

**Questions for the Record  
Attorney General Eric H. Holder, Jr.  
Committee on the Judiciary  
United States Senate  
May 4, 2011**

**QUESTIONS POSED BY CHAIRMAN LEAHY**

**Collateral Consequences of Crime Study**

1. I wrote and Congress passed in 2007 a provision requiring the Department to study the collateral consequences of criminal convictions across the country. This means consequences like restrictions on jobs and housing for those convicted of crimes. Vermonters have told me that some of these consequences are not related to public safety and make it harder for those getting out of jail to become contributing members of society. The study, commissioned by the Department and done by the American Bar Association, has documented more than 38,000 collateral consequences nationally. You have now written to every state Attorney General in the country asking each state to review this study and reevaluate its laws and policies. I am thinking about these issues as I work on reauthorizing the Second Chance Act.

Do you agree with me that it is essential in these times of tight budgets that states and the federal government review their policies to make sure we maximize the chance that those convicted of crimes will not return to crime and jail and instead will become contributing members of society?

**Response:**

**State Secrets**

2. You announced a new policy on the use of the state secrets privilege in September 2009. That policy incorporated some elements of a bill I introduced, the State Secrets Protection Act, but did not go as far as I would have liked. I believe that the government should be required to show significant evidence to a judge when seeking to assert the privilege. Otherwise, the decision to assert the privilege lies solely in the hands of the Executive Branch.

Neither the report you submitted to me last Friday on use of the privilege-- stating that the Department has asserted the privilege only twice since September 2009-- nor the letter you send me last night with some additional detail, contained basic information about the number of state secret cases.

- A. Your task force reviewed all pending cases and determined that all assertions of the state secret privilege were valid. How many pending cases did the task force review?

Response:

- B. Did you personally review each of these prior pending cases? Or did you only personally review the two cases in which the privilege was asserted since September 2009?

Response:

Mortgage/Foreclosure Fraud

3. As the result of the housing market's collapse, millions of Americans have lost, or will lose their homes to foreclosure. I feel very strongly that as lenders repossess homes to put back on the market, homeowners in foreclosure must be treated fairly and honestly in this process. There is pervasive evidence that the opposite is occurring in the rush by lenders to foreclose.

I am especially concerned by reports of widespread abuses by servicers, the foreclosure mills that assist them, and lenders. Bankruptcy and state court decisions have outlined these problems in great detail. I am not alone in my fear that we are seeing a substantial fraud on the courts carried out through the use of forged or fraudulent documents, inaccurate accounting, and serious assignment of title issues. I appreciate that the Department is leading an interagency effort to combat mortgage fraud, and I encourage continued vigilance in this work.

- A. Is mortgage servicer fraud in the foreclosure process something the Task Force is looking at?

Response:

- B. What specific steps are being taken by the Department to address fraudulent documentation and other problems in the foreclosure process?

Response:

- C. Would the Department like to see Congress consider additional legal tools to help you ensure that homeowners in foreclosure are not victimized by fraudulent conduct?

Response:

## Hate Crimes

4. After more than a decade, Congress finally passed the *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*, which the President signed in October 2009. I am proud that Congress came together in a bipartisan fashion to show that violence against members of any group because of who they are will not be tolerated in this country.

The tragic deaths of Matthew Shepard and James Byrd, Jr. highlighted the need for this law. In recent years, many cases have raised new concerns about the growing violence against other groups including Latinos and immigrants.

Just last month, a federal grand jury returned an indictment charging two Arkansas men with one count of conspiracy and five counts of violating the new hate crimes law. The indictment alleges that the defendants yelled anti-Latino epithets at the victims while they were at a gas station parking lot. When the victims drove away, the defendants chased after them in a separate vehicle. Eventually the defendants caught up to the victims' car and repeatedly rammed their truck into it, causing the victims' car to go off the road, overturn and ignite.

- A. In what other cases has the Department been able to apply the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act?

### Response:

- B. What has the Department done, and what else needs to be done, to implement these hate crimes measures designed to help law enforcement curb the alarming trend of attacks based on ethnicity, race, sexual orientation, and other forms of bias?

### Response:

## QUESTIONS POSED BY SENATOR SCHUMER

5. As you know, the Bureau of Prisons oversees more than 209,000 Federal Inmates. This population has grown by over 45 percent over the past decade, while space and staffing has failed to keep pace. Indeed, today Federal prisons are overcrowded by 45 percent of their rated capacity, and the inmate-to-staff ratio increasing by 50 percent. This is truly a recipe for tragedy.

Regrettably, the April report released by the GAO (Bureau of Prisons: Evaluating the Impact of Protective Equipment Could Help Enhance Officer Safety, GAO-11-410) showed a 43 percent increase in assaults on our federal prison officers over the last decade. That increase is nearly identical to the population growth over the same time period. Moreover, the report included understaffing and overcrowding as two of the five factors most impacting officer safety. However, even as understaffing of these facilities reaches critical levels, and assaults on prison officers increases – a recent FOIA request reveals the increasing allocation of bonuses for BOP management personnel – more than doubling from 2005 to 2008.

With BOP Director Lappin’s recent resignation, I ask you to commit to closely examining these issues as you find a suitable replacement. Can you make that commitment?

### Response:

6. The GAO report (GAO-11-410) gauged the opinions of corrections officers, union officials, and BOP management officials on several items of safety equipment used in state correction facilities. It found that corrections officers and BOP management held vastly differing opinions in the effectiveness of that equipment. Additionally, the report recommend that the BOP collect increased data on the assault of federal corrections officers to evaluate the impact of equipment which it already provides or could provide to enhance protection.
- A. The report asserts that the BOP concurred with its recommendation and will conduct an evaluative study of protective equipment; can you confirm the implementation of this study, and provide a timeline for completion?

### Response:

- B. Can you confirm that such a study would move beyond the opinions provided in the GAO report and rely on data?

### Response:

7. In questions I previously submitted regarding the safety of federal prisons, your Department mentioned that you had “recently formed a Sentencing and Corrections Workgroup to make recommendations for addressing the critical challenges facing the federal prison system among other issues.”

What is the status of this workgroup – has it submitted recommendations?  
Has the Department implemented any such implementations?

Response:

8. In a recent opinion piece, the President stated that that NICS Improvement Amendments Act of 2007 which sought to strengthen our gun check system “hasn’t been properly implemented.” Representative McCarthy and I worked long and hard to pass this legislation through Congress after the tragedy at Virginia Tech. This act included among other provisions, a requirement that all federal agencies provide any record of persons prohibited from purchasing firearms to the FBI. Tucson gunman Jared Loughner, was rejected by the Army due to his admitted drug use. Under the NICS Improvement Amendments Act – now federal law – it seems to me that such information could have been sent to the NICS.

However, according to press accounts, a policy enacted by former-Attorney General Janet Reno directed federal agencies not to report to the FBI for inclusion in the NICS failures on “voluntary” drug tests, including tests taken by persons seeking federal jobs or seeking to enlist in the military. That directive seems to contradict the NICS Improvement Amendments Act, but apparently the policy remains in place at most federal agencies. Unfortunately, FBI information reveals very few federal agencies reporting any information at all to the NICS.

- A. Attorney General Holder, would you agree that the Reno memo is superseded by the more recent statute?

Response:

- B. What has the Department done to let the military and other federal agencies know that you want the names of known drug abusers and other prohibited purchasers so we can keep them from getting guns?

Response:

- C. Given that the President has stated the NICS Improvement Amendments Act “hasn’t been properly implemented,” your Department’s stated commitment to strengthening our gun check system, and Loughner’s ability to purchase a firearm even after admitting to the federal government of his drug abuse, will you examine the implementation of NICS Improvements Amendments Act to ensure it is serving its intended purpose?

**Response:**

9. Since January, 29 police officers have been killed which amounts to an increase in fatal police shootings of more than 50 percent over last year. Of the 29 officers fatally shot this year, at least 20 were killed by individuals who were actually barred by federal law from possessing guns.

A. Do you support broader use of the federal background check system to prevent such violence?

**Response:**

B. How are the Department's public safety responsibilities impacted by the loophole in law that allows a person to buy a gun from a private seller with no background check?

**Response:**

10. As you know, I am the lead sponsors of the Fix Gun Checks Act. I believe it provides common sense ways to ensure dangerous people cannot purchase guns – first, by making sure all these names are in the NICS database and second, by requiring virtually everyone goes through the background check system.

Do you agree that this is a common sense approach to ensuring dangerous people can't access guns?

**Response:**

## QUESTIONS POSED BY SENATOR WHITEHOUSE

11. With gas prices in Rhode Island and across the country approaching or exceeding \$4 per gallon, we need to make sure we are doing everything we can to ease the burden on consumers at the pump. I was pleased to see that you recently appointed an Oil and Gas Price Fraud Working Group to look into illegal activity in the energy markets. I hope the Working Group, and the Department, will ensure that fraud, collusion, and manipulation, do not contribute to price-gouging in this essential market.

A. Please provide an update on the Working Group's progress, and the timeline for completion of its work.

Response:

B. Do the Working Group and Department have sufficient resources to identify and prosecute misconduct in the energy markets?

Response:

C. Does the Department need new statutory tools to deter and eliminate fraud or price-gouging in the gas markets?

Response:

12. Unfortunately, because of rising healthcare costs, some are urging us to do away with Medicare as we know it. The House of Representatives recently passed a Republican Budget, which proposes privatizing Medicare and requiring seniors to pay the majority of their health expenses with their own money. Estimates suggest that this proposal would end up forcing a typical, 65 year-old senior to pay on average \$12,500 each year in out-of-pocket expenses starting in 2022. In my home state of Rhode Island, where the average senior only gets about \$13,600 per year from Social Security, that would be an exercise in poverty creation. I believe we can protect and strengthen Medicare for our seniors, in part by making sure we do not lose Medicare dollars to fraud and abuse. Last year, I worked on bipartisan Medicare fraud-fighting legislation that was signed into law as part of the Small Business Jobs Act. The law requires Medicare to adopt state-of-the-art technology – predictive modeling systems currently used by the credit card and banking industries – to identify fraudulent claims and billing patterns before taxpayer funds are spent.

A. Please provide an update on the scope of the threat to Medicare's finances from fraud and the success of the Department's Medicare fraud prosecutions to date.

**Response:**

- B. Is the Department of Justice working with counterparts at the Department of Health and Human Services to use the predictive modeling systems required by law to limit Medicare fraud, in order to protect the program's finances and ensure its continued viability for our seniors?**

**Response:**

- 13. The recent financial crisis has done great harm to the American people. Thousands of families in Rhode Island and elsewhere have lost their homes, jobs, or retirement savings as a consequence of this crisis. The Financial Crisis Inquiry Commission recently released its report on the causes of the crisis. It found that there were "stunning instances of governance breakdown and irresponsibility" in several major financial institutions, and concluded that the crisis resulted from "a systemic breakdown in accountability and ethics." The Commission wrote that "we clearly believe the crisis was a result of human mistakes, misjudgments, and misdeeds" and "that specific firms and individuals acted irresponsibly." In light of this, I have been surprised at the paucity of major prosecutions stemming from this crisis. Are there obstacles to holding wrongdoers in the financial crisis accountable? Is there a need for additional resources or more robust statutory tools to prosecute this type of conduct?**

**Response:**

- 14. What is the Department's current standard for prosecution of medical marijuana cases? In particular, what is the standard with respect to medical marijuana compassion centers sanctioned by state law?**

**Response:**

- 15. I understand that the Department's Inspector General (IG) found that the current encryption methods used by many of the Department's tactical communications systems are vulnerable to amateur hacking attempts that allow communications to be intercepted by unauthorized parties, thereby jeopardizing operations and investigations. The IG also found cases where agents had to interrupt surveillance operations in order to manually reprogram their radios with updated encryption keys. Can you let us know what the Department has done to address these concerns? The IG stated that "if IWN is not implemented DOJ will miss a critical opportunity to provide more effective communications support to its law enforcement agents in the field." Do you share that concern?**

**Response:**



**QUESTIONS POSED BY SENATOR KLOBUCHAR**

16. **Last November, the FBI searched several homes in Chicago and Minneapolis, and nineteen individuals – including several Minnesotans – were subpoenaed to appear before a grand jury.**

**Many Minnesotans have questions about these searches and about the scope of surveillance being performed by the FBI. Understanding that investigations may be ongoing, will the Department of Justice work with community members to address their concerns?**

**Response:**

## QUESTIONS POSED BY SENATOR FRANKEN

17. On April 29, 2011, the Department reported that the FBI made 24,287 National Security Letters (NSLs) requests for information pertaining to 14,212 U.S. persons. This is a substantial increase from the level reported in 2009. Can you explain what accounts for this substantial increase in NSLs requests?

Response:

18. The Office of Legal Counsel (OLC) is considered to be the Supreme Court of the Executive Branch, and absent judicial review, OLC's advice is the final word on many pertinent legal issues. Unlike Supreme Court decisions, OLC memos are regularly not made public. Why not make all OLC memos public, except for those very limited parts of any memo that must remain classified for national security reasons? At a minimum, shouldn't the existence of all OLC memos on significant subjects be made public?

Response:

19. You recently announced that Khalid Sheikh Mohammed and four others would be tried in military commissions at Guantanamo instead of in federal courts. Does that decision reflect any lack of confidence on your part in our federal criminal justice system's ability to try terrorists?

Response:

20. Several weeks ago, a member of Congress said that there was a lack of cooperation from the Somali community after a very small number of members of that community went back to Somalia to train with al Shabaab. Both Secretary Napolitano and FBI Director Mueller, however, made clear in previous hearings that the Somali community is cooperating with law enforcement, and Director Mueller said the FBI is actively working to recruit more Somalis as field agents for the FBI. Do you agree that it is essential that we encourage and recruit members of key communities like the Somali community to actually become law enforcement officers, prosecutors, and analysts at the Department of Justice?

Response:

21. The Supreme Court recently handed down *AT&T v. Concepcion*, which affirmed AT&T's ability to bar customers from bringing a class action through use of an arbitration clause. Although the Department didn't take a position on the *Concepcion* case, do you agree that forced arbitration clauses and class action bans make it harder for Americans to seek justice in our courts?

Response:

## QUESTIONS POSED BY SENATOR GRASSLEY

### Prosecution of Leaks of Classified National Security Information

22. Two weeks ago, it was reported that the Justice Department had notified a former Justice Department attorney—Thomas Tamm—that that it was no longer investigating him for leaking classified information to *The New York Times*. This announcement surprised many because Tamm had publicly admitted he revealed classified information in a series of phone calls with reporters at *The New York Times*. This information ultimately was printed and revealed the existence of the Terrorist Surveillance Program.

Attorney General Holder, you have stated publicly that “to the extent that we can find anybody who was involved in breaking the law...they will be held accountable.” At the hearing, you mentioned that the decision not to prosecute Tamm was “done on the merits by career professionals within the – within the Department of Justice.”

- A. Which offices at the Department signed off on the decision not to criminally prosecute Thomas Tamm?

Response:

- B. What are some of the possible reasons the Department would choose not to prosecute an individual who admits revealing classified information?

Response:

- C. What message does it send to other potential leakers when the Department fails to prosecute an individual who admits leaking classified information?

Response:

- D. If the Department won't prosecute an individual who admits knowingly leaked classified information, how can we have any confidence that the Department will prosecute the harder cases, such as Wikileaks?

Response:

### Double Standard for Prosecution of Department of Justice Employees that Leak Classified Information

23. In addition to Mr. Tamm, the Justice Department has sought to protect the identity of two Department employees who received formal warnings for leaking classified information to the media in 1996.

**One individual was an assistant director in charge at the FBI and the other an Assistant United States Attorney, who was detailed as the head of a DOJ component. They were both subjected to internal sanction by the Department's Office of Professional Responsibility. However, DOJ objected to releasing their names in response to a FOIA inquiry earlier this year.**

**In another, more recent example, the Justice Department has supposedly been investigating the leak of sensitive information from the Amerithrax investigation. That leak led to the Department paying out a multi-million dollar settlement for revealing the identity of a suspect who turned out not to be the perpetrator.**

**Based upon these examples, it appears that there may be a double standard at the Department when it comes to prosecuting those who leak classified information. These examples show where the Department took little or no action on DOJ employees, while criminally prosecuting a former State Department employee, a former CIA employee and a former NSA employee.**

**A. Do you believe there is a double standard for prosecuting Department employees that leak classified information?**

**Response:**

**B. How do you explain this perception of a double standard for not prosecuting Department employees that leak classified information?**

**Response:**

**C. Please provide the Committee with a list of all Department personnel sanctioned, either criminal or administratively, for leaking classified information over the last 10 years. Additionally, provide a list and summary of all OPR investigations into leaks of classified information by Department employees.**

**Response:**

**D. Will you support an independent review by the Inspector General of the decisions not to prosecute Department employee that leak classified information? If not, why not?**

**Response:**

**Integrated Wireless Network (IWN) Contract**

**24. It was reported two weeks ago that the Department has suspended work on the Integrated Wireless Network (IWN). This program began in 2002 and was designed to integrate all wireless radios for federal law enforcement. This was a key recommendation of the 9/11 Commission.**

To date, the Department has spent hundreds of millions of dollars on the program and it now appears that the program will end without completing the stated goal. In fact, it sounds like the program hasn't even succeeded in completing work in the national capital region as originally planned.

On top of that, what work was done didn't include agencies from the Department of Homeland Security. From the looks of it, this program is just another in the long line of failed government procurements for information technology. I want to know why this program failed and why so much taxpayer money was wasted on a system that isn't going to work.

- A. Would you support a top to bottom review of the Integrated Wireless Network to determine why the program failed to complete a nationwide interoperable system? If not, why not?

Response:

- B. There is some speculation that the Department will take the remaining money that was appropriated as part of the FY2011 continuing appropriations bill and use it to provide a sole source contract to purchase radios that would not meet the original contract specifications. Will you support freezing any further purchases under this program until a top to bottom audit and evaluation of the program is complete? If not, why not?

Response:

- C. Do you support using sole source contracts as a method of doling out congressional funding for the IWN project? If so, please explain how the use of sole source contracts meets the requirements outlined in the original IWN program.

Response:

- D. The Inspector General warned in 2007 that, "Despite over 6 years of development and more than \$195 million in funding for IWN, apart from one pilot system DOJ law enforcement agents have received little in the way of new, secure, compliant radio equipment through IWN." Now that you have suspended the IWN contract, what do the American taxpayers have to show for the project?

Response:

- E. This program sounds an awful lot like the failed information technology programs at the FBI. What is it going to take for the Department of Justice to get these contracts done on time and on budget?

Response:

## Defense of Marriage Act and Attorneys for Guantanamo Detainees

25. General Holder, you commented last week that Paul Clement should be praised and not criticized for representing the House in arguing for the constitutionality of the Defense of Marriage Act. That representation was made necessary, by the way, by your refusal to continue the Justice Department's defense of the statute. Clement's previous law firm had been attacked by some who believed that it was wrong for it to defend the law. You, however, and I agree with you, stated that "those who were critical of him for taking that representation—that criticism is very misplaced."

However, you also went on to compare the criticism of Mr. Clement to criticism of Justice Department lawyers who had defended Guantanamo detainees while in private practice. You said, "The people who criticized our people at the Justice Department were wrong then, as are the people who criticized Paul Clement for taking the representation that is going to continue."

These two matters are apples and oranges. Mr. Clement had agreed to represent a client and was rightly offended that his former firm, as he understood the situation, after agreeing to that representation, bowed to political pressure in dropping that client. He acted in accord with the highest principles of professionalism.

I certainly believe that the Guantanamo detainees were entitled to be represented, and, indeed, there was no shortage of attorneys who offered to represent them. When some of those attorneys joined the Justice Department, I and others who criticized them did not so for having represented those detainees in the past. We objected to the conflict of interest that was posed by their working on detainee issues at the Department of Justice on behalf of the American people after having represented Guantanamo detainees on the opposite side of the same issues.

Neither Paul Clement nor King & Spaulding had any conflict of interest that should have kept them from continuing to represent the House in support of DOMA. Equating criticism of Mr. Clement's representation of the House to criticism of Guantanamo detainee lawyers now working on those issues at the Department of Justice misses the point entirely. Mr. Clement undoubtedly acted in conformity with the highest ethical standards. The actions of the Department of Justice attorneys, by contrast, could represent an unethical conflict of interest, to the detriment of the American people.

- A. Do you see the difference between criticizing a law firm or attorney in private practice for the unpopularity of the representation it is undertaking and criticizing Justice Department lawyers who have a conflict of interest from previously representing individuals whose interests are adverse to the Department? If not, please explain why.

Response:

- B. In responses to questions for the record at the April 2010 hearing you stated, “Given the size of the Department and the number of attorneys in the Department, it is not practical and would not be useful to notify all employees of conflicts. In general, notice of recusals is provided only with regard to specific pending matters, such as when a lawyer who would ordinarily work on a case, or who is asked to do so, is unable to do so due to a conflict.” How many attorneys at the Department of Justice have been admonished or reprimanded by the Office of Professional Responsibility (OPR) for failing to disclose conflicts of interest over the last 5 years? Please provide summaries of any such violations found by OPR.**

**Response:**

**Office of Legal Policy**

- 26. There has been a hiring freeze in effect at the Department of Justice since January 21, 2011. Notwithstanding the freeze, it is my understanding that hiring can occur if the Attorney General authorizes such hiring.**

**One of the Department’s components is the Department’s Office of Legal Policy, headed by Assistant Attorney General Christopher Schroeder. This is a small office at DOJ, with only around 25 lawyers. One attorney who recently left OLP had so little work assigned that after the attorney informed OLP’s chief of staff that he was available to take on more work, she responded by thanking the attorney for the email, stating that it was good to know of the situation, and by assigning very little additional work.**

**Nonetheless, it has come to my attention that OLP asked to hire four new attorneys despite the hiring freeze, and that you approved the request. I understand that two attorneys have left OLP, but given the hiring freeze, the important work that other components are performing without hiring new attorneys, the huge percentage increase in the number of attorneys sought at OLP, and the objective evidence that even the previously smaller number of attorneys were not being fully utilized, how can your approval of Assistant Attorney General Schroeder’s request for four additional attorneys not be considered a waste of valuable taxpayer resources?**

**In addition, it has come to my attention that Mr. Schroeder, while a nominee for Assistant Attorney General, insisted on the appointment of a particular employee, who to the knowledge of the career employees, produced no work. He did not come to work two days per week at a time when OLP had no policy concerning telecommuting. In the entire month of December, 2009, this employee did not spend a single day at his OLP office. The OLP career attorneys allowed him to do so if he complied with various requirements that documented the work that he produced. He did not do so. After one year of producing no work at OLP, this employee left DOJ for a position in private life, whereupon Assistant Attorney General Schroeder sought to provide this individual with a consulting contract.**

- A. Is this individual an example of DOJ employing, as you said in a recent speech, “some of the world’s most ... dedicated lawyers... and public servants”?

**Response:**

- B. Will you please undertake an internal review of the functions of OLP and whether its staffing levels are appropriate in light of these examples of underutilized attorneys and the new hires that were made as exceptions to the hiring freeze? If not, why not?

**Response:**

- C. Do you believe that an OIG or OPR investigation is warranted into OLP’s personnel practices?

**Response:**

**U.S. v. Booker and Sentencing Guidelines**

27. I am concerned that the Supreme Court’s decisions in United States v. Booker and subsequent cases have greatly compromised the effectiveness of the Sentencing Guidelines in reducing unwarranted sentencing disparities among criminal defendants and in assuring that criminal defendants receive appropriate sentences given the severity of the crimes that they committed. Recently, Chairman Leahy sent the Department a letter seeking its views on a proposal by Judge Sessions, the former chairman of the Sentencing Commission, to legislatively overturn Booker while respecting constitutional limitations.

Although I appreciate that I was copied on the response that the Department provided to Chairman Leahy, I was very disappointed in the content of the letter. It provided no clear statement whether the Department supported overturning Booker under Judge Session’ approach or any other.

Would you please specify in unambiguous terms (1) whether the Department favors legislation that would overturn Booker, and if so (2) whether the Department favors doing so through an approach that is similar to that which Judge Sessions has suggested, and (3) whether the Department will be sending legislation to the Congress in the next six months to accomplish the objective of overturning Booker or whether it recommends that Congress begin the process without awaiting any further input from the Department.

**Response:**

**Corruption Investigations**

28. Following the decision of the United States Court of Appeals for the District of Columbia Circuit in United States v. Rayburn House Office Building, the



Department of Justice warned that the effect of the ruling would be to “seriously and perhaps fatally” undermine Congressional corruption investigations by cabining the ability of FBI to undertake wiretaps and searches. Since then, it has been publicly reported that at least four of the Department’s criminal investigations of members of Congress have been impeded by Speech or Debate Clause claims.

A. Are these reports accurate?

Response:

B. What steps is the Department taking to make sure that the Speech and Debate Clause does not impede valid criminal investigations of Members of Congress?

Response:

C. Is any legislation needed to ensure that Members of Congress can be held accountable for any criminal acts that they commit?

Response:

#### Medical Marijuana Policy

29. Marijuana is a dangerous drug that is illegal under the Controlled Substances Act. In an October 19, 2009, memorandum entitled “Memorandum for Selected United States Attorneys” (Ogden Memo), Deputy Attorney General David Ogden stated that federal drug enforcement efforts “should not focus federal resources in your states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana” despite the fact that possession and distribution of marijuana violates federal laws.

States have relied on this memo in passing legislation legalizing medical marijuana in direct contravention of federal law. Recently, several United States Attorneys have issued letters indicating they intend to vigorously prosecute violations of the Controlled Substances Act against large-scale distributors and state regulators who approve and regulate the sale of medical marijuana. These letters and memos seem to point to a change in policy away from the Ogden Memo at the Department of Justice. However, some of these memos by US attorneys indicate that the Ogden memo is still in effect. Based on these memos, it appears states are being sent mixed signals as to whether or not your department will enforce the law.

A. Is the Ogden memo’s indication that the Justice Department will not prosecute drug offenders that comply with state law undermined by these recent memos and letters from US Attorneys? If so, to what extent? If not, how do you reconcile the two competing policy pronouncements?

Response:

- B. To what extent will the Department prosecute drug offenders who violate federal law, but are in compliance with state law?**

**Response:**

- C. Will the Department allow United States Attorneys to prosecute state regulators who approve of violations of federal drug laws that are in compliance with state law?**

**Response:**

- D. The Department seems to be sending mixed signals about the enforcement of federal drug laws. How do you intend to clarify the Department's policy on enforcing federal drug laws? Will you provide direction to United States Attorneys as to what offenses to prosecute? If not you, who at the Department will clarify this policy?**

**Response:**

**Domestic Communications Assistance Center**

- 30. The President's fiscal year 2012 budget requests \$15 million to establish the Domestic Communications Assistance Center (DCAC). This center, under the control of the Federal Bureau of Investigation (FBI), will allegedly establish an effective relationship with the communications industry and assist state and local law enforcement by facilitating the sharing of information. The FBI also claims the DCAC will support initiatives aimed at solving Communications Assistance for Law Enforcement Act (CALEA) issues. Furthermore, FBI Chief Counsel Valerie Caproni testified before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security that "due to the immediacy of these issues, DOJ is identifying space and building out the facility now." The FBI, attempting to justify the need for the DCAC, has also briefed Senate staff members that communications industry members don't want a relationship with so many law enforcement entities and instead would prefer one specific point of contact.**

- A. Do you feel it is appropriate for the Department of Justice to begin "identifying space and building out the facility now" given that the fiscal year 2012 budget has not yet been agreed upon?**

**Response:**

- B. Provide the location and current costs associated with the identification and "building out" of the DCAC.**

**Response:**

- C. The Department of Justice, Office of Inspector General recently released a report stating that the FBI agents routinely assigned to units investigating**

cybercrimes lacked the necessary experience. Specifically, the OIG supported a previous Government Accountability Office review which stated, “the agents who replaced experienced cyber crime investigators often had little or no cyber crime experience or background.” Moreover, the report also found that the FBI routinely withheld pertinent information from other member law enforcement agencies of the FBI led National Cyber Investigative Joint Task Force.

1. Is it appropriate to construct the DCAC under the control and leadership of the FBI when according to the Inspector General and the GAO; the FBI lacks the skills necessary to investigate cyber-attacks?

Response:

2. If the FBI withholds relevant information from agencies they partner with on task forces, how are we in Congress expected to believe that the FBI is the best agency to undertake control and coordination of the DCAC?

Response:

3. Given the current financial difficulties the federal government faces, why should Congress fund and construct the DCAC given that the Inspector General found serious deficiencies in the FBI’s ability to share information?

Response:

4. Do you think there a better agency in the federal government to handle the proposed capabilities of the DCAC? Should it be coordinated by a working group instead of a single federal agency?

Response:

### Freedom of Information Act – Office of Information Policy

31. According to its website:

The Office of Information Policy (OIP) is responsible for encouraging agency compliance with the Freedom of Information Act (FOIA) and for ensuring that the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines are fully implemented *across the government*. OIP develops and issues policy guidance to *all agencies* on proper implementation of the FOIA. ... OIP provides individualized guidance to agencies on questions relating to the application of the FOIA, regularly conducts training programs for FOIA personnel across the government, including specialized agency

programs, and provides general advice to the public on use of the FOIA. In addition to its policy functions, OIP *oversees agency compliance with the FOIA....*

(Emphasis added).

Thus, the OIP's responsibilities are not limited to the Department of Justice ("DOJ"). It (and therefore the DOJ) is responsible for "oversee[ing]" compliance with the Freedom of Information Act ("FOIA") by all agencies "across the government."

A. Do you agree that the DOJ is responsible for insuring compliance with the FOIA by all agencies "across the government"?

Response:

B. If you disagree, how do you reconcile your disagreement with the statements on the OIP's/DOJ's website? And if you disagree, identify the government agency that is responsible for "oversee[ing]" compliance with the FOIA by all agencies "across the government."

Response:

Freedom of Information Act – Department of Homeland Security

32. Last year, Ted Bridis of *The Associated Press* uncovered that for at least a year, the Department Homeland Security ("DHS") was diverting requests for records to senior political advisers, who delayed the release of records they considered politically sensitive.

Specifically, the AP's July 21, 2010 article revealed that in July of 2009, the Secretary Napolitano's political staff introduced a directive at the DHS requiring a wide range of information to be vetted by political appointees, no matter who requested it. Under the directive, career employees were ordered to provide Secretary Napolitano's political staff with information about the people who asked for records — such as where they lived, whether they were private citizens or reporters — and about the organizations where they worked.

At a March 15, 2011 hearing before the Senate Judiciary Committee, Melanie Pustay, the Director of the OIP, testified that "if" the AP's story was true, the DOJ would have serious concerns. She also testified that the DOJ has not investigated the DHS's political vetting policy.

On March 31, 2011, the Office of the Inspector General at the DHS released a report on the DHS' implementation of the FOIA. The report is carefully written in

measured language. Nevertheless, in relevant part, in connection with the political vetting policy, the report states:

We also determined that the Office of the Secretary has had unprecedented involvement in the *Freedom of Information Act* process beginning in 2009. For several hundred requests deemed significant, components were required to provide for headquarters review all the material they intended to release. The department's review process created inefficiencies that hampered full implementation of the *Freedom of Information Act*. We evaluated a *Freedom of Information Act* release about the review process, and identified some redactions we believe may have been inappropriate.

The AP's article is now 10 months old. It was based on and quoted DHS emails. Those emails either say what they say or they don't.

- A. By the time of the Senate Judiciary hearing on March 15, 2011, the AP story was nine months old. As noted above, the story was based on and quoted DHS emails. Those emails either say what they say or they do not. Given the DOJ's responsibility for "oversee[ing]" compliance with the FOIA, didn't the DOJ have a duty to know whether or not the AP story was "true" long before March 15, 2011?

Response:

- B. Do you agree that at this point there is no question that the AP's story is "true"?

Response:

- C. If you agree that the AP story is "true," do you have serious concerns about the actions of DHS political actions reported on by the AP? If not, why don't you? If you do have serious concerns, what are you and the DOJ doing to resolve those concerns?

Response:

- D. (i) Was the DOJ aware of the DHS's political vetting policy prior to the AP's reporting on it? (ii) If so, why didn't the DOJ direct the DHS to end the policy and to properly comply with the FOIA?

Response:

- E. Has the DOJ obtained copies of the DHS emails at issue? If not, why not?

Response:

**F. Did the DOJ ever review the DHS emails? If not, why not?**

**Response:**

**G. Does the DOJ know whether the DHS withheld any emails or other documents which were responsive to the AP's FOIA request?**

**Response:**

**H. Was any consideration at all given by the DOJ to commencing an investigation of the DHS's political vetting of FOIA requests? If so, describe in detail what consideration was given. If any consideration was given and any documents were prepared by the DOJ in connection with that analysis, provide copies of those documents.**

**Response:**

**I. Who made the decision that the DOJ would not conduct an investigation of the DHS's political vetting policy? If you did not make the decision, why wasn't this decision made by you?**

**Response:**

**J. Describe in detail the justification for and reasoning behind the DOJ's conclusion that an investigation should not be commenced. If any documents were created by the DOJ in connection with its decision not to investigate the DHS's political vetting policy, provide copies of those documents.**

**Response:**

**K. Have you or any member of your staff had any conversations with the President or any member of his staff regarding the DHS's political vetting policy? If so, identify the individuals involved in the conversation(s) and the date(s) on which the conversation(s) took place. Also, set forth the content of the conversation(s) in as much detail as possible.**

**Response:**

**L. Has any member of the DOJ or any other government agency questioned Secretary Napolitano about her knowledge of the events reported on by the AP and her involvement and knowledge of the political vetting policy? If not, why not? If so, set forth in detail the circumstances of the questioning, the questions asked and Secretary Napolitano's responses.**

**Response:**

**M. Have you had any conversations with Secretary Napolitano about the political vetting policy at DHS and the events reported on by the AP? If so,**

set forth in detail the circumstances of the conversation(s) and what Secretary Napolitano's said.

**Response:**

- N. Based on the AP's article and assuming it is entirely accurate, what laws were violated and what are the potential penalties for those violations?

**Response:**

- O. Other than the Inspector General's Office at the DHS, has any unit of the federal government investigated the DHS's political vetting policy? If so, which unit and what conclusions were reached? If any documents were prepared in connection with any other investigation, provide copies of those documents.

**Response:**

- P. Has any disciplinary action been taken against the political appointees on Secretary Napolitano's staff who created and/or implemented the political vetting policy at the DHS? If not, why not?

**Response:**

- Q. Assuming that it has actually been discontinued, what corrective actions have been taken by the DOJ to prevent the DHS's political vetting policy from being repeated at the DHS or any other agency?

**Response:**

- R. Since March 15, 2011, has DOJ commenced an investigation of the political vetting policy implemented at the DHS? If so, set forth in detail the circumstances involved in the decision to commence an investigation at this point in time, including identifying the individuals involved in making the decision. Also, if so, set forth in detail what has taken place so far and what remains to be done with the investigation. If any documents have been created in connection with the decision to commence an investigation and the investigation, provide copies.

**Response:**

**Freedom of Information Act – Political Vetting**

33. The reports of the DHS's political vetting policy are disturbing to say the least. Nevertheless, based on Ms. Pustay's testimony, it does not appear that the DOJ has done anything in response to the DHS's political vetting of FOIA requests.

- A. Describe in detail what level of disregard or violation of the FIOA by political appointees would need to occur before the DOJ commenced an investigation?

**Response:**

- B. Given the DOJ's responsibility to "oversee" compliance with the FOIA by all agencies "across the government," do agree that the implementation DHS's political vetting policy or its continuance for one year constitutes a failure by the DOJ to fulfill its duties?

**Response:**

- C. If you agree, describe how the DOJ is being held accountable for its failure and what, if anything, you are doing to guarantee that the failure will not occur again.

**Response:**

- D. If you disagree, how do you characterize DOJ's failure to detect and correct the DHS's political vetting policy?

**Response:**

**Freedom of Information Act – President Obama's and AG Holder's Memoranda**

34. On his first full day in office, President Obama declared openness and transparency to be touchstones of his administration, and ordered agencies to make it easier for the public to get information about the government. Specifically, he issued two memoranda designed to usher in a "new era of open government."

The President's memorandum on FOIA called on all government agencies to adopt a "presumption of disclosure" when administering the law. He directed agencies to be more proactive in their disclosure and to act cooperatively with the public. To further his goals, the President ordered you to issue new FOIA guidelines for agency heads.

Following the President's order, you issued FOIA guidelines in a memorandum dated March 19, 2009. Your memo rescinded former Attorney General Ashcroft's 2001 pledge to defend agency FOIA withholdings "unless they lack[ed] a sound legal basis." Instead, you stated that the DOJ would now defend withholdings only if the law prohibited release of the information or if the release would result in foreseeable harm to a government interest protected by one of the exemptions in the FOIA. In relevant part, your memo states:



As President Obama instructed in his January 21 FOIA Memorandum, 'The Freedom of Information Act should be administered with a clear presumption: *In the face of doubt, openness prevails.*' This presumption has two important implications.

First, an agency should not withhold information simply because it may do so legally. *I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.*

Second, ... [a]gencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information....

At the same time, the disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. *But as the President stated in his memorandum, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." ...*

*... Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests. Each agency must be fully accountable for its administration of the FOIA.*

*I would like to emphasize that responsibility for effective FOIA administration belongs to all of us—it is not merely a task assigned to an agency's FOIA staff. We all must do our part to ensure open government.*

(Emphasis added).

- A. Did the DHS's political vetting policy and the conduct of Secretary Napolitano's political staff who authored the directive and carried out the policy, violate the President's and your memoranda? And if so, why hasn't some disciplinary action been taken?

Response:

- B. If you do not believe that the political vetting policy at the DHS violated the President's and your memoranda, how do you reconcile the DHS's policy

**and the conduct of Secretary Napolitano's staff with the instructions set forth in the President's and your memoranda?**

**Response:**

- C. If your political staff at the DOJ (including your Chief of Staff and/or Deputy Chief of Staff) implemented the same political vetting policy that the DHS did and carried out that policy for one year, as reported on by the AP, would you know about it?**

**Response:**

- D. If your political staff at the DOJ (including your Chief of Staff and/or Deputy Chief of Staff) had implemented the same political vetting policy that the DHS did and carried out that policy for one year, as reported on by the AP, how would you have reacted?**

**Response:**

- E. Did Secretary Napolitano know about the political vetting policy at the DHS before it was exposed by the AP's article? If you do not know, is the DOJ or any other unit of the government currently investigating this question?**

**Response:**

- F. Is the DOJ currently monitoring or "oversee[ing]" the DHS's compliance with the FOIA? If so, describe in detail how that is being done. If not, why not?**

**Response:**

**Freedom of Information Act – Civil Rights Division**

- 35. In a February 10, 2011 blog posting, Christian Adams set forth his detailed analysis of FOIA logs for the DOJ's Voting Section in its Civil Rights Division. Mr. Adams is a former DOJ attorney. His review of the logs reveals that requests from certain civil rights groups are often given same day turn-around. By contrast, requests from conservative groups faced long delays, if they are fulfilled at all. Indeed, according to Mr. Adams' analysis in no instance did a conservative or Republican requestor receive a reply in the time period prescribed by FOIA.**

**On March 1, 2011, Representative Frank Wolf questioned you about Mr. Adams' blog posting. You testified that you had looked into the issues and assured Congressman Wolf that there is no ideological component to how the DOJ answers FOIA requests. You maintained that Mr. Adams' analysis was misplaced and compared "apples to oranges."**

- A. Describe in detail the DOJ's investigation into the allegations made in Mr. Adams' article, including the date it commenced and the date it was completed.

**Response:**

- B. Who conducted the investigation?

**Response:**

- C. Who supervised the investigation?

**Response:**

- D. Were any political appointees involved in conducting or supervising the investigation?

**Response:**

- E. Were any political appointees at DOJ questioned in connection with the investigation?

**Response:**

- F. If a report has been written in connection with the investigation, provide a copy.

**Response:**

- G. If the investigation is ongoing, describe in detail what has been done to date and what remains to be done.

**Response:**

**Mr. Adams' blog posting identified 16 FOIA requests by groups perceived as liberal and 11 FOIA requests by groups or individuals perceived as conservatives or Republicans. Two of the 11 requests from conservatives or Republicans had received no reply. In order to accept your March 1, 2011, testimony, it would seem to mean that all of the FOIA requests from perceived conservatives or Republicans were "complex" and all of the perceived liberal FOIA requests were "simple."**

**Moreover, in connection with the FOIA hearing held before the Senate Judiciary Committee on March 15, 2011, Mr. Adams submitted written testimony. In relevant part, it states as follows:**

Attorney General Eric H. Holder, Jr. testified before an appropriations subcommittee chaired by Representative Frank Wolf on Tuesday, March 1, 2011. When confronted by Mr. Wolf with the data about the log which I described in the *Pajamas Media* story, the Attorney General claimed that there may be differing degrees of complexity in the differing FOIA requests. This is inaccurate. There is no difference in complexity in request for submission files created under Section 5 of the Voting Rights Act. The comparison is an “apples to apples” comparison.

Further contradicting the Attorney General’s testimony is the structure of the files in question. The Section 5 submission files are already pre-segregated between public and non-public content. The public and non-public content occupy literally different portions of the file folder. I have seen them myself. It takes hardly any effort whatsoever to access the requested Section 5 file, walk to a copier machine, and copy the public portion of the file and mail it to the requestor. The Attorney General should look more carefully at the issue, for he will discover different requests are being treated differently.

H. What is your response to Mr. Adams’ written statement?

Response:

Freedom of Information Act – Whistleblower Retaliation

36. On March 17, 2011, Ted Bridis of *The Associated Press* reported that Catherine Papoi, formerly the Deputy Chief FOIA Officer at the DHS was effectively demoted and denied a promotion. According to news reports, Ms. Papoi had complained to the Inspector General of the DHS about the political vetting policy implemented by Secretary Napolitano’s political staff. Also, according to news reports, the day after she spoke with investigators, Ms. Papoi was told that she was being replaced as the Deputy Chief FOIA at the DHS and was told to clear out her office. The adverse employment action taken against Ms. Papoi appears to be retaliatory. And it is sure to deter other career employees in all agencies from reporting misconduct about the handling of FOIA requests or any other misconduct.

A. Is the DOJ investigating DHS’ mistreatment of Ms. Papoi for potential employment retaliation, violation of statutes protecting whistleblowers and/or any other civil or criminal violation?

Response:

B. If so, identify which unit is conducting the investigation and whether any attorney conduction or supervising the investigation is a political appointee?

**Response:**

- C. If the DOJ is not conducting an investigation of DHS' treatment of Ms. Papoi, why is it not doing so?

**Response:**

**ATF Investigative Strategy Briefing Paper**

37. The Department of Justice wrote on February 4, 2011, in response to letters I sent on January 27 and January 31:

At the outset, the allegation described in your January 27 letter—that ATF “sanctioned” or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

Yet one briefing paper written by ATF Phoenix Field Office agents listed the investigative strategy of Operation Fast and Furious. The briefing paper, which was recently released by the House Oversight and Government Reform Committee states:

Currently our strategy is to *allow the transfer of firearms to continue to take place* in order to further the investigation and allow for the identification of additional coconspirators who would *continue to operate and illegally traffic firearms to Mexican DTOs* [Drug Trafficking Organizations] which are perpetrating armed violence along the Southwestern Border.

**Questions:**

- A. Have you read this briefing paper?

**Response:**

- B. Was it ever provided to the Deputy Attorney General's office or any other component of the Justice Department other than the ATF? If so, please describe the circumstances in detail.

**Response:**

- C. How does this document square with your Department's assertion that “ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico”?

**Response:**

- D. How does this document square with your Department's assertion that the whistleblower allegations are false?

**Response:**

- E. Why was this inaccurate information provided to the Senate Judiciary Committee?

**Response:**

- F. What steps were taken to verify the truth of the assertions in the February 4, 2011 letter before it was sent?

**Response:**

- G. Please list each official within DOJ and ATF who reviewed the draft letter and indicate whether that individual was aware of the briefing paper at that time.

**Response:**

38. **Genesis of Operation Fast and Furious**

**Questions:**

- A. When was Operation Fast and Furious first conceived?

**Response:**

- B. Who first suggested the methods of investigation employed in Operation Fast and Furious, specifically the strategy of "*allow[ing] the transfer of firearms to continue to take place in order to further the investigation*"?

**Response:**

- C. Which officials at ATF and DOJ are responsible for authorizing the strategy of "*allow[ing] the transfer of firearms to continue to take place in order to further then investigation*"?

**Response:**

- D. Did any investigative methods in Operation Fast and Furious require the approval of the Department of Justice? If so, please describe in detail the method and the persons providing authorization.**

**Response:**

- E. If no investigative methods used in Operation Fast and Furious required the approval of the Department of Justice, what is the process used to authorize such methods, and who conducts it?**

**Response:**

**39. U.S. Attorney's Office Involvement**

**Questions:**

- A. When did U.S. Attorney Dennis Burke first become aware of Operation Fast and Furious and the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further then investigation"?**

**Response:**

- B. What was his subsequent involvement in Operation Fast and Furious?**

**Response:**

- C. When did Assistant U.S. Attorney Emory Hurley first become aware of Operation Fast and Furious and the strategy of "*allow[ing] the transfer of firearms to continue to take place* in order to further then investigation"?**

**Response:**

- D. What was his subsequent involvement in Operation Fast and Furious?**

**Response:**

- E. As of May 10, 2011, is the U.S. Attorney's Office for the District of Arizona listed as the point of contact for any Phoenix Police Department criminal case? If so, please describe each case and explain why a Phoenix AUSA is listed as the point of contact on each case.**

**Response:**

- F. I understand that the U.S. Attorney’s Office for the District of Arizona has been unwilling in recent history to prosecute firearm trafficking or straw purchase cases in which they did not have the possession of the firearm because of a belief that case law required it as “the *corpus* of the crime.” This policy was followed even in cases where there was a signed confession from the straw purchaser or trafficker. However, I also understand that other districts, including others in the 9th circuit, do not take that position. Is it the Justice Department’s understanding possession of the firearm is required to prosecute a straw purchaser or trafficker? If not, please explain why this policy is enforced in the District of Arizona.

**Response:**

- G. How many cases have been declined for prosecution by U.S. Attorney’s Office in the District of Arizona on this basis? How many have been declined in each of the other districts on this basis?

**Response:**

40. **Federal Firearms Licensees**

On April 13, 2011, I provided DOJ emails in which Federal Firearms Licensees (FFLs) expressed concerns to ATF about the dangers of engaging in suspicious sales to further the ATF’s investigation. ATF arranged at least one meeting between at least one FFL and the U.S. Attorney’s Office for the District of Arizona to discuss these concerns.

**Questions:**

- A. How many meetings did the U.S. Attorney’s Office for the District of Arizona have with FFLs to discuss similar concerns?

**Response:**

- B. Please describe in detail the dates, participants, and communications during any such meetings.

**Response:**

41. **ATF Acting Director**

**Questions:**

- A. When did Acting Director Kenneth Melson first become aware of Operation Fast and Furious and the strategy of “*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation”?



**Response:**

- B. How often was Acting Director Melson briefed on Operation Fast and Furious?

**Response:**

- C. When did you first speak to Acting Director Melson about Operation Fast and Furious? What was the context?

**Response:**

42. **Awareness of Operation Fast and Furious**

**Questions:**

When and how did you first learn of Operation Fast and Furious or the strategy of “*allow[ing]the transfer of firearms to continue to take place in order to further the investigation*”?

**Response:**

43. **Deputy Attorney General’s Office**

**Questions:**

When and how did any official in the Deputy Attorney General’s office first become aware of Operation Fast and Furious or the strategy of “*allow[ing] the transfer of firearms to continue to take place in order to further the investigation*”? Please provide a detailed answer for each official in that office.

**Response:**

44. **Criminal Division**

**Questions:**

- A. When and how did the Assistant Attorney General for the Criminal Division, Lanny Breuer, first become aware of Operation Fast and Furious or the strategy of “*allow[ing] the transfer of firearms to continue to take place in order to further the investigation*”?

**Response:**

- B. When and how did any other official in the office of the Assistant Attorney General for the Criminal Division first become aware of Operation Fast and Furious or the strategy of “*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation”? Please provide a detailed answer for each official in that office.

Response:

45. Other Awareness

Questions:

- A. Before the death of Border Patrol Agent Brian Terry, who else at the Justice Department headquarters knew about the existence of Operation Fast and Furious or the strategy of “*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation”?

Response:

- B. When and how did they become aware of it?

Response:

46. Priorities

When questioned about portions of the above matters at the House Judiciary Committee hearing last week, you repeatedly said that you were not sure or did not know the answer.

Questions:

Since your Department informed me on March 2, 2011, that you had asked the Acting Inspector General to evaluate the concerns that had been raised about ATF’s actions, you had at least two months to inquire into this matter. Other than referring this matter to the Acting Inspector General, what actions have you personally taken to inquire into Operation Fast and Furious or the strategy of “*allow[ing] the transfer of firearms to continue to take place* in order to further the investigation”—now that you are aware of it?

Response:

47. Connection of Terry Guns to Operation Fast and Furious

In your testimony before the House Judiciary Committee last week, you said that if the guns that were found at the murder scene of Border Patrol Agent Brian Terry had indeed come from the ATF's Operation Fast and Furious, a serious problem likely occurred. I identified for you in my February 9, 2011, letter the serial numbers of the two firearms recovered at Agent Terry's murder scene, as well as the fact that both were purchased by Operation Fast and Furious suspect **ATF** **ATF** on January 16, 2010.

Questions:

Given that the recently unsealed indictment of Manuel Osorio-Arellanes for his involvement in the murder of Border Patrol Agent Brian Terry confirms the serial numbers of two AK-47 variant rifles recovered at the murder scene, does the Department officially acknowledge that those two guns are connected to Operation Fast and Furious?

Response:

48. Recovery of Guns

At last week's hearing, I presented you with a chart regarding the firearms purchased by fifteen specific targets before and after they were identified in Operation Fast and Furious. This chart also identified the firearms recovered in the U.S. after the target was identified in the investigation. These fifteen targets were later indicted, but they are not the only suspects involved in Operation Fast and Furious.

Questions:

- A. For these fifteen defendants, what was the number of firearms they purchased that were recovered in Mexico after the suspects were identified in the investigation?

Response:

- B. What was the total number of firearms purchased by *all* suspects in Operation Fast and Furious (not just the fifteen on the chart) before they were entered in the investigation?

Response:

- C. What was the total number of firearms purchased by *all* suspects in Operation Fast and Furious (not just the fifteen on the chart) after they were entered in the investigation?

**Response:**

- D. For *all* suspects in Operation Fast and Furious (not just the fifteen on the chart), what was the number of firearms they purchased that were recovered in the U.S. after the targets were identified in the investigation?**

**Response:**

- E. For *all* suspects in Operation Fast and Furious (not just the fifteen on the chart), what was the number of firearms they purchased that were recovered in Mexico after the targets were identified in the investigation?**

**Response:**

- F. How many guns from *all* suspects in Operation Fast and Furious (not just the fifteen on the chart) were purchased after the targets were entered into the investigation but have not been recovered in the U.S. or Mexico?**

**Response:**

- G. Can the Department of Justice, the ATF, or any other agency under your oversight account for the whereabouts of any of these guns that have not been recovered in the U.S. or Mexico? If so, how many can be accounted for, and how many cannot? Please explain.**

**Response:**

**49. Recovery of Guns in Connection with Violent Crimes**

**Questions:**

- A. In addition to the two guns recovered at the Terry murder scene, how many of the guns connected to Operation Fast and Furious that have been recovered were recovered in connection with violent crimes in the U.S.? Please describe the date and circumstances of each such recovery in detail.**

**Response:**

- B. How many of the guns connected to Operation Fast and Furious that have been recovered were recovered in connection with violent crimes in Mexico? Please describe the date and circumstances of each such recovery in detail.**

**Response:**

**50. Accountability**

- A. If Acting Director Melson was fully informed of Operation Fast and Furious throughout the operation, do you believe he should be held accountable?**

**Response:**

- B. If the whistleblower allegations of allowing straw purchases of weapons in Operation Fast and Furious prove true and Acting Director Melson approved, condoned or remained complicit of these investigative techniques, should he be removed from his position of leadership at ATF?**

**Response:**

- C. If individuals in the Deputy Attorney General's office were aware that the ATF was not making every effort to interdict guns that have been purchased illegally and approved, condoned, or remained complicit regarding the ATF techniques of knowingly allowing straw purchases, do you believe they should be held accountable?**

**Response:**

- D. If individuals in the office of the Assistant Attorney General for the Criminal Division were aware that the ATF was not making every effort to interdict guns that have been purchased illegally and approved, condoned, or remained complicit regarding the ATF techniques of knowingly allowing straw purchases, do you believe they should be held accountable?**

**Response:**

- E. Who do you believe should be held accountable for the "major errors" of Operation Fast and Furious?**

**Response:**

**51. ATF Leadership in Phoenix**

**I understand that the ATF Phoenix Field Office has temporarily assigned a new Special Agent in Charge and two new Assistant Special Agents in Charge. That constitutes the top three leadership positions in that office.**

**Questions:**

- A. Why was this new leadership assigned?**

**Response:**

- B. Has this ever happened before in the ATF? Please provide supporting documentation of these changes in the Phoenix field office leadership in addition to any other similar changes in ATF leadership.**

**Response:**

- C. Does this change in leadership represent an acknowledgement that mistakes have been made by those who were replaced? Please explain.**

**Response:**

- D. Will the ATF officials who were temporarily replaced return to their posts or will they permanently be replaced in the Phoenix Field Office?**

**Response:**

- E. Where will Phoenix Special Agent in Charge (SAC) William Newell be assigned after his temporary Headquarters assignment ends?**

**Response:**

**52. Murder Weapon of ICE Agent Jaime Zapata**

According to a Justice Department press release from March 1, 2011, one of the firearms used in the February 15 murder of U.S. Immigration and Customs Enforcement (ICE) Agent Jaime Zapata was traced by the ATF to Otilio Osorio, a Dallas-area resident. Otilio Osorio and his brother Ranferi Osorio were arrested at their home, along with their neighbor Kelvin Morrison, on February 28. According to that same press release, the Osorio brothers and Morrison transferred 40 firearms to an ATF confidential informant in November 2010. Not only were these three individuals not arrested at that time, according to the press release their vehicle was later stopped by local police. Yet the criminal indictment in *United States v. Osorio*, filed March 23, 2011, is for straw purchases alone and references no activity on the part of the Osorio brothers or Morrison beyond November 2010.

**Questions:**

- A. Why did the ATF not arrest Otilio and Ranferi Osorio and their neighbor Kelvin Morrison in November?**

**Response:**

- B. Was any surveillance maintained on the Osorio brothers or Morrison between the November firearms transfer and their arrest in February?**

**Response:**

- C. Did any ATF personnel raise concerns about the wisdom of allowing individuals like the Osorio brothers or Morrison to continue their activities after the November weapons transfer? If so, how did the ATF address those concerns?**

**Response:**

- D. Although the gun used in the assault on Agent Zapata that has been traced back to the U.S. was purchased on October 10, 2010, how can we know that it did not make its way down to Mexico after the undercover transfer in November, when the arrest of these three criminals might have prevented the gun from being trafficked and later used to murder Agent Zapata?**

**Response:**

- E. Why should we not believe that this incident constitutes a further example, outside of the Phoenix Field Office and unconnected to Operation Fast and Furious, of the ATF failing to make arrests until a dramatic event is linked to a purchase from one of their targets, even when those targets are ultimately only charged for the same offenses the ATF was aware of months prior to their arrest?**

**Response:**

- F. Do you believe that it was appropriate for the ATF to wait until Agent Zapata was shot before arresting these individuals on February 28?**

**Response:**

**53. Earlier Knowledge of Zapata Murder Weapon Traffickers**

**The DOJ press release alludes to an August 7, 2010, interdiction of firearms in which including a firearm purchased by Morrison. Further documents released by my office make clear that not only did Ranferi Osorio also have two firearms in that interdicted shipment, ATF officials received trace results on September 17, 2010 identifying these two individuals.**

- A. What efforts did the ATF take in September to further investigate the individuals whose guns had been interdicted, including Morrison and Osorio?**

**Response:**

- B. When did law enforcement officials first become aware that Otilio Osorio purchased a firearm on October 10, 2010?**

**Response:**

- C. Had the ATF placed surveillance on the Osorio home in September or arrested Ranferi Osorio and Kelvin Morrison, isn't it possible that the ATF might have prevented Otilio Osorio from purchasing a weapon on October 10 with the intent for it to be trafficked?**

**Response:**

**54. Misconduct in the Civil Rights Division**

**I have been informed that DOJ employee Maura Lee, then an employee in the Voting Section of the Civil Rights Division, was caught breaking into other employees' e-mail accounts and disseminating personal information. I understand that at one point, the DOJ Office of Professional Responsibility authorized the searching of Lee's emails by her superiors, and that search turned up evidence that Lee had attempted to leak information to the Washington Post on a variety of issues.**

**Questions:**

- A. Are these charges regarding Maura Lee true?**

**Response:**

- B. Where these or similar allegations ever referred to DOJ OPR or to the OIG? If not, why not?**

**Response:**

- C. Why was such an employee transferred to the Office of the Inspector General?**

**Response:**

- D. What individual changes to the security protocols of the Civil Rights Division have taken place over the past five years? When was each change made?**

**Response:**

- E. Was one of those changes a result of the investigation of Maura Lee?**

**Response:**



**55. Housing Testing Program**

In 2008, a complaint was filed with the DOJ Office of the Inspector General (OIG) regarding Darryl Foster, then head of the Housing Testing Program in the Housing and Civil Enforcement Section of the Civil Rights Division. The OIG investigation involved allegations that Foster had engaged in an inappropriate relationship with the president of an organization over whom he had oversight responsibility for approving contracts with and requests for payments by the organization. Foster was demoted in May 2008 and reassigned to the Voting Section, also receiving a 7-day suspension of duration.

**Questions:**

- A. What were the specific findings of the OIG report?

**Response:**

- B. How large was the budget that Foster was responsible for overseeing as head of the Housing Testing Program?

**Response:**

- C. For what behavior was Foster demoted?

**Response:**

- D. What kind of message does it send when employees guilty of misconduct are only transferred between sections instead of being fired?

**Response:**

**56. Prince George's County Inmate Death**

Ronnie L. White, who was arrested for murdering Prince George's County Police Corporal Richard S. Findley, was found dead in his cell of the Prince George's County Jail on June 29, 2008. Anthony McIntosh was the only guard with access to White's jail cell when he died, and White's family has filed a wrongful death lawsuit against Prince George's County. An investigation conducted by the Maryland State Police concluded that White might have killed himself, but the Justice Department has taken over in launching Federal Civil Rights investigation. Some reports indicate that the federal criminal investigation may have been launched because White's death is not the first security concern that has been raised at the Upper Marlboro jail in the past two years.

**Question:**

**A. What is the status of the federal investigation?**

**Response:**

**B. When do you expect the investigation to conclude?**

**Response:**

**57. February Questions for the Record**

**On February 2, 2011, I submitted questions for the record to Assistant Attorney General Lanny Breuer and Assistant Attorney General Tony West for the Committee on the Judiciary hearing on “Protecting American Taxpayers: Significant Accomplishments and Ongoing Challenges in the Fight Against Fraud.”**

**Question:**

**What is the status of Mr. Breuer’s and Mr. West’s responses to those questions?**

**Response:**

## QUESTIONS POSED BY SENATOR SESSIONS

**58. You have reaffirmed that, under this administration, there is a rebuttable presumption that captured terrorists will be tried in civilian courts. What remains unclear is whether this presumption encompasses the classification of terrorists either as enemy combatants or criminal defendants.**

**A. When a suspected terrorist is apprehended in the United States, is the presumption that the individual will be designated as a criminal defendant, or is the presumption that the individual will be designated as an enemy combatant?**

**Response:**

**i. If the presumption is that the individual will be designated as a criminal defendant, under what circumstances would this presumption be rebutted in favor of military detention and trial by a military commission?**

**Response:**

**B. When a suspected terrorist is apprehended abroad, is the presumption that the individual will be designated as a criminal defendant, or is the presumption that the individual will be designated as an enemy combatant?**

**Response:**

**i. If the presumption is that the individual will be designated as a criminal defendant, under what circumstances would this presumption be rebutted in favor of military detention and trial by a military commission?**

**Response:**

**59. You testified that you have “modified how *Miranda* should be viewed.” While I understand a public safety exception exists allowing the delay of the administration of *Miranda* rights in certain circumstances, there is a risk that employing this exception to the broadest extent possible (as indicated in the FBI’s October 2010 memorandum) would yield incriminating statements that will later be deemed inadmissible. Even though a significant delay in *Miranda* rights might produce more intelligence information, a successful prosecution of the individual is also important. Do you agree that, instead of stretching criminal laws to accommodate terror suspects, the wiser policy is to designate these individuals as enemy combatants from the beginning, subjecting them to military detention, lawful**

**military interrogation, and trial by military commission, thus preserving both intelligence gathering and the case against the individual?**

**Response:**

**60. You testified that, on the same day you announced that Khalid Sheikh Mohammed would be tried before a civilian court, you also “sent a number of cases to the military commissions” and that you will continue to do so. However, you have also reiterated the administration’s commitment to closing the detention facility at Guantanamo Bay.**

**A. If the administration continues to send cases to military commissions, but closes the detention facility at Guantanamo Bay, where will these cases be tried?**

**Response:**

**B. During a Senate Intelligence Committee hearing in February, CIA Director Leon Panetta testified that if captured, high-level al Qaeda leaders such as Ayman Al-Zawahiri would likely be imprisoned at Guantanamo Bay. If Guantanamo Bay is closed, where will high-value targets be detained upon capture?**

**Response:**

**61. What is the status of the investigation by U.S. Attorney Patrick Fitzgerald regarding whether lawyers representing certain Guantanamo detainees illegally compromised the identities of Central Intelligence Agency employees?**

**Response:**

**62. You testified that the Department of Justice “continue[s] to protect the nation from other serious threats, including espionage and export control violators;” however, the ongoing WikiLeaks scandal went noticeably unmentioned. On April 24th, the *New York Times*, the *Washington Post*, and other media outlets obtained more than 700 classified military documents through WikiLeaks, which contained assessments of Guantanamo Bay detainees. As you know, this is the fourth time classified government documents have been released by WikiLeaks and the fact that the leaks have not been stopped by now is disconcerting.**

**A. Please explain what legal steps the Department has undertaken to prosecute and/or stop the WikiLeaks breaches.**

**Response:**

- B. Are you aggressively pursuing a strong case against all parties legally chargeable with this dramatic breach?**

**Response:**

- C. Do you believe that the Espionage Act or another law currently on the books gives you the legal authority that you need to prosecute culpable individuals effectively?**

**Response:**

- i. If not, are you in favor of Congress passing new legislation giving you this authority?**

**Response:**

- 63. In your February 23, 2011 letter to Speaker Boehner, you wrote that “the President and I have concluded that classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law, Section 3 of DOMA is unconstitutional.”**

- A. Is it this administration’s view that all classifications based on sexual orientation warrant heightened scrutiny?**

**Response:**

- B. Eleven United States Circuit Courts of Appeal have applied the rational basis test to such classifications. The Third Circuit has not had the occasion to address the issue, and the Second Circuit, in *Able v. United States*, 155 F.3d 628, 632 (2d Cir. 1998), applied rational basis review without deciding whether a higher standard would be warranted. In your letter to Speaker Boehner, you dismiss the eleven circuit court decisions as follows:**

**“many of them reason only that if consensual same-sex sodomy may be criminalized under *Bowers v. Hardwick*, then it follows that no heightened review is appropriate – a line of reasoning that does not survive the overruling of *Bowers* in *Lawrence v. Texas*, 538 U.S. 558 (2003). Others rely on claims regarding ‘procreational responsibility’ that the Department has disavowed already in litigation as unreasonable, or claims regarding the immutability of sexual orientation that we do not believe can be reconciled with more recent social science understandings. And none engages in an examination of all the factors that the Supreme Court has identified as relevant to a decision about the appropriate level of scrutiny. Finally, many of the more recent decisions have relied on the fact that the Supreme Court has not recognized that gays and lesbians constitute a suspect class or the**

fact that the Court has applied rational basis review in its most recent decisions addressing classifications based on sexual orientation, *Lawrence* and *Romer*. But neither of those decisions reached, let alone resolved, the level of scrutiny issue because in both the Court concluded that the laws could not even survive the more deferential rational basis standard.”

Is it the administration’s position that the United States Circuit Courts mentioned above are incorrect in their application of the rational basis standard, rather than heightened scrutiny, in cases involving classifications based on sexual orientation?

**Response:**

64. Has the Department of Justice ever refused to defend a law based on its determination that a standard of review applies that is different from the standard of review employed by the majority of circuit courts and never employed by the Supreme Court?

**Response:**

65. An important element of our federal bankruptcy law is the requirement that debtors receive a budget briefing and analysis from an approved credit counseling agency before filing a bankruptcy petition. I was a leading proponent of that requirement when it was added in 2005, because it was important to ensure that people are aware of the alternatives to bankruptcy and that only people who truly have no hope of repaying their debts are subject to the burden, expense and credit damage that a filing involves. I also thought it was important that we provide debtors with the knowledge and insight they need to emerge successfully from bankruptcy so that they will never have to file again. To ensure that debtors receive objective, professional advice that will further these goals, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 directed the Executive Office for United States Trustee (EOUST) to create a list of approved nonprofit budget and credit counseling agencies to provide these services.

Recently, it has come to my attention that the EOUST has approved a number of credit counseling agencies that some people characterize as “certificate mills.” These agencies appear to be primarily concerned with simply providing debtors with a certificate to prove they have completed the requisite pre-filing counseling, rather than helping debtors explore their alternatives to bankruptcy and to understand what types of behavior placed them in a position of financial distress. Of particular concern is that some approved agencies appear to be related through family or business ties with for-profit companies, including debt relief agencies and bankruptcy lawyers, which can lead to a conflict of interest. For example, bankruptcy lawyers associated with some of these approved agencies may try to cultivate relationships with credit counseling agencies that will, in turn, make no effort to help debtors avoid filing bankruptcy.

- A. When considering whether to approve a credit counseling agency, does the EOUST evaluate the relationship between the credit counseling agency or its personnel and debt relief agencies or bankruptcy lawyers?**

**Response:**

- B. Please explain the steps the EOUST takes to ensure that conflicted relationships do not arise between approved credit counseling agencies and debt relief agencies or bankruptcy lawyers.**

**Response:**

**QUESTIONS POSED BY SENATOR GRAHAM**

**The Integrated Wireless Network (IWN) radio system has been deployed in the National Capital Region.**

- 66. Please explain the Department's decision to cancel the IWN program now that it is being deployed.**

**Response:**

- 67. If the Department does not consider IWN to be successful in providing federal agents with an upgraded system and interoperability, what is the Department's new plan to do so?**

**Response:**

- 68. When do you intend to submit that plan to the Judiciary Committee for our review and comment?**

**Response:**



## QUESTIONS POSED BY SENATOR CORNYN

69. **The Joint Interagency Task Force-South (JIATF-South) is a DoD-led interagency enterprise that integrates and synchronizes U.S. Government counter-trafficking operations in the Caribbean Sea, Gulf of Mexico, and the eastern Pacific. At JIATF-South, 15 different USG agencies and liaisons from 13 partner nations are at work, detecting and monitoring illicit traffickers and other threats, and then facilitating their interdiction.**

**In contrast to JIATF-South, the USG takes a much less unified and less effective approach along the U.S. land border with Mexico, where counter-trafficking and border security operations are critical. Although the USG does have solid interagency coordination in the area of intelligence fusion on the border, there is no similar interagency integration and synchronization function in the areas of interdiction operations and border security.**

**Recently, Admiral Winnefeld, commander of NORTHCOM, testified before the Armed Services Committee that JIATF-South is a “very good model” that he supports “as a potential concept” for utilization on the Southwest border. He emphasized that it would be important for any such interagency task force on the U.S.-Mexico border to be civilian-led.**

- 1) **Do you agree with the DHS, the U.S. NORTHCOM commander, and the President’s “Drug Czar”?**

**Response:**

- 2) **Do you think an interagency civilian-led task force on the Southwest border, modeled after the “gold standard” of JIATF-South, would enhance our counter-trafficking and border security efforts?**

**Response:**

70. **Mexican transnational criminal organizations (TCOs) annually generate, remove, and launder between \$18 billion and \$39 billion in proceeds, a large portion of which is believed to be smuggled in bulk out of the United States through the Southwest border. Other methods include use of Money Services Businesses, trade-based schemes, and stored value card systems. At most, officials seize \$1 billion of this revenue.**

- 1) **What is DOJ doing to improve coordination between law enforcement agencies and focus resources on these criminal financial networks?**

**Response:**

- 2) **What legislative tools do you need to more effectively identify and prosecute money laundering threats through criminal investigations?**

**Response:**

71. **On April 18, Representative Lamar Smith sent you a letter asking if the Department of Justice was going to sue the State of Utah, as it did the State of Arizona, over its recently enacted immigration laws.**

- 1) **How do you distinguish the Arizona case from the Utah law, especially given that both involve States enacting legislation in an area that should be controlled by the Federal Government?**

**Response:**

- 2) **Wouldn't you say that the Utah laws are subject to preemption as you argued in the Arizona case?**

**Response:**

72. **In April, the Government Accountability Office (GAO) released a report on criminal alien statistics. In the report, GAO noted that three individuals with links to international terrorism were able to become naturalized U.S. citizens.**

**The ability to bar terrorists and people who are national security risks from obtaining immigration benefits is a recurring problem. As we know from the 9/11 Commission report, terrorists will exploit any legal avenue to gain entry into the United States. They have been able to use our current immigration system to advance their efforts to do harm to Americans. Whether they obtain a visa or U.S. passport or are able to come to the U.S. legally through a relative or employment – the end result is the same.**

**I have tried to address this problem through legislative amendments that would bar terrorists from establishing good moral character – a requirement for naturalization. However, this problem also requires additional authorities that would give you and the Secretary of Homeland Security the ability to bar terrorists or known security risks from obtaining U.S. citizenship as a matter of discretion.**

- 1) **Do you believe an individual who is a terrorist or has ties to terrorist organizations should be allowed to get U.S. citizenship?**

**Response:**

- 2) **What additional authorities do you wish you had available to you to better prosecute individuals suspected of terrorists activity?**

**Response:**

- 3) **Is there an administrative process that could be revised to ensure that no individual obtains U.S. citizenship until you or the Secretary of Homeland Security determines they are not a threat to the U.S.?**

**Response:**

73. **Last year the American Bar Association (ABA) published a report suggesting three alternatives to reform the current immigration court system – creation of an Article I court, Independent Agency, or some hybrid of the two to oversee immigration proceedings.**

**I like the idea of an Article I Court and have drafted legislation to create such a court to replace the current immigration court system.**

- 1) **What are your views on the ABA’s immigration court reform proposal?**

**Response:**

- 2) **Do you think that the immigration court function should be moved out of DOJ? If yes, why?**

**Response:**

**QUESTIONS POSED BY SENATOR COBURN**

74. **Following the April 2009 Justice Department Oversight hearing, I submitted written questions to you regarding the steps taken at the Justice Department to implement President Obama’s promise to conduct “an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy.”**

**In your response, you stated, “the Department established an Advisory Council for Savings and Efficiencies (SAVE Council) in June 2010...The Council will ensure accountability for performance improvements resulting in cost savings, cost avoidance, and streamlined processes across the Department.”**

- A. **Your response merely described the SAVE Council, and what it proposed to do. Since it has now been in existence for almost a year, please describe its activities to date, cost savings implemented, how Department processes have been streamlined, and what, if any, recommendations were made to eliminate certain subdivisions to improve organizational efficiency.**

**Response:**

- B. **I also asked whether any proposals for organizational change included an in-depth review of current grant programs, their effectiveness, and whether any grant programs were identified as poorly managed, duplicative or in need of elimination. You stated grant program review had not occurred as part of the proposals from senior leadership at the Department, but that, “with the establishment of the Council, this is a potential program area that can be examined.”**

- i. **Has the Council examined grant programs as part of its goal to “ensure accountability for performance improvements resulting in cost savings, cost avoidance, and streamlined processes across the Department?” If not, why not?**

**Response:**

- ii. **If so, please list the grant programs the Council identified as problematic in its review.**

**Response:**

75. **The Department of Justice Office of the Inspector General has been preparing its “Top Management and Performance Challenges in the Department of Justice” since 1998. In its most recent list, published in November 2010, it states grant**

management has been “a top management challenge since the inception of this list.” The Department faced even more challenges in this area when it had to award funds through the 2009 Recovery Act.

- A. The OIG’s 2010 memo on this challenge state, “as of the end of August 2010, the Department had expended about 52 percent of its Recovery Act funds.” What is the current percentage of Recovery Act funds that have been expended to date?

**Response:**

- i. The Recovery Act was signed into law over 2 years ago. It was allegedly needed to provide an immediate infusion of funding to jumpstart the economy. Why has the Department delayed its delivery of the entire amount of Recovery Act funding?

**Response:**

- ii. Is there a closeout date for grant funding provided by the Recovery Act? Does the Department plan to return to the Treasury any unused Recovery Act funds that are outstanding at this time? Why or why not?

**Response:**

- B. Testimony of the Inspector General in May 2010 before the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies also noted the grant management problem in both Recovery Act and non-Recovery Act grant programs. While acknowledging improvement, the Inspector General’s testimony noted “OJP needs to ensure that our audit recommendations regarding a particular grant program will be implemented throughout all applicable Department programs, rather than only in the specific program the OIG audited.” He also stated, “considerable work remains in ensuring effective grant management...”

The Acting Inspector General recently testified before the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, and she described the grant management portion with the same sentiment, “considerable work remains before managing the billions of dollars the Department awards annually in grants is no longer a top challenge for the Department.”

- i. The Inspector General’s 2010 testimony notes lack of consistent application of audit recommendations among grant programs. Do the individual program managers now coordinate to address concerns

expressed by the Inspector General to ensure those recommendations are applied across all programs? Why or why not?

**Response:**

- ii. I believe it is irresponsible for taxpayer dollars to be funneled into grant programs the OIG has consistently classified over the past 13 years as being mismanaged by the Department. What changes do you believe are necessary within the Department to prevent grant management from appearing on the OIG's top management challenges list next year? How do you plan on implementing your proposed changes?

**Response:**

- 76. The Office of the Inspector General released its last Semiannual Report to Congress in the Fall of 2010, covering the period from April 1, 2010 – September 30, 2010. In that report, the Inspector General noted its audits of Office of Justice Programs (OJP) grants to state and local entities. One such audit included 10 Weed and Seed grants and 2 Bureau of Justice Assistance (BJA) grants totaling over \$5 million awarded to Oklahoma City, OK. Over \$300,000 in grant funds were questioned, and other internal control discrepancies were identified, such as inadequate property control records, and a city employee opening a bank account in the name of Oklahoma City, but giving himself exclusive signatory authority over the account.
  - A. The Report notes OJP agreed with OIG's eight recommendations and "agreed to coordinate with Oklahoma City to remedy the questioned costs and implement appropriate corrective action." Please provide these eight recommendations, and an update on the status of the implementation of those by both OJP and Oklahoma City.

**Response:**

- B. Has Oklahoma City been forced to repay any of the questionable expenditures highlighted by the OIG's Report? Why or why not?

**Response:**

- C. Has Oklahoma City continued to receive any Weed and Seed or other BJA grant funding since the OIG questioned its conducted in the April 1, 2010 Semiannual Report? If so, why?

**Response:**

77. In the Department’s 2010 PRO IP Act Annual Report, you note Congress did not appropriate funds for the state and local law enforcement grants authorized under Section 401 of the PRO IP Act, yet the Office of Justice Programs (OJP) “offered competitive grants to support state and local IP law enforcement task forces and local IP training and technical assistance....”

A. Under which OJP competitive grant program were these funds awarded?

Response:

B. The PRO IP Act Report notes, “on September 30, 2010, OJP announced that it had awarded approximately \$4 million in grants to 14 state and local law enforcement agencies and three non-profit organizations....” Are these 17 grantees required to report to the Justice Department on the use of these funds and their enforcement success as a result of these grants? If so, please provide that information and comments regarding whether the Department is satisfied with the grantees’ performance with the federal grant funds.

Response:

78. In the Department’s 2010 PRO IP Act Annual Report, you also note, regarding the funds authorized under Section 403, Congress provided funding in 2009 “for the Department to appoint 15 new CHIP prosecutors to support CHIP Units nationwide.”

A. The Report merely noted where these new positions would be located, but did not comment on the investigations and prosecutions that have resulted from the hiring of these new prosecutors. Have these new hires pursued any investigations and prosecutions? If so, please provide examples of the success or failure of these efforts.

Response:

B. Did the Department receive any federal funding for these positions in FY 2010? If so, what was the amount? If not, does the Department plan to retain these prosecutors?

Response:

C. If these prosecutors will be retained regardless of specific funding received, how will the Department use its current funding to accommodate these positions?

Response:

**79. In the Department's 2010 PRO IP Act Annual Report, you describe various prosecution initiatives conducted through the newly reestablished IP Task Force. In all four of the enforcement priorities you listed, there were cases involving products manufactured in China, offenders who were Chinese nationals, or espionage to benefit China.**

**A. Does the Department believe China poses the most serious threat to the United States' efforts to protect our intellectual property? Why or why not?**

**Response:**

**B. If the Department does view China as the most serious threat, does the Department have different investigative or enforcement techniques tailored to China and its offenses? Why or why not?**

**Response:**

**C. In October 2010, you traveled to China to participate in an IP Crime Conference and to meet with senior Chinese law enforcement officials on the importance of IP enforcement and cooperation with the United States.**

**i. Please provide more specific information regarding how you were received, the reaction to the proposed cooperation, and your opinion regarding China's commitment to enforce intellectual property laws.**

**Response:**

**ii. What actions has the Department taken to follow up on this visit and ensure China does engage in cooperation with the United States on this issue and makes efforts to change its policies that are conducive to violating intellectual property rights?**

**Response:**

**80. In November 2010, the Justice Department's Inspector General issued a report that said between 2007 and 2009 several U.S. Attorneys had consistently stayed at luxury hotels that exceeded the government per diem.**

**A. What controls are in place now to ensure that travel is not being abused by U.S. Attorneys?**

**Response:**

**B. The scope of the report was limited to U.S. Attorneys. Is there any similar oversight of the travel of employees at Main Justice? What about employees of U.S. Attorneys?**



**Response:**

- C. While the report addressed travel at higher rates than are generally allowed, it did not address the *amount* of travel.**
- i. How often do employees travel for reasons other than a court appearance?**

**Response:**

- ii. For what reasons do they travel?**

**Response:**

- D. When an Assistant Attorney General or other administration official travels to give a speech to an outside organization, does that organization pay for their travel? Or does the Justice Department subsidize their travel?**

**Response:**

- 81. A June 2009 memorandum from the Inspector General identified potential overlap and duplication in grants administered by COPS, the Edward Byrne Memorial Justice Assistance (JAG) Formula Program, and the Edward Byrne Competitive Grant program. A report issued in May 2010 showed this could still be a problem, and remedies to duplicative grants generally occurred after the grants were awarded.**

**In response to that Inspector General's report have there been any efforts to ensure that grants administered by different sectors of DOJ are not duplicative?**

**Response:**