are you doing this?

ATTY. GEN. HOLDER: Yeah, we try to deploy our resources in places where they are most needed. And the concerns you raise are legitimate ones, not only because Puerto Rico is a transshipment point which is right -- but because the people who live in Puerto Rico are American citizens and deserving of the protection of their government.

COMM. PIERLUISI: You're right.

ATTY. GEN. HOLDER: We'll try to come up with ways in which we get investigators, agents, into places that need them, such as Puerto Rico, by coming up with incentives, by coming up with what we call PDYs, temporary duty, by putting people there for -- if people don't want to relocate, putting them there for maybe 90 days, 180 days, something along those lines, to try to keep the numbers up. We are, you know, doing the best we can trying to get our resources to the places where they are most needed.

You and I have talked about this issue, and I'm very concerned about the homicide rate in Puerto Rico and the influence of drugs on that part of our country, part of our nation, on the island.

COMM. PIERLUISI: One other thing. In looking at this issue, I got statistics from all the different agencies within your department, but for the FBI. Would you assist me in providing me that this is the number of positions that you have authorized or available and the number that are vacant? I just want to compare, and I believe I should have this information.

ATTY GEN. HOLDER: I'll get you that information.

COMM. PIERLUISI: Thank you so much.

I yield back the balance of my time.

REP. SMITH: Thank you, Mr. Pierluisi.

The gentleman from South Carolina, Mr. Gowdy, is recognized.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Mr. Chairman.

Attorney General Holder, if you would, I would be indebted to you if you would let the AUSAs and the federal law enforcement officers in the District of South Carolina know how grateful I am for their service and how much I appreciate it. They do a fantastic job, and I would -- I'm sure it would mean more to them to hear it from you than it would from me, so if you would let them know that, I'd be grateful to you.

ATTY GEN. HOLDER: Well, I thank you for that, and I will pass that on. I'll make a point to do that.

REP. GOWDY: Thank you. And what I hope to do with the remainder of my time is have a constitutional conversation with you, as opposed to a political conversation.

You do not disagree that Congress has the authority to define marriage. Your position is not that the interstate commerce clause doesn't allow -- say, you're not making a states' rights argument; you're making an argument based on the three tiers of constitutional scrutiny.

ATTY GEN. HOLDER: Right, but typically marriage has been defined as something that -- has been seen as something that has been a state issue as opposed to the federal government.

REP. GOWDY: It is, but there are thousands of instances where Congress has to define what the family is in order to be instructive with respect to other statutes. So you're not challenging that Congress has the authority to define marriage?

ATTY GEN. HOLDER: Well -- and I think we may be quibbling here, but not define marriage as much as to define in federal statutes how

married people are to be treated, something along those lines. I think I would agree in that regard.

REP. GOWDY: All right. And would you agree with me that the rational basis test is the appropriate test to be used with respect to consanguinity, the marrying of family members? That's the appropriate test, right? Rational basis? You're not arguing for a heightened level of scrutiny on whether or not cousins can marry each other?

ATTY GEN. HOLDER: No, I -- I would not argue that. I don't -- I don't know if there's law on that, but again, off the top of my head, I'm not sure that that would -- you'd need a heightened scrutiny standard in that regard.

REP. GOWDY: Right. And age restrictions, we wouldn't need a heightened level of scrutiny with respect to age restrictions?

ATTY GEN. HOLDER: No, there's a four-part test the -- that I have right here that -- I don't think you'd have a heightened scrutiny there as well.

REP. GOWDY: All right. And we don't need an intermediate or heightened level of scrutiny with respect to polygamy, right?

ATTY GEN. HOLDER: Yeah, I would think not. REP. GOWDY: And since Lawrence, two courts of appeals have upheld the rational basis test for sexual orientation. So that's two that have upheld the rational basis; one that has applied a heightened level of scrutiny.

So my question is why would you single out the one court of appeals that has applied a higher level of scrutiny, ignoring the two that applied a rational basis test? That just strikes me as a political calculation and not a constitutional calculation.

ATTY GEN. HOLDER: No, not a political calculation. I mean, I think what we had to do was look at -- you know, court of appeals make decisions that sometimes the Department of Justice will disagree with. To the extent that court of appeals have taken different views of what the appropriate level of scrutiny is, we think those courts of appeals are wrong. The Supreme Court will ultimately have to decide, I guess, this issue.

But I want to assure you and everybody else that the decision that we made with regard to DOMA had not -- did not have a political component to it. It was a legal determination.

REP. GOWDY: I want to believe you, I really do. I mean that earnestly. But, you know, when I was an AUSA there was a court of appeals that said that law enforcement officers didn't have to read Miranda warnings anymore, all right? It was an unusual opinion and it was one we didn't follow. It was one court of appeals that ruled that way. There are -- heavens knows, the Ninth Circuit Court of Appeals is presumptively wrong.

So we don't change our course of conduct -- when the Ninth Circuit --

ATTY GEN. HOLDER: (Off mic.)

REP. : (Inaudible) -- not you, right. (Laughter.)

REP. GOWDY: When the Ninth Circuit Court of Appeals comes up with something crazy, we don't change our course of action. It is difficult to explain why it's not a political calculation or decision when two courts of appeals, post-Lawrence, have said the rational basis test is the one that applies, and only one has argued for a heightened level of scrutiny, it's tough to see how that's not political.

ATTY GEN. HOLDER: I think, you know, one example -- and I think -- I might be wrong on this one, but I think my memory serves me correctly. When it came to the Dickerson case, the Fourth Circuit, you know, indicated that -- that statute that was passed to essentially overrule Miranda, I think the Fourth Circuit said that that was a -- that statute was in fact constitutional. The Justice Department argued against that statute, said that it was unconstitutional, before the Supreme Court. So you had the Justice Department both arguing in the Supreme Court against the statute passed by Congress and also taking on a federal court of appeals. So there is a basis -- I mean, there's history to these kinds of actions that we took with regard to DOMA. It's unusual. It's, you know, rare, but it happens on occasion.

REP. GOWDY: But you -- you would agree the Supreme Court has never applied a heightened level of scrutiny to sexual orientation, so there's no precedent from the Supreme Court and only one of the courts of appeals has even suggested there's a heightened level of scrutiny, while two have not.

Mr. Chairman, could I have 30 seconds just to ask one other question?

REP. SMITH: Without objection.

REP. GOWDY: Thank you, Mr. Chairman.

We'll continue this conversation, hopefully, at some other point. You said that there were tactical reasons to try terrorists in civilian court rather than military tribunals. You would agree the evidentiary rules are more relaxed in the military tribunals than in civil court?

ATTY GEN. HOLDER: There are certain -- they're not as lax. The difference is not as great as some people think. Certainly with regard to hearsay; you can get more hearsay evidence in in the military commissions than you can in Article III courts.

REP. GOWDY: Discovery rules are different?

ATTY GEN. HOLDER: Slightly.

REP. GOWDY: Jury qualification and selection is certainly different.

ATTY GEN. HOLDER: Yeah. Different systems there.

REP. GOWDY: Right. So, I mean, to the extent you can, what tactical decisions made you believe that it was better to try these defendants in civilian court than in military court? Because you used the word tactical, and as a prosecutor, I'm thinking more likely to get a conviction.

ATTY GEN. HOLDER: Well, there are -- and you would be right when it comes to tactical and how I view that. What I don't want to do, with all due respect -- because you've asked questions, I think, in good faith -- is to -- I don't think I can answer that question out of concern that what I might say could have a negative impact on the case that is pending now in these military commissions. The tactical reasons that -- or tactical concerns that I saw, were I to reveal them, might give to the defense an opportunity to raise issues that otherwise might not exist.

REP. GOWDY: Right. Fair enough.

Thank you, Mr. Chairman.

REP. SMITH: Thank you, Mr. Gowdy.

ATTY GEN. HOLDER: I would -- I do want to say, Mr. Gowdy, I appreciate what you've said about the assistants there, and I will share with them those -- those good thoughts.

REP. GOWDY: Thank you very much.

REP. SMITH: The gentleman from Georgia, Mr. Johnson, is recognized for his questions.

REPRESENTATIVE HANK JOHNSON (D-GA): Thank you, Mr. Chairman.

Mr. Attorney General, I welcome you here today. And as head of the Justice Department, you are responsible for, among other things, enforcing the federal criminal laws, defending the United States against civil actions, and also protecting our national security.

Now, at a time when your department has been adversely impacted by the ravenous budget cutting, I was puzzled by one of my colleagues on the other side's questioning you about the allocation of your precious resources to the issue of adult hardcore pornography. And I was -- I really would like to know what is adult hardcore pornography, but because my time is limited I will forego that question.

But Mr. Attorney General, over the last couple of years you have successfully prosecuted many terrorist cases, and in fact, under your



leadership the Justice Department has successfully prosecuted more terrorists than any other two-year period in history.

The recent military operation which led to the death of Osama bin Laden is a testament as to how this administration handles national security in a disciplined fashion, using all the tools at its disposal, that are available, in an effort to protect the American people.

And I must take this opportunity to recognize the great -- the fabulous success of the mission which was carried out by the CIA and the Joint Special Operations Command that resulted in the apprehension of Osama bin Laden over the weekend. And I know that your department is just as effective when it comes to prosecuting terrorists.

And I deeply regret the fact that your decision to prosecute Khalid Sheikh Mohammed, the mastermind of 9/11, your decision to prosecute him in the civil -- I mean, in the criminal courts of this country -- I regret that Congress -- politicians in Congress usurped your ability to exercise the discretion that you have with respect to where to try that gentleman.

And because he'll be tried in a secret military tribunal, many of the things about the case that have not been publicly revealed will not be revealed. And so the American people will be left without the information which I think would generate true closure for them in this matter.

I appreciate all that you've done at Justice to protect all Americans at home and abroad. And I applaud the Justice Department's commitment to transparency. Under your leadership, the department has processed a record number of Freedom of Information Act requests, and you've testified before this committee numerous times and your dedication to state and local law enforcement by supporting the COPS program certainly does not go unnoticed, especially in this tight economy.

Now, General Holder, I sent you a letter on March 28th of this year requesting information pertaining to three federal intelligence contractors -- HBGary Federal, Palantir Technologies and Berico Technologies, who collectively refer to themselves as Team (Famous ?). Are you familiar with my letter?

ATTY GEN. HOLDER: I can't say that I am.

REP. JOHNSON: Well, in that letter I express concern that the three firms may have broken the law by conspiring to harm American citizens using illegal techniques such as hacking, planting malware, blackmail and fraud. Nineteen of my colleagues in the House of Representatives echoed those serious concerns in a letter sent to House committee chairs earlier in March. And I also requested copies of all Department of Justice contracts with those firms within 10 days.

I have great concerns that the law may have been broken. And I understand that there are many demands on your time and that your staff is busy, but will you commit to looking into that matter?

ATTY GEN. HOLDER: Yeah, we will -- I have a great staff, many of whom are right behind me, and they're undoubtedly taking notes right now with regard to the letter you talked about -- I hope they are -- about March 28th. And we will --

REP. JOHNSON: Well, I hope they are also. (Laughs.)

ATTY GEN. HOLDER: They're writing. They're writing.

REP. JOHNSON: OK. I'd appreciate you all getting back to me. And when additional information arises, I will definitely send it to you on that case. And with that, I will yield back. Thank you.

REP. SMITH: Thank you, Mr. Johnson.

The gentleman from Iowa, Mr. King, is recognized for his questions.

REPRESENTATIVE STEVE KING (R-IA): Thank you, Mr. Chairman.

And I thank Attorney General Holder for his long testimony here. And this is always a challenge and always an interesting (day ?) to serve on this committee when the attorney general of the United States is to testify before the Judiciary Committee. And I do appreciate it.

I have a series of subjects I'd like to examine, perhaps not in the depth that some of the others have. But I recall your testimony here of roughly a year ago, and we had a discussion and an exchange about Arizona's SB 1070 law. And at that time, I had asked you if there was a provision in the Constitution that you believed it had violated, or if there was federal preemption that it had perhaps violated or if there was any controlling case law that had perhaps crossed the line on it.

At that point you weren't prepared to respond to that. And I don't ask you to do that today, but to make this point, that subsequent to that, then, of course, Justice filed a lawsuit against Arizona. And in reading that, I come across this. It seemed to be something I hadn't encountered before, a careful balance that makes the case that Congress has established a careful balance between the various and sometimes competing immigration laws, and that it's the job of Justice and the other departments to maintain that careful balance, just to put that in summary. ATTY GEN. HOLDER: I'm sorry, I can't -- what kind of balance? I didn't hear you.

REP. KING: A careful, careful balance. And I've been involved in a lot of immigration debates, and I don't know that anyone has alleged they'd introduced legislation on immigration that was designed to achieve or enhance a careful balance. And so I'd just ask if that -- I'll call it a legal theory, the careful-balance theory. Does that exist anywhere else in law that you know of?

ATTY GEN. HOLDER: Well, I mean, the positions that we have taken in that lawsuit have been upheld by both a district court and a court of appeals, theories that we have brought, theories that we have used. I think our mainstream -- (inaudible) -- that we are -- (inaudible).

REP. KING: Well, this is the microphone. It's not Trent Franks's fault.

The careful-balance theory, however, regardless of the two courts' ruling -- and we're on the way to the Supreme Court, I presume -- do you know that that careful-balance theory exists anywhere else in law?

ATTY GEN. HOLDER: To the extent that we have used particular theories or particular phrases, I'm sure that the lawyers who filed those briefs did so carefully, did so with reference -- with regard to --

REP. KING: OK, Attorney General, I just -- (inaudible). I think it's a unique theory myself. And I'd be very interested if there is any other place that you could direct my reference. It seems to me that that's the one that's convenient for this case. And if there's -- (inaudible) -- I'd like to know the answer to that.

Let me move on, and that is -- and I didn't ask you the question on whether you'd read SB 1070. But we have another piece of legislation out there now that's been passed by one of the states. It's been called HB 116. That's Utah's legislation that I will just contend, for the sake of simplified vernacular, creates Utah as a sanctuary state.

Have you examined and have you read HB 116?

ATTY GEN. HOLDER: I have read the Utah law.

REP. KING: And have you made a determination on whether to bring suit against Utah?

ATTY GEN. HOLDER: No, we've not. As I indicated, I think, in a prior question, what we typically do is try to interact with the states and try to work our way through any disagreements we might have without bringing suit. The statute doesn't go into effect until 2013, I understand. We are prepared to bring suit if that is necessary, but that is a decision we would make in about a year or so.

REP. KING: (Inaudible) -- make the point that if Arizona is preempted, then Utah establishing a sanctuary state certainly is preempted. I'll make that point between us here today.

And I'll move on also -- you have reviewed, since your last testimony before this committee, the sworn testimony of Christian Adams and Chris Coates before the Civil Rights Commission under oath when they had made the point that the Justice Department has a racial component to the equation of whether they will enforce discrimination if it

disadvantages a minority. Have you reviewed that testimony? And do you accept it as truthful, their sworn testimony?

ATTY GEN. HOLDER: I have not reviewed the testimony but that their characterization is totally inaccurate.

REP. KING: And I would just ask for your -- have you then looked into the department and evaluated -- done a further investigation, though? I mean, you disagree with that, but have you actually done an extra investigation within your own department to satisfy yourself? Or was that your judgment a year ago, and is that just simply your same judgment today?

ATTY GEN. HOLDER: Well, if you look at the assertions that they have made, it seems to me that they are inconsistent with the findings that the Office of Professional Responsibility has made, looking at the whole Black Panthers matter, where the OPR made the determination that politics, race did not play a part, both in the filing of the case or in the decision as to how the case was disposed of, which it seems to me inconsistent with what they are claiming.

REP. KING: And then, Mr. Attorney General, I'm pointing out that I believe that Thomas Prowse was less than truthful with this committee when he testified that they'd achieved the highest penalty (enveloped ?) under the law. And I'd just ask unanimous consent for an additional minute.

REP. SMITH: Without objection, the gentleman is recognized for an additional 30 seconds.

REP. KING: Thank you, Mr. Chairman.

I also wanted to bring up the issue of Pigford Farms. And do you -- can you cite for this committee the authorization that you had or may believe you had to open up negotiations for a second round of Pigford Farms we refer to as Pigford II?

ATTY GEN. HOLDER: The attorney general has the ability to settle cases. That is part of what the -- that's, I think, an inherent part of what the attorney general's -- (inaudible) --

REP. KING: Well, would you cite the 2008 Farm Bill as a(n) authorization for that specifically to conclude Pigford II?

ATTY GEN. HOLDER: I'm not sure I quite understand your question. In terms of --

REP. KING: Well, I can understand why. And then so I'd ask, did you negotiate with John Boyd on settlement for Pigford II.

ATTY GEN. HOLDER: Did I?

REP. KING: Yes, or did anyone from your office authorized by you do so.

ATTY GEN. HOLDER: I'm not sure I know who Mr. Boyd is.

REP. KING: That's instructive to me, and I won't push my time limits any further. Thank you, Mr. Attorney General. Appreciate it.

REP. SMITH: Thank you, Mr. King.

The gentlewoman from California, Ms. Chu, is recognized.

REPRESENTATIVE JUDY CHU (D-CA): Thank you, Mr. Chair. Thank you, Mr. Attorney General, for being here. Two nights ago, President Obama announced that Osama bin Laden had been killed. and as Americans around the country rejoiced, President Obama also reminded us that on that day no matter where we came from, what god we prayed to or what race or ethnicity we were, we were united as one American family.

But in the wake of 9/11, we've seen a disturbing increase of hatred and discrimination against the Muslim community in America and those thought to be Muslims, such as South Asians and Sikh Americans. Most recently, the House Homeland Security Committee in fact held hearings that targeted the American Muslim community. Considering the importance that intelligence information played in finding Osama bin Laden, how could an antagonistic relationship between the American-Muslim community and law enforcement hurt our efforts to combat any homegrown terrorist threat? And what have you been doing to engage the community and maintain their trust?

ATTY GEN. HOLDER: Well, I think that's a good question. If there were an antagonistic relationship between law enforcement and those communities, that would have a negative impact on our ability to protect the American people. What we have seen is a pretty consistent level of cooperation and provision of information from the Muslim community here in the United States.

We have started a series of outreach efforts where I think the Department of Justice has been leading the way in order to dispel myths, make sure that there are open lines of communication, make sure that people understand that our aim is to protect all Americans, Muslim Americans as well as everyone else. And to the extent that there is discrimination or inappropriate actions directed towards that community, our civil rights division has tried to step in and take action.

REP. CHU: Then let me ask about a guidance that the DOJ has. Even 10 years after 9/11, there is racial and religious profiling against the South Asian, Muslim and Sikh communities, and it is of widespread concern. I do commend the department and especially the civil rights division, the FBI and the U.S. Attorney's Office, which has investigated over 750 incidents involving violence, threats and vandalism and arson against Arabs, Muslims, Sikhs and South Asian Americans in the United States between 9/11 and March 2007.

And in June 2003, the DOJ issued guidance banning the practice of racial profiling. Giving evidence that shows that racial profiling is

ineffective and counterproductive, policies that prohibit it are certainly admirable. However, there needs to be much more strength on this kind of guidance, and the guidance doesn't profile -- doesn't ban profiling on the basis of religion or national origin and lacks a meaningful enforcement mechanism. What is the progress of the review that I believe that you're doing right now involving this guidance? Where is it at? ATTY GEN. HOLDER: Well, I would say first as a general matter the use of profiling techniques is not generally good law enforcement -- is not generally good law enforcement. We have under review the policy that was initiated back, I believe, in 2003. That review is under way and my hope would be that I'll have some recommendations from the group that is looking -- looking at that -- looking at that policy.

REP. CHU: And I certainly would urge then that you do look at the issues of religion and national origin as well as the enforcement mechanisms.

Let me also say that the DOJ has engaged in this much-needed outreach, and I certainly acknowledge that, but there certainly is also a need to better institutionalize current ad hoc initiatives. Would the DOJ consider formalizing the initiative to combat post-9/11 discriminatory backlash within the Civil Rights Division of the DOJ by designating a special counsel for post-9/11 discrimination and a special counsel for religious discrimination?

ATTY GEN. HOLDER: Well, that's an interesting idea. I mean, I think that, you know, we have laws that our Civil Rights Division traditionally enforces that handles, I think, those kinds of issues. We have a Community Relation Service as well in the Justice Department that can contribute in this regard. So I think -- I think we have the tools that we -- that we need and we certainly have the dedication of the people who are career employees and who will be there after I leave as attorney general who I think will remain dedicated to the enforcement of those regulations and those laws.

REP. CHU: Well, I hope you might consider that, and my last question has to do with hate crime statistics, and the Hate Crimes Statistics Act mandates the collection of data on hate crimes but it lumps together those acts that are anti-Muslim or anti-Arab, hence those acts that are actually committed against Sikh Americans or South Asian Americans are not distinguished. Would the Department of Justice consider formally tracking hate crimes suffered by Arabs, Hindus, Sikhs and South Asians separately?

ATTY GEN. HOLDER: I think that's something that we could consider. I mean, I think the greater the amount of granularity we have with regard to who is the -- who are the victims of these kinds of -- these kinds of acts, the more effective we can be in our enforcement efforts. And so I think your suggestion is a good one, and that's certainly something that we can consider and we'd work with you in trying to determine whether that is something that we can appropriately do.

REP. CHU: Thank you, and I yield back.

REP. SMITH: OK. Thank you, Ms. Chu. Now, before I recognize the gentleman from Arizona, Mr. Quayle, for his questions, let me say that two votes have been called and we'll need to stand in recess and go vote, and then we'll return, Mr. Attorney General, if that's all right with you. There are still several members who would like to ask questions.

ATTY GEN. HOLDER: That's fine.

REP. SMITH: The gentleman from Arizona.

REPRESENTATIVE BEN QUAYLE (R-AZ): Thank you, Mr. Chairman, and thank you, Mr. Holder, for -- I just want to get some clarification on what you talked about with Mr. King. Is the reason that there hasn't been any action on the Utah case -- was it -- is it based on just the fact that it's not getting implemented until 2013, and you still do see some possible supremacy clause violations within that law?

ATTY GEN. HOLDER: Yeah, I think there are certainly issues that we see now. Our hope would be that between now and 2013, there might be some way that we can work our way through those concerns without having to bring a lawsuit. But if we have to, you know, we will.

REP. QUAYLE: Right. So just working through possibly the legislature, the state legislature, passing a different law, making some amendments to that law. Is that what you're --

ATTY GEN. HOLDER: Right.

REP. QUAYLE: OK.

ATTY GEN. HOLDER: That way, interpretations that the attorney general might take of the law -- I mean, there are a number of ways in which we might try to work our way through it.

REP. QUAYLE: OK. Thank you. And just kind of changing gears, but I read, I think it was about last month, that the Wall Street Journal reported that the DOJ and the FTC have resorted to coin flips, sometimes trades and bargains, when determining which agency would have jurisdiction over cases, which can cost the interested parties additional time and expenses. Recently, the DOJ's Antitrust Division, the FTC and Congress have conducted investigations into online search engines and online advertising markets. As this area of our economy continues to grow, how do you plan on dividing the work between the agencies while preserving institutional knowledge and consistency?

ATTY GEN. HOLDER: That's a very good question and something that we're trying to work our way through. The FTC and the Justice Department Antitrust Division have generally been in a good place in dividing up responsibility for antitrust enforcement. There are -- there have, however, been instances where we've not been on the same page, and I think we need to get together and try to work together, and that's what we are trying to do to try to figure out what the rules of the road are

going to be so that we don't end up with, as you indicated, either coin flips or other ways in which we decide these matters.

REP. QUAYLE: So the DOJ and the FTC are working together to try to get some guidance and see who's going to be overseeing those matters?

ATTY GEN. HOLDER: Yeah.

REP. QUAYLE: OK. OK. And the other question I have is, what role do you think that the Antitrust Division has in helping to maintain an online marketplace that rewards without necessary -- necessarily foreclosing new competition and preventing ideas from reaching consumers?

ATTY GEN. HOLDER: Well, I mean, I think the Antitrust Division -- it's an interesting way that you phrase that, but I think it's right. You know, we are generally seen -- Antitrust is generally seen as trying to stop mergers, consolidation.

But I think the effect, the collateral -- the impact of that work is to make sure that things are kept open, things are kept free and that's especially important when one looks at cyber issues -- the Internet -- where innovation happens so rapidly and where consolidation is not necessarily -- where consolidation is not necessarily a good thing. And so we are constantly looking in that sphere for things that might inhibit the growth, the development of the Internet.

REP. QUAYLE: And in those investigations have you seen any active and actual bottlenecks or gatekeepers on the Internet that actually is keeping content from consumers? You know, have you seen any actual evidence of that or are we starting to get down to conjecture and it's going to the possibility of the gatekeepers rather than actual factual evidence pointing to that?

ATTY GEN. HOLDER: Another good question and I don't want -- I'm not sure that I'm capable of answering that. We can get you something in writing from the folks in the Antitrust Division who, you know, would be able to tell you more in a more complete and contemporary way what concerns they have in that regard. I'm not aware of any but I wouldn't want to --

REP. QUAYLE: Right.

ATTY GEN. HOLDER: Just because I'm not doesn't mean that maybe there aren't things going on in the Antitrust Division that would be responsive to your question.

REP. QUAYLE: Right. So you don't know anything but you could give me information if there is any. OK. Perfect.

ATTY GEN. HOLDER: We'll get you something.

REP. QUAYLE: Thank you, Mr. Holder, and with that, Mr. Chairman, I yield back.



REP. SMITH: Thank you, Mr. Quayle. Mr. Attorney General, we'll stand in recess for 20 minutes and be back then.

ATTY GEN. HOLDER: Right.

REP. SMITH: Thank you. (Recess.)

REP. SMITH: The Judiciary Committee will reconvene. Welcome back, Mr. Attorney General. And the gentlewoman from California, Ms. Sanchez, is recognized for questions.

REPRESENTATIVE LINDA SANCHEZ (D-CA): Thank you, Mr. Chairman. Attorney General Holder, I want to thank you for joining us here today. It's always nice when the AG takes the time to come and talk about the many issues facing the Department of Justice and how they impact the population here in the United States.

I want to start with a couple of quick questions regarding the antitrust division first. As I'm sure the members of the committee are aware, one of the major issues facing the antitrust division is the proposed merger of AT&T and T-Mobile. I serve on the Intellectual Property Subcommittee and I am sure that they're going to be holding hearings to consider the various impacts of this merger.

I just want to talk to you really quickly about the DOJ's investigation into this proposed merger and the questions I have specifically on this issue are, if you can give the committee a sense of how long you expect that review to take, and then also what factors are you going to be considering as you review that merger.

ATTY GEN. HOLDER: I'm not sure that I can give you with any degree of clarity how long the review would take. It will be one that will be done, you know, thoroughly and expeditiously. And then I think, you know, the normal things that would be -- would be considered will be the ones that will drive the inquiry. You know, the whole question of what the impact of the merger will have on -- potential merger would have on consumers, on the market. It would be just a, I think, a traditional analysis even though it is, you know, it involves some cutting-edge technologies.

REP. SANCHEZ: OK. Thank you. I want to talk to you a little bit about the state criminal alien assistance program. When I was a new member of Congress, law enforcement came to visit me in my office to talk about how a reinterpretation by the Department of Justice had a profound impact on their budgets. The SCAAP program was established to help reimburse state and local governments for the costs associated with housing undocumented criminals.

But in 2003 the Department of Justice reinterpreted SCAAP in a way that caused a drastic drop in every state's reimbursements, and that had repercussions throughout the law enforcement community at a time when, quite frankly, law enforcement can least afford it. In my state of California, for example, SCAAP reimbursement payments have declined from \$220 million in fiscal year 2002 -- that was prior to the

reinterpretation of statute -- and it's dropped to \$112 million in fiscal year 2009.

As I'm sure you're aware, many states are experiencing budget shortfalls and having to scale back on many services. I'm wondering if you would be willing to reexamine the award criteria for the SCAAP program and review the reinterpretation and see if that merits continuance.

ATTY GEN. HOLDER: When I testified before the budget committees, I was very conversant with SCAAP and where we were in terms of our budget. I'll be honest with you, I'm not now. What I can do is promise to get you something that indicates where we are in our budget with regard to SCAAP and also look at that opinion and see how that impacts the --

REP. SANCHEZ: Yes, I don't want to get into the weeds of it but it really is criteria that's very nonsensical and doesn't make a lot of sense. I'm just asking if you would, you know, take the time to review that opinion and figure out if that still makes sense.

ATTY GEN. HOLDER: We can do that.

REP. SANCHEZ: OK, great. And then finally, I just want to address an issue some of my colleagues earlier asked you some questions about the recent indictments of several online poker websites. Those have a significant impact on many of my constituents because I've heard a lot from them on this matter. As Mr. Cohen, I believe, stated, it's a game that's gaining in popularity and there are about 10 million Americans that currently play poker online, and it also ends up being about a \$16 billion industry in this country.

Now I know that there has been successful regulation of online poker playing in places like Europe and Australia, and I happen to be a strong supporter of legislation that would legalize online gambling in this country and allow us to tax it reasonably and efficiently and make sure that people were not being cheated out of their money. I'm sure you can appreciate, again, in challenging economic times when states are experiencing deep budget shortfalls and the federal government is trying to find a way to get its fiscal house in order, that is one area in which we could potentially increase revenue for the coffers.

So I'm hoping that that's an area that you'll look at again in terms of, you know, where you dedicate your precious resources. I think time would probably, in my humble opinion, be better spent dealing with bigger and more impactful, serious violent crimes, for example, than trying to interrupt this industry, which as I said is -- you know, has been efficiently regulated in other countries. With that, I will yield back my time to the chairman.

REP. SMITH: Thank you, Ms. Sanchez. The gentlewoman from Florida, Ms. Adams.

REPRESENTATIVE SANDY ADAMS (R-FL): Thank you, Mr. Chair.

Mr. Holder, I have a few questions, and I'm going to go quickly because I only have five minutes and I'd really like to have a lot more to be honest with you.

Earlier I listened, and you said there were determinations as to why to follow through on enforcing a law or not enforcing a law, and I have a couple questions. We are a nation of laws, are we not?

ATTY GEN. HOLDER: We are -- I can't hear you.

REP. ADAMS: We are a nation of laws.

ATTY GEN. HOLDER: Yes.

REP. ADAMS: And what determination -- what do you do to make your -- what do you go through to determine which laws your agency will enforce or not enforce?

ATTY GEN. HOLDER: See, I wouldn't put it that way. I'd say that we would enforce all the laws. The question is --

REP. ADAMS: Well, we'll probably disagree on that. And I'm just wondering, is there a process which you go through to determine which ones you will actively enforce and which ones you will inactively enforce?

ATTY GEN. HOLDER: I think it's a question of prioritizing. That's how I would -- I would say it. We look at --

REP. ADAMS: So you have a process to prioritize the laws and which you will enforce?

ATTY GEN. HOLDER: No. Prioritize our enforcement efforts. I mean, you try to find what is -- have -- what has the potential of greatest harm, for instance, when it comes to violent crime, what's the most impact when it comes to financial crime. Given the limited resources that we have on those determinations, that's how we decide where we deploy our resources.

REP. ADAMS: Well, as someone who comes from a law enforcement background, I know that I was tasked with enforcing the laws that were on the books. If there was something wrong with the law or we found there was an issue, we went to our legislative branch to deal with those. And I would ask that you would do that, you would give us that opportunity, because if they're on those books, the American people expect for us to enforce them. Do you not agree with that?

ATTY GEN. HOLDER: As I said, we enforce the laws. We take into account the impact --

REP. ADAMS: Well, do you agree the American people expect us to enforce the laws that we have on our books?

ATTY GEN. HOLDER: Sure. And we do.

REP. ADAMS: OK. The other thing is with the final end to the chapter of bin Laden -- and he's now deceased, and I commend everyone involved with his capture and ultimate demise -- my question to you is in -- last year you were reauthorizing the reinvestigation of the CIA operatives in Gitmo, even after they were cleared once by career Department of Justice investigators. Were any of these CIA operatives involved in getting the detainee information that led to Obama (sic) bin Laden's death?

ATTY GEN. HOLDER: The inquiry that I ordered -- I guess it was last year --

REP. ADAMS: Were any of them involved?

ATTY GEN. HOLDER: The investigation that I ordered last year --

REP. ADAMS: Were any of those involved in the ultimate information that --

ATTY GEN. HOLDER: I was trying to answer the question.

REP. ADAMS: Just a yes or no.

ATTY GEN. HOLDER: Well, I can't answer that way. The investigation that I ordered last year was of people who potentially went beyond the OLC opinions --

REP. ADAMS: But were previously cleared.

ATTY GEN. HOLDER: Well, their information, that is being examined by a special prosecutor who had been appointed by --

REP. ADAMS: But I'm not asking exactly that. I was wanting to know were they involved in getting the information that ultimately caught bin Laden?

ATTY GEN. HOLDER: And I'm not -- I don't -- I'm not in a position to answer that. I don't know.

REP. ADAMS: OK. ATTY GEN. HOLDER: I'm not allowed to answer the question, so --

REP. ADAMS: OK.

ATTY GEN. HOLDER: I'm --

REP. ADAMS: Maybe in another venue you could answer that for me.

ATTY GEN. HOLDER: No, what I'm saying is that I was trying to answer the question. You're looking for yes/no, and I don't think I can give you one in that way.

REP. ADAMS: OK. The task force that has been created -- and I'm looking forward to seeing the outcome of that task force. I know there's a lot of factors playing into what is going on with the prices of gas and oil. And a lot of people in America want answers, and I agree with them. They should be afforded those answers.

One of the things I noted was that your central mission of the Financial Fraud Enforcement Task Force is to enhance the government's effectiveness and combat financial fraud. As part of your investigations, will you also be probing into the Department of Interior for its efforts to restrict trade by closing land and holding our natural resources hostage?

ATTY GEN. HOLDER: I'm not sure that I'm familiar with those allegations.

REP. ADAMS: Well, we've had some closed and permits pulled back, and people are wanting to know, and have a right to know, the answers to those questions. Why? And if that plays into the cost, the American people would like to know if it does. Also, the value of the dollar, is that playing into the cost of our oil and gas? Those are questions that I would hope that you will answer for the American people, since you've created this.

And just one other thing, though. I'm curious; does your agency not have the authority to do this without this commission being created?

ATTY GEN. HOLDER: Sure. We could, but in trying to be an effective task force, you bring into the task force those agencies that have particular expertise. And by combining that, we make a task force that is better than one that we might be able to create out of certain Justice Department personnel.

REP. ADAMS: So you were already investigating prior to?

ATTY GEN. HOLDER: I'm sorry?

REP. ADAMS: You had already started an investigation prior to the task force being created? ATTY GEN. HOLDER: I couldn't hear you.

REP. ADAMS: You had already started investigating prior to the task force being created?

ATTY GEN. HOLDER: No.

REP. ADAMS: Thank you.

REP. SMITH: OK. Thank you, Ms. Adams.

The gentlewoman from California, Ms. Waters, is recognized.

REPRESENTATIVE MAXINE WATERS (D-CA): Thank you very much, Mr. Chairman.

And I thank the attorney general for the time that he's spending here today and the fact that he waited for us to come back from the vote.

I wanted to come over here despite the fact that I'm chairing (sic) a subcommittee of the Financial Services Committee because I want to talk about -- I want to talk about mergers. I have spent -- I spent an awful lot of time on the Comcast-NBC merger, as you and a lot of people know. And I'm concerned. I'm concerned about consolidation.

But, Mr. Holder, it appears across all industries the antitrust enforcement under the administration -- under this current administration -- does not appear to be much different than the previous administration's kind of rubber-stamped approval of multiple mergers and consolidations. The mergers of Ticketmaster-Live Nation, Continental-United, Southwest-AirTran, Comcast-NBC and Google-ITA have all been approved by your Antitrust Division.

It appears that the Antitrust Division is charting a new territory in positioning itself as more a regulator than a legal enforcement agency. The constant -- the consent decrees from the Comcast-NBC, Google-ITA and other mergers attach conditions that temporarily require DOJ monitoring and enforcement actions if breached. In my estimation, it takes more resources for DOJ to regulate through the judiciary than to simply block or audit divestiture when appropriate.

Is regulating through consent decree in areas such as competition over the Internet and tech industry really the most effective, efficient and transparent way to create rules of the road for merger reviews? That's kind of a dual question here. I just want to understand where you're going over there with --

ATTY GEN. HOLDER: Well, I think the Antitrust Division is tough on enforcement where it finds violations of the antitrust laws, and I don't think that those consent decrees or those conditions that were placed on those mergers are insignificant.

The Antitrust Division doesn't go into this with the notion that we want to try to find a way in which we make a merger occur. You look at the antitrust laws, apply them, and then make a decision as to whether or not a merger can go through or are there ways in which a merger might be constructed that it could. But they don't go into it with a presumption or a mind-set that we want to make mergers occur. And I think that we have -- through the leadership of our assistant attorney general, I think we have been appropriately aggressive.

REP. WATERS: Have you denied any since you have been there?

ATTY GEN. HOLDER: Let's see, I can probably get back to you with that. I'm not sure. But I can --

REP. WATERS: Well, let me -- well, let me just register this. I spent hours upon hours working on the Comcast-NBC merger and made significant (rethink ?) questions about that merger. We understand how

they operate now. I mean, we learned an awful lot about some of the agencies and programs that came in to support them. We learned about how they make contributions to nonprofit organizations.

We were not talking about whether or not you contribute to churches and civil rights groups and all of that. We were talking about whether or not your company, your business, is diverse, whether or not it's reflected in your management. We talked about whether or not the programming at NBC, et cetera, opened up opportunities for independent operators. We talked about some serious and significant issues.

We got outplayed because they were able to roll in a lot of folks who had gotten contributions for their yearly conventions and their churches and all of that.

And I'm just wondering whether or not those of us who are concerned about consolidation and mergers should just stop fighting these things altogether and allow them to come in, with the condition that they think play well, and you all just adopt those conditions and let these mergers go through. I'm really concerned about it.

ATTY GEN. HOLDER: Well, as I said, the antitrust division is taking its enforcement responsibility seriously. I think again, as I said before, we are being appropriately aggressive and handling these matters in a way that's consistent with the law.

REP. WATERS: I'm going to ask you something that's very sensitive. At the time that we were fighting --

ATTY GEN. HOLDER: At the time of what?

REP. WATERS: At the time that we were trying to fight to get people to pay attention Comcast and NBC and how huge this merger was, NBC, that's owned by GE, CEO was being considered to head up the president's Business Council. Are you aware of that?

ATTY GEN. HOLDER: I was not aware of it at the time. I mean, I'm aware of it now.

REP. WATERS: Was that something that should be taken into consideration as you made a decision about that merger?

ATTY GEN. HOLDER: It should not have been and was not taken into consideration.

REP. WATERS: It should not have been taken into consideration?

ATTY GEN. HOLDER: And was not.

REP. WATERS: Why not?

ATTY GEN. HOLDER: That is not consistent with what the enforcement responsibilities are of the antitrust division.

REP. WATERS: At the time that you were considering the merger, the key player was GE, that owns NBC. And it appears that there was a relationship here with the administration and with GE that would cloud their objectivity about that merger. You don't think that's worth considering? Or you don't think that's in your mandate to consider?

ATTY GEN. HOLDER: No, we certainly should not consider it. Did not consider it. You have to understand that the Justice Department acts, when it comes to its enforcement responsibilities, independent of anything that the White House might be doing with regard to --

REP. WATERS: The appointees on the FCC acts independent of the White House also. I mean, the DOJ and the FCC have nothing to do with each other when they are considering these mergers.

ATTY GEN. HOLDER: I'm talking about the Justice Department and its responsibilities when it comes to the enforcement of the laws that are our responsibility. We act independently of other executive branch agencies --

REP. WATERS: Including the FCC? You're not interacting with the FCC at --

ATTY GEN. HOLDER: I was going to say, there are instances where we would interact with other agencies if they have a particular expertise or if there is a reason for us to interact with them because of a particular statute. But when it comes to our enforcement responsibilities and determinations as to whether or not the antitrust laws are violated and those are the responsibility of the Justice Department, we act in an independent manner.

REP. WATERS: We're not talking about whether or not the antitrust laws were violated, past tense. We're talking about consideration of the request, or the attempts to get the merger. And looking at all aspects of whether or not this merger is in the best interest of, you know, the citizens of this country, the people of this country. That's what I'm talking about.

Do you, in looking at that merger, interact with the FCC, who have appointees by the president and what is going on in the overall discussion?

ATTY GEN. HOLDER: Well, let's cut to the quick here. The Justice Department's determinations in that case or any other case is not affected by relationships that have -- that exist between the White House and, you know, the head of GE or anything like that. That didn't come into play in the determination that the Justice Department made in that case.

REP. WATERS: And should not come into play?

ATTY GEN. HOLDER: That's the bottom line.

REP. SMITH: The gentlewoman's time has expired.



REP. WATERS: Thank you. Thank you very much.

REP. SMITH: The gentleman from Pennsylvania, Mr. Marino, is recognized for his questions. REPRESENTATIVE TOM MARINO (R-PA): Thank you, Mr. Chair. General, welcome. I want to thank you and your staff for waiting for us. I know how busy you are. I was a U.S. attorney for 2002 to 2008 and I was very busy. And multiply that times a thousand for you and your staff and I know how you multitask. So with that said, sir, I have to put a plug in for my middle district of Pennsylvania staff, who I miss dearly, and they made me look good.

ATTY GEN. HOLDER: Don't take this off Mr. Marino's time, but I tried my second and third cases in Scranton. I'm an admirer of Judge Nealon. He's a great judge and was very kind to a young lawyer when I was up there in the '70s.

REP. MARINO: I know what you mean. Tried several cases there.

Let's just switch gears here for a moment and let's talk about the Bureau of -- the Federal Bureau of Prisons. We know over the years that we have had officers who have been murdered, killed by inmates, and no one knows better than I do the seriousness of when we talk about having the officers carry gun. And just visiting a federal prison last week I sat down with the inmates and had a chance to talk with them a little bit about how things are operating.

Some of those inmates stood up and were concerned about the safety of some of the guards, believe it or not. I have to take what they were saying as the truth. But also the guards and I discussed the fact that the guards should not be carrying guns, for obvious reasons at least between us. But do you see any harm in the officers carrying Mace, carrying a spray of some type? There's a situation where a guard was killed. He was stabbed several times by two inmates, got away from them, down onto another landing, they came down and finished him off.

I would have to think that perhaps just the fact of having some Mace to fight them off for a few seconds until help got there, it may have saved his life. So I would ask you to please consider that and let me know what the downside is to that, if you would, because we couldn't come up with any other than the fact that a guard could grab that -- that an inmate could grab that. But still there would be time to handle that situation.

ATTY GEN. HOLDER: I'm not an expert in that field but I'm more than glad to run your suggestion by the folks at BOP and we'll get back to you on what their response is.

REP. MARINO: Thank you. Now I want to switch gears here to Countrywide Financial, particularly Angelo Mozilo. He was the former chair and CEO of Countrywide Financial. And the SEC filed charges against him and others on June 4th of 2009, alleging that they had failed to disclose to investors the significant credit risk that Countrywide was taking on as a result of its efforts to build and maintain market shares.

The SEC's complaint further alleged that Mozilo engaged in insider trading while he was aware of material non-public informations concerning Countrywide, increasing credit risk, the risk regarding the poor expected performance of Countrywide-originated loans. This gentleman received or made over a -- from 2001 until 2006 \$470 million in salary and stock options and things of that nature.

The federal prosecutor in Los Angeles dropped these criminal investigations on this man in February 2011. He was assessed several penalties to the tune of almost \$68 million, and I don't know all the facts. I haven't read any indictments or anything or potential investigator reports. I only know what I read in the newspaper and catch from other individuals. But I understand this person is still enjoying his yacht out in the Mediterranean.

Based on the limited material that I read I think there's a question there. I think there's a serious question that at least could have been brought before a grand jury to determine whether to indict. I can see why he'd probably want to hand over \$68 million if he made 470 and not spending any jail time on that. If you are familiar with that, could you elaborate on it a little bit? And if not, could you have someone look into that, please?

ATTY GEN. HOLDER: Well, I'm not sure there's an awful lot of information that we'd be able to share. I'm not intimately familiar with the case, but in any case I'm not at all certain we'd be in a position to share information about a closed matter. As you remember from your DOJ days, that is not something that is typically done.

What we try to do, obviously, is to look at these matters, be aggressive. You know, good lawyers, again as you know, around the country who look at these matters and try to make cases. That's something that I hope I've conveyed today, that, you know, these matters are examined by prosecutors who come to the Justice Department to try these matters, investigate these matters and to take these matters to court and then to hold people responsible. If determinations are made not to proceed, it's not for lack of trying. It's because they have made a determination that they can't.

REP. MARINO: You've made it very clear today. I applaud you for those efforts. I did -- my office was involved in prosecuting a case similar to this, and I never questioned a U.S. attorney as to why they did or didn't. I'm sure there are reasons. But this is the kind of situation where my constituents say, how can someone this wealthy get away with that? And you know how they're couching it in terms of wealth and get away with it. I know that's not the case with the Justice Department.

Thank you so much for being here today, and I yield my time.

ATTY GEN. HOLDER: Thank you.

REP. SMITH: Thank you, Mr. Marino. Mr. Attorney General, I'd like to ask you a few questions just to follow up on some subjects that

were raised earlier. My guess is that there are easy answers. Does the administration still favor having background checks conducted by those who purchase firearms at gun shows? I couldn't tell by your earlier answer whether the administration had changed its position or not. But do you still favor having those background checks conducted?

ATTY GEN. HOLDER: I will say that I think that, you know, having a system where people who are exercising their Second Amendment rights in purchasing firearms, we would all be better served by having background checks done. We are presently engaged in a dialogue with a variety of members of the firearms community. We've been having working group meetings at the Justice Department, talked to retailers, a whole variety of people, and we're in the process of trying to look at the state of the law and come up with proposals about things that we might consider to make the law better and to make the American people more safe.

REP. SMITH: But you do favor the background checks being conducted?

ATTY GEN. HOLDER: I would say that -- as I said, I think the American people are better served and are more safe by having people exercising their rights in a way that when you go to a licensed firearms dealer, you know, you have an instant background check done. I think that that's a better way to do it.

REP. SMITH: OK, I'm not talking about -- I'm talking about a gun show, though. And you do favor the background checks there?

ATTY GEN. HOLDER: I think that having everybody who purchases a gun, anybody include that.

REP. SMITH: OK, I understand. You were asked a question earlier about price-fixing by oil companies. Are you aware of any oil companies who have engaged in that conduct? I know you've appointed a task force that might or might not discover that, but are you aware of any of that type of activity today?

ATTY GEN. HOLDER: I'm not aware of any activity like that today. I have to await the results of the investigation. That's what the investigation's for.

REP. SMITH: Understand. In regard to my question about the Utah immigration law, when I asked why you weren't filing suit against Utah as you had Arizona, you said we're trying to work something out with them. What were you referring to when you said trying to work something out with Utah?

ATTY GEN. HOLDER: Well, it will depend on what Utah does. I mean, once we have raised the concerns that we have, the legislature might decide to change the law. There might be enforcement ways -- there might be ways in which the law might be enforced that are consistent with how we view our immigration responsibilities.

REP. SMITH: It would seem that it's unconstitutional, or at least it's suspect on its face because you have a law that professes to give legal status to people in the country who are here illegally. Why wouldn't -- I don't know how you work that out, and it seems to be a clear violation of current immigration law.

ATTY GEN. HOLDER: Well, it might be the law as it exists in 2011, that could be a violation that we would sue. By 2013 we may be in a position that we're in a different place.

REP. SMITH: If they change the law. It would take something like that. OK for now. And do you still favor closing Gitmo? I wasn't sure by an earlier answer whether that was the case. You still --

ATTY GEN. HOLDER: As I've indicated and the president has indicated, we both think that the closure of Guantanamo would be in our national interest.

REP. SMITH: Fair enough. Mr. Attorney General, thank you for being here today. Thank you for answering all of our questions, and we'll be in touch with you as well.

ATTY GEN. HOLDER: Thank you.

REP. SMITH: Before we adjourn, without objection all members will have five legislative days to submit additional written questions for the witness and to submit any additional materials for the record. With that, we stand adjourned. Thank you again.

END.